United States Government Accountability Office

GAO

Report to the Ranking Member, Committee on Finance, U.S. Senate

July 2007

FEDERAL FARM PROGRAMS

USDA Needs to Strengthen Controls to Prevent Improper Payments to Estates and Deceased Individuals

GAO-07-818

Highlights of GAO-07-818, a report to the Ranking Member, Committee on Finance, U.S. Senate

July 2007

FEDERAL FARM PROGRAMS

USDA Needs to Strengthen Controls to Prevent Improper Payments to Estates and Deceased Individuals

Why GAO Did This Study

Farmers receive about $20 billion annually in federal farm program payments, which go to individuals and "entities," including corporations, partnerships, and estates. Under certain conditions, estates may receive payments for the first 2 years after an individual's death. For later years, the U.S. Department of Agriculture (USDA) must determine that the estate is not being kept open for payments.

As requested, GAO evaluated the extent to which USDA (1) follows its regulations that are intended to provide reasonable assurance that farm program payments go only to eligible estates and (2) makes improper payments to deceased individuals. GAO reviewed a nonrandom sample of estates based, in part, on the amount of payments an estate received and compared USDA's databases that identify payment recipients with individuals the Social Security Administration listed as deceased.

What GAO Recommends

GAO recommends that USDA conduct all required annual estate eligibility determinations, implement management controls to verify that an individual receiving program payments has not died, and determine if these payments have been made to deceased individuals or to entities that failed to disclose the death of a member, and if so, recover the appropriate amounts. USDA agreed with these recommendations and has begun actions to implement them.

www.gao.gov/cgi-bin/getrpt?GAO-07-818.

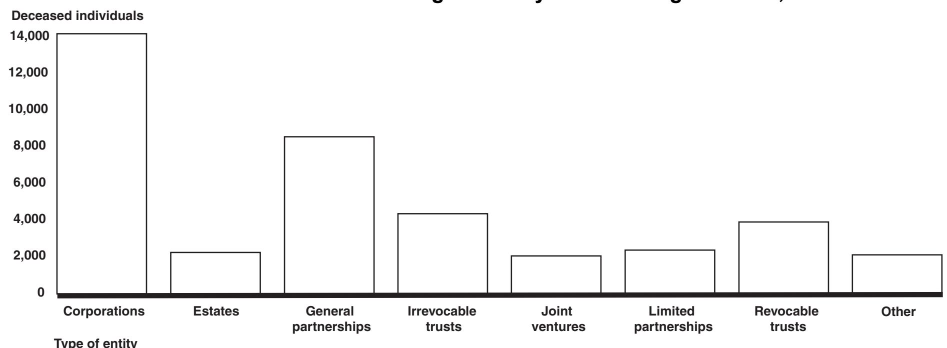
To view the full product, including the scope and methodology, click on the link above. For more information, contact Lisa Shames at (202) 512-3841 or shamesl@gao.gov.

What GAO Found

USDA has made farm payments to estates more than 2 years after recipients died, without determining, as its regulations require, whether the estates were kept open to receive these payments. As a result, USDA cannot be assured that farm payments are not going to estates kept open primarily to obtain these payments. From 1999 through 2005, USDA did not conduct any eligibility determinations for 73, or 40 percent, of the 181 estates GAO reviewed. Sixteen of these 73 estates had each received more than $200,000 in farm payments, and 4 had each received more than $500,000. Also, for the 108 reviews USDA did conduct, GAO identified shortcomings. For example, from 1999 through 2005, 69 of the 108 estates did not receive annual reviews for every year of payments received, and some USDA field offices approved groups of estates for payments without reviewing each estate. Furthermore, 20 estates that USDA approved for payment eligibility had no documented explanation for keeping the estate open.

USDA cannot be assured that millions of dollars in farm payments are proper. It does not have management controls to verify that it is not making payments to deceased individuals. For 1999 through 2005, USDA paid $1.1 billion in farm payments in the names of 172,801 deceased individuals (either as an individual recipient or as a member of an entity). Of this total, 40 percent went to those who had been dead for 3 or more years, and 19 percent to those dead for 7 or more years. Most of these payments were made to deceased individuals indirectly (i.e., as members of farming entities). For example, over one-half of the $1.1 billion payments went through entities from 1999 through 2005. In one case, USDA paid a member of an entity—deceased since 1995—over $400,000 in payments for 1999 through 2005. USDA relies on the farming operation's self-certification that the information provided is accurate and that the operation will inform USDA of any changes, such as the death of a member. Such notification would provide USDA with current information to determine the eligibility of the entity to receive the payments. The complex nature of some farming operations—such as entities embedded within other entities—can make it difficult for USDA to avoid making payments to deceased individuals.

Number of Deceased Individuals Receiving Farm Payments through Entities, 1999-2005



Source: GAO's analysis of USDA's data.

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Abbreviations

EQIP	Environmental Quality Incentives Program
FSA	Farm Service Agency
IPIA	Improper Payments Information Act of 2002
OMB	Office of Management and Budget
USDA	U.S. Department of Agriculture

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United States Government Accountability Office
Washington, DC 20548

July 9, 2007

The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate

Dear Senator Grassley:

Farmers receive about $20 billion annually in federal farm program payments for crop subsidies, conservation practices, and disasters. Such payments go to 1.7 million recipients, both individuals and "entities," including corporations, partnerships, and estates. Individuals may receive farm program payments indirectly through as many as three entities.[1] The Agricultural Reconciliation Act of 1987 (1987 Act) limits payments to individuals and entities that are "actively engaged in farming." We reported in 2004 that because the U.S. Department of Agriculture's (USDA) regulations ensuring that recipients are actively engaged in farming do not specify measurable standards, they allow individuals with limited involvement in farming to qualify for farm program payments.[2] We recommended that USDA strengthen its regulations for active engagement in farming. Subsequently, in November 2006, we identified the need for better oversight of farm program payments.[3] Without better oversight to ensure that farm program funds are spent as economically, efficiently, and effectively as possible, we pointed out, USDA has little assurance that these funds benefit the agricultural sector as intended.

From 1999 through 2005, USDA, through its Farm Service Agency (FSA), made 124 million payments totaling about $130 billion. Over $200 million of this amount went to nearly 42,000 estates. Generally, under the 1987

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[1]Under this "three-entity rule," a person—an individual or entity—can receive program payments through no more than three entities in which the person holds a substantial beneficial interest. A person can receive payments (1) as an individual and as a member of no more than two entities or (2) through three entities and not as an individual. FSA defines a substantial beneficial interest as 10 percent or more.

[2]GAO, *Farm Program Payments: USDA Needs to Strengthen Regulations and Oversight to Better Ensure Recipients Do Not Circumvent Payment Limitations*, GAO-04-407 (Washington, D.C.: Apr. 30, 2004).

[3]GAO, *Suggested Areas for Oversight for the 110th Congress*, GAO-07-235R (Washington, D.C.: Nov. 17, 2006).

Act, once a person dies, farm program payments may continue to that person's estate under certain conditions. However, if no estate is probated, or once the estate is settled, the deceased person's heirs must qualify in their own right in order to receive payments.

USDA regulations covering most farm program payments allow an estate to receive payments for the first 2 years after the death of the individual if the estate meets certain eligibility requirements for active engagement in farming. That is, an estate must contribute (1) capital, land, or equipment and (2) the personal representative or heirs of the estate must contribute labor or management to the farming operation.[4] Following the initial 2 years, the estate will continue to be eligible for program payments if it meets the active engagement in farming requirement and the local field office determines that the estate is not being kept open primarily to continue receiving program payments. Estates are commonly kept open for longer than 2 years because of, among other things, asset distribution and probate complications, and tax and debt obligations. Under USDA regulations, for an estate to remain eligible for farm program payments, FSA must annually determine that the estate is still active and that obtaining farm program payments is not the primary reason it remains open. FSA guidelines provide that each estate should provide documents showing why it has not distributed its assets to its beneficiaries and why it is still active for the current year. When property is completely distributed from the deceased individual to his or her heirs directly or through an estate, the payments to the individual who died must end. However, the deceased individual's heirs may subsequently apply for program payments in their own right and to receive payments must satisfy the requirements for active engagement in farming.

FSA guidance directs county committee staff to annually notify individuals and entities that they must file farm operating plans with their local field office if they are seeking farm program payments. These plans document the name of each recipient, the contribution each recipient makes to the farming operation, and the share of profits and losses each recipient will receive. The individual filing this plan certifies that, in a timely manner, he or she will notify the local field office of any changes in the information that could affect an eligibility determination, such as the death of an

[4]Alternatively, the estate could qualify as actively engaged in farming as a landowner if the estate receives rent or income for the use of the land based on the land's production or the farming operation's operating results.

individual in the farming operation. If timely notification is not given, the farming operation is subject to forfeiture of payments. Also, payments must be returned if they were based on erroneous information or if the producer is otherwise not entitled to them.

You asked us to examine FSA's implementation of regulations to identify improper payments to estates and deceased individuals. As agreed with your office, we evaluated the extent to which FSA (1) follows its regulations that are intended to provide reasonable assurance that farm program payments go only to eligible estates and (2) makes improper payments to deceased individuals.

To address these issues, we reviewed USDA's regulations, FSA's guidelines, and other management controls for implementing the provisions of the 1987 Act. We also spoke with FSA officials in headquarters, state offices, and local field offices who are responsible for ensuring that (1) estates are properly reviewed for eligibility and (2) payments are not made to deceased individuals. To evaluate FSA's application of regulations and guidance and to assess the overall effectiveness of its review process for deciding whether estates are eligible to receive farm program payments, we reviewed a nonrandom sample of estate eligibility determinations. To identify estates for our nonrandom sample, we obtained and analyzed FSA's computer databases for information on payment recipients from 1999 through 2005. The databases contained detailed information on payment recipients—including Social Security numbers, payment amounts, the status of recipients as individuals or members of entities, recipients' ownership interests in entities, types of entities receiving payments, and additional organizational details. The data showed 2,841 estates that had received payments for more than 2 years between 1999 and 2005, thus requiring FSA to conduct a determination of eligibility. Of these, we examined 181 estates in 26 states and 142 counties. These estates included the 162 (i.e., 162 of 2,841) that received over $100,000 in farm program payments from 1999 through 2005. They also included the 16 estates (i.e., 16 of 2,841) that (1) had received between $50,000 and $100,000 in farm program payments during this period and (2) had at least one member receiving payments through three other entities. Lastly, they included the three estates (i.e., 3 of 2,841) that had at least one member who appeared to be receiving payments through seven or more other entities. For each estate selected, we obtained files from FSA field offices. These files ideally would have included the following information

to facilitate FSA's determinations: letters testamentary from a probate court, minutes of the FSA county committee meeting that approved eligibility,[5] explanation letters or documentation for the reason the estate remained active beyond 2 years, farm operating plans, and payment history. However, because the documentation required for probated estates varies by jurisdiction, we could not easily determine whether improper payments had been made to estates. Furthermore, even in cases in which FSA had not done the required annual determinations, or when relevant documentation was missing or incomplete in the estate file, we could not determine whether improper payments were made without examining each case in depth.

In examining the extent to which FSA makes improper payments to deceased individuals after the date of their death, we matched the payment recipients in FSA's databases with individuals that the Social Security Administration has identified as deceased in its Death Master File. The data match showed the number and dollar amount of payments FSA provided to deceased individuals, either directly or indirectly through entities, from 1999 through 2005. We attributed payments made indirectly to individuals based on each individual's ownership share in the entity.

We conducted our review from June 2006 through May 2007 in accordance with generally accepted government auditing standards, which included an assessment of data reliability and internal controls. Appendix I contains more detailed information on our scope and methodology.

Results in Brief

FSA made farm program payments to estates more than 2 years after recipients have died without determining whether the estates were being kept open primarily for the purpose of receiving these payments, as its regulations require. As a result, FSA cannot be assured that farm program payments made to these estates are proper. We identified weaknesses in FSA's eligibility determinations for 142 of the 181 estates we reviewed. In particular, from 1999 through 2005, FSA did not conduct eligibility determinations for 73, or 40 percent, of the 181 estates in our sample. Sixteen of these 73 estates had each received more than $200,000 in farm program payments, and 4 had each received more than $500,000. For the remaining 108 estates, we identified several shortcomings with FSA's

[5]FSA county committees are made up of three to five farmers, elected by other farmers, to oversee the local operation of FSA programs, including eligibility determinations.

determinations. Specifically, FSA did not make an annual eligibility determination for every year in which it provided payments, as regulations require. From 1999 through 2005, 69 of the 108 estates did not receive determinations for every year in which they received payments, and some FSA field offices approved groups of estates for payments without reviewing each estate individually. Moreover, documentation supporting the determinations was often either nonexistent or vague. For example, 20 of the determinations had no documented explanation for why the estate remained active. In other cases, FSA approved eligibility based on insufficient explanations for why the estate remained open—such as the heirs stating that they wanted to keep it open on the advice of a lawyer or an accountant without specifying the reasons why. We also found that although the minutes of FSA county committee meetings indicated approval of payments to estates, the associated files did not contain critical documents that might validate why the estates were still active for reasons other than to obtain farm program payments. According to FSA field officials, many eligibility determinations were either not done or not done thoroughly, in part because of a lack of sufficient personnel and time, as well as competing priorities for carrying out farm programs.

FSA cannot be assured that millions of dollars in farm payments it made are proper because FSA does not have management controls, such as computer matching, to verify that it is not making payments to deceased individuals. Instead, according to the FSA field officials, FSA relies on self-certifications by farming operations that the information provided is accurate and that the operations will inform FSA of any changes, including the death of an operation's member. From 1999 through 2005, FSA paid $1.1 billion in farm program payments in the names of 172,801 deceased individuals (either as an individual or as a member of an entity). Of this amount, 40 percent went to individuals who had been dead for 3 or more years, and 19 percent went to individuals who had been dead for 7 or more years. Furthermore, complex farming operations consisting of multiple entities increase the risk of improper payments to deceased individuals. Farm program payments made to deceased individuals indirectly—that is, as members of entities—represent a disproportionately high share of post-death payments. We found that these payments to deceased individuals through entities accounted for $648 million—or 58 percent of the $1.1 billion in payments made to all deceased individuals from 1999 through 2005—whereas payments to all individuals through entities accounted for only 27 percent of all farm program payments. In one case, FSA paid a member of an entity who has been deceased since 1995 over $400,000 in farm program payments from 1999 through 2005.

We are making a number of recommendations to the Secretary of Agriculture for improving FSA's ability to prevent improper payments to estates and deceased individuals. Specifically, we are recommending that FSA ensure that its field offices conduct all annual estate eligibility determinations as required, implement management controls to verify that individuals receiving farm program payments have not died, and determine if program payments have been made to deceased individuals or to entities that failed to disclose the death of a member and if so, recover the appropriate amounts. In addition, we have referred the cases of improper payments we identify in this report to USDA's Office of Inspector General for further investigation.

We provided FSA with a draft of this report for review and comment. FSA agreed with our recommendations and already has begun to take actions to implement them. However, FSA did not agree with our use of the term "improper payments" in the report. The agency stated that the payments we describe do not meet the definition of improper payments under the Improper Payments Information Act of 2002 (IPIA).[6] We disagree. We believe the payments we highlight in three examples in the report do meet the definition of improper payments under IPIA. Furthermore, in these cases, officials in FSA's field offices agreed with our findings and told us they intend to recover the payments. For the remaining farm program payments identified in the report, we continue to believe that the potential exists for improper payments because of the lack of FSA management controls and the complexity of some of the farming operations involved. Our detailed response to USDA's comments appears at the end of this letter and following USDA's written comments in appendix II.

Background

FSA provides benefits through various programs of the Farm Security and Rural Investment Act of 2002.[7] Appendix III provides a listing of USDA farm programs and payments made from 1999 through 2005. The three-entity rule applies to certain USDA payments, including direct and counter-cyclical payments; loan deficiency payments and marketing loan gains, under the Marketing Assistance Loan Program; and Conservation Reserve Program payments.

[6] Pub. L. No. 107-300, 116 Stat. 2350 (2002).

[7] Pub. L. No. 107-171, 116 Stat. 134.

- *Direct and Counter-Cyclical Payments Program* provides two types of payments to producers of covered commodity crops, including corn, cotton, rice, soybeans, and wheat. Direct payments (formerly known as production flexibility contract payments) are tied to a fixed payment rate for each commodity crop and do not depend on current production or current market prices. Instead, direct payments are based on the farm's historical acreage and yields. Counter-cyclical payments provide price-dependent benefits for covered commodities whenever the effective price for the commodity is less than a pre-determined price (called the target price). Counter-cyclical payments are based on a farm's historical acreage and yields, and are not tied to the current production of the covered commodity.

- *Marketing Assistance Loan Program (formerly known as the Commodity Loan Program)* provides benefits to producers of covered commodity crops when market prices are low. Specifically, the federal government accepts harvested crops as collateral for interest-bearing loans (marketing assistance loans) that are due in 9 months. When market prices drop below the loan rate (the loan price per pound or bushel), the government allows farmers to repay the loan at a lower rate and retain ownership of their commodity for eventual sale. The difference between the loan rate and the lower repayment rate is called the marketing assistance loan gain. In lieu of repaying the loan, farmers may forfeit their crops to the government when the loan matures and keep the loan principal. In addition, farmers who do not have marketing assistance loans can receive a benefit when prices are low—the loan deficiency payment—that is equal to the marketing assistance loan gain that the farmer would have received if the farmer had a loan. Finally, farmers can purchase commodity certificates that allow them to redeem their marketing assistance loan at a lower repayment rate and immediately reclaim their commodities under loan. The difference between the loan rate and the lower repayment rate is called the commodity certificate gain.

- *Conservation Reserve Program* provides annual rental payments and cost-share assistance to producers to help them safeguard environmentally sensitive land. Producers must contractually agree to retire their land from agricultural purposes and keep it in approved conserving uses for 10 to 15 years.

Most farmers receive farm program payments directly from FSA as an individual operator. However, some farmers use legal entities to organize their farming operations to reduce their exposure to financial liabilities or estate taxes or, in some cases, to increase their potential for farm benefits.

Some of the more common ways farmers organize their operations include the following:

- *Corporations* have a separate legal existence from their owners; that is, the corporation, rather than the owners, is ordinarily responsible for farm business debts and can be sued. As a result, some individuals may incorporate their farm to protect their personal assets.

- *General partnerships* are a simple arrangement of two or more partners—individuals or entities—that do business together. Partners are personally liable for their own conduct and for the conduct of those under their direct supervision, as well as for negligence, wrongful acts, and misconduct of other partners and partnership employees. Partners are also personally liable for the partnership's commercial obligations, such as loans or taxes.

- *Joint ventures* are two or more individuals who pool resources and share profits or losses. Joint ventures have no legal existence independent of their owners. Members in a joint venture are personally liable for the farm's debts.

- *Limited partnerships* are an arrangement of two or more partners whose liability for partnership financial obligations is only as great as the amount of their investment. A limited partnership must have at least one general partner who manages the farm business and who is fully liable for partnership financial obligations to be considered eligible for farm program payments.

- *Trusts (irrevocable and revocable)* are arrangements generally used in estate planning that provide for the management and distribution of property. A revocable trust is amendable by the grantor during his or her lifetime who may also be the trustee and beneficiary. An irrevocable trust is an arrangement in which the grantor departs with ownership and control of property.

- *Other types of entities* that may qualify for farm program payments under payment limitation rules include a limited liability company—a hybrid form of a business entity with the limited liability feature of a corporation and the income tax treatment of a general partnership; a charitable organization; and a state or political subdivision.

FSA is responsible for ensuring that recipients meet payment eligibility criteria and do not receive payments that exceed the established limitations. It carries out this responsibility through its headquarters office, 50 state offices, and over 2,300 field offices.

IPIA requires the heads of federal agencies to annually review all programs and activities that they administer, identify those that may be susceptible to significant improper payments, and estimate and report on the annual amount of improper payments in those programs and activities. IPIA defines an improper payment as any payment that should not have been made or that was made in an incorrect amount, including any payment to an ineligible recipient.

OMB defines significant improper payments as payments in any particular program that exceed both 2.5 percent of total program payments and $10 million annually. If a program's estimated improper payments exceed $10 million in a year, IPIA and related OMB guidance requires agencies to prepare and implement a plan to reduce improper payments and report actions taken. Agencies are required to report this information, among other things, annually in their Performance and Accountability Reports. Specifically, OMB guidance requires agencies to report on (1) the causes of improper payments and corrective actions, (2) the steps the agency has undertaken to ensure that agency managers are held accountable for reducing and recovering erroneous payments, along with a realistic timetable, and (3) any statutory or regulatory barriers that may limit the agency's corrective actions in reducing improper payments. In November 2006, we reported that federal agencies, including USDA, need to improve their reporting of improper payments under IPIA by better identifying programs susceptible to improper payments and improving statistical sampling methodologies to estimate improper payments made.[8]

[8]GAO, *Improper Payments: Agencies' Fiscal Year 2005 Reporting under the Improper Payments Information Act Remains Incomplete*, GAO-07-92 (Washington, D.C.: Nov. 14, 2006).

Because Many FSA Field Offices Do Not Systematically Determine the Eligibility of Estates for Farm Program Payments, FSA Cannot Be Assured That Payments Are Proper

While there are legitimate reasons for keeping estates open, we found that FSA field offices do not systematically determine the eligibility of all estates that have been kept open for more than 2 years, as regulations require, and when they do conduct eligibility determinations, the quality of the determinations varies. Without performing annual determinations, an essential management control, FSA cannot identify estates being kept open primarily for the purpose of receiving these payments and be assured that the payments are proper.

We identified weaknesses in FSA's eligibility determinations for 142 of the 181 estates we reviewed. In particular, FSA did not conduct any program eligibility determinations for 73, or 40 percent, of estates that required a determination from 1999 through 2005. Because FSA did not conduct the required determinations, the extent to which estates remained open for reasons other than for obtaining program payments is not known. Sixteen of these 73 estates received more than $200,000 in farm program payments and 4 received more than $500,000 during this period. In addition, 22 of the 73 estates had received no eligibility determinations during the 7-year period we reviewed, and these estates had been open and receiving payments for more than 10 years. In one case, we found that the estate has been open since 1973. The following provides examples of estates that received farm program payments but were not reviewed for eligibility by FSA:

- A North Dakota estate received farm program payments totaling $741,000 from 1999 through 2003, but FSA did not conduct the required determinations.

- An Alabama estate received payments totaling $567,000 from 1999 through 2005, but FSA did not conduct the required determinations. In this case, the estate has been open since 1981.

- Two estates in Georgia, open since 1989 and 1996, respectively, received payments totaling more than $330,000 each, from 1999 through 2005. Neither estate received the required determinations for any of the years we reviewed.

- An estate in New Mexico, open since 1991, received $320,000 from 1999 through 2005, but it did not receive any of the required determinations.

According to FSA field officials, many determinations were either not done or not done thoroughly, in part because of a lack of sufficient personnel and time, as well as competing priorities for carrying out farm

programs. However, FSA's failure to conduct appropriate eligibility determinations means that it has no assurance that it is not making farm program payments to estates that have been kept open primarily to receive these payments.

Even when FSA field offices determined estates' eligibility for continued farm program payments, they did not always do so consistently. For the remaining 108 estates, 39 had eligibility determinations every year that a determination was required, while 69 had determinations at least once between 1999 and 2005, but not with the frequency required by regulations. Table 1 shows the number of years for which estates in our sample were required to have annual eligibility determinations compared with the number of years that FSA actually conducted determinations. The dark shaded numbers highlight the number of estates that received all the required annual eligibility determinations for the years that the estate received farm program payments—a total of 39 estates.

Table 1: Estate Eligibility Reviews, Program Years 1999 through 2005

	Number of years FSA should have conducted eligibility reviews							
Number of years FSA actually conducted eligibility determinations	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**Total**
	Estates							
None	19	14	7	6	5	9	13	**73**
1	10	7	2	4	6	6	4	**39**
2		10	0	2	1	4	6	**23**
3			9	1	4	2	1	**17**
4				2	3	3	4	**12**
5					5	3	3	**11**
6						1	3	**4**
7							2	**2**
Total	**29**	**31**	**18**	**15**	**24**	**28**	**36**	**181**

[dark shading] Signifies the number of estates that received all required determinations—a total of 39 estates.

[light shading] Signifies the number of estates that received at least one, but not all annual determinations—a total of 69 estates.

Source: GAO's analysis of FSA's data.

Note: Cells are left blank for years an eligibility determination was not required.

As the table shows, the longer an estate was kept open, the fewer determinations it received. For example, only 2 of the 36 estates requiring a determination every year over the 7-year period received all seven required determinations.

According to FSA guidelines, an estate should provide evidence that it is still making required reports to the court to be eligible for farm program payments. However, we found that FSA sometimes approved eligibility for payments when the estate had provided insufficient information—that is, information that was either nonexistent or vague. For example, in 20 of the 108 determinations, the minutes of FSA county committee meetings indicated approval of eligibility for payments to estates, but the associated files did not contain any documents that explained why the estate remained active. FSA also approved eligibility on the basis of insufficient explanations for keeping the estate open. In five cases, executors explained that they did not want to close the estate but did not explain why. In a sixth case, documentation stated that the estate was remaining active upon the advice of its lawyers and accountants, but did not explain why.

Furthermore, some FSA field offices approved program payments to groups of estates that were kept open after 2 years without any apparent review. In one case in Georgia, minutes of an FSA county committee meeting listed 107 estates as eligible for payments by stating that the county committee approved all estates open over 2 years. Two of the estates on this list of 107 were part of the sample that we reviewed in detail. In addition, another 10 estates in our sample, from nine different FSA field offices, were also approved for payments without any indication that even a cursory review had been conducted.

Additionally, the extent to which FSA field offices make eligibility determinations varies from state to state, which suggests that FSA is not consistently implementing its eligibility rules. Overall, FSA field offices in 16 of the 26 states we reviewed made less than one-half of the required determinations of their estates. For example, in Alabama and in Georgia, FSA field offices made only 22 percent and 31 percent of the required determinations for estates, respectively, compared with FSA field offices in Kansas and Texas, which made 62 percent and 87 percent of the required determinations, respectively. Table 2 shows, for the 181 estates in our sample, the variation in FSA's conduct of eligibility reviews from 1999 through 2005 in states that had five or more estates to examine. Appendix IV shows the extent to which FSA conducted estate eligibility determinations in each state in our review.

Table 2: Variation in Determinations FSA Made for Selected States, Program Years 1999 through 2005

State	Number of estates requiring determinations	Number of estates reviewed	Percent reviewed
Alabama	9	2	22.2
Arkansas	12	8	66.7
Georgia	16	5	31.3
Illinois	20	13	65.0
Kansas	13	8	61.5
Texas	63	55	87.3
Washington	8	3	37.5
Total	**141**	**94**	**66.7**

Source: GAO's analysis of FSA's data.

Note: This table presents the states in our sample that had at least five estates to review from 1999 through 2005.

Under the three-entity rule, individuals receiving program payments may not hold a substantial beneficial interest in more than two entities also receiving payments. However, because a beneficiary of an Arkansas estate we reviewed received farm program payments through the estate in 2005, as well as through three other entities, the beneficiary was able to receive payments beyond what the three-entity rule would have allowed. FSA was unaware of this situation until we brought it to officials' attention, and FSA has begun taking steps to recover any improper payments. Had FSA conducted any eligibility determinations for this estate during the period, it might have determined that the estate was not eligible for these payments, preventing the beneficiary from receiving what amounted to a payment through a fourth entity.

We informed FSA of the problems we uncovered during the course of our review. According to FSA field officials, a lack of sufficient personnel and time, and competing priorities for carrying out farm programs explain, in part, why many determinations were either not conducted or not conducted thoroughly. Nevertheless, officials told us that they would investigate these cases for potential receipt of improper payments and would start collection proceedings if they found improper payments.

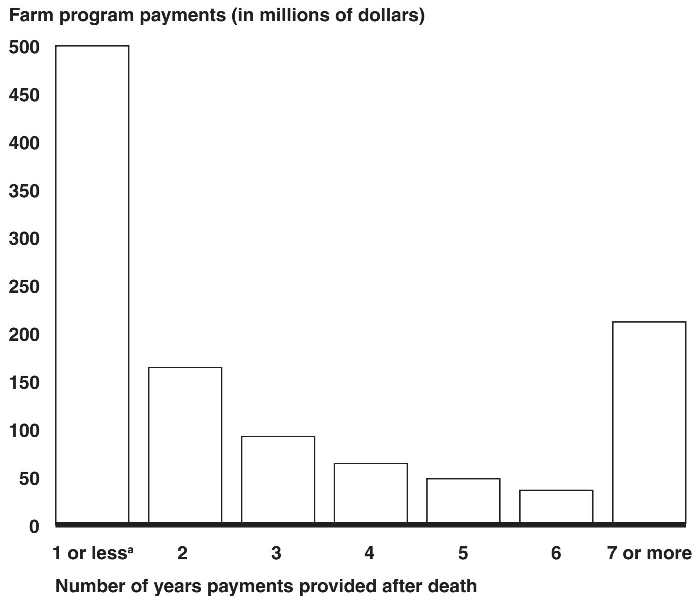
Because FSA Does Not Have Appropriate Management Controls, It Cannot Be Assured That It Is Not Making Payments to Deceased Individuals

FSA cannot be assured that millions of dollars in farm program payments it made to thousands of deceased individuals from fiscal years 1999 through 2005 were proper because FSA does not have appropriate management controls, such as computer matching, to verify that it is not making payments to deceased individuals. For example, FSA is not matching recipients listed in its payment database with individuals listed as deceased in the Social Security Administration's Death Master File. In addition, complex farming operations, such as corporations or general partnerships with embedded entities, make it difficult for FSA to prevent improper payments to deceased individuals. At present, FSA relies on farming operations to advise the agency of any change in the operation, including the death of a member that would affect payments made to the operation.

FSA Made Millions of Dollars of Farm Program Payments to Deceased Individuals from Fiscal Years 1999 through 2005

From fiscal years 1999 through 2005, FSA paid $1.1 billion in farm program payments to 172,801 deceased individuals—either as individuals or as members of entities, according to our matching of FSA's payment databases with the Social Security Administration's Death Master File. Of the $1.1 billion in farm payments, 40 percent went to individuals who had been dead for 3 or more years, and 19 percent went to individuals who had been dead for 7 or more years. Figure 1 shows the number of years in which FSA made farm program payments after an individual had died and the value of those payments. As the figure shows, for example, FSA provided $210 million in farm program payments to deceased individuals 7 or more years after their date of death.

Figure 1: Number of Years and Value of Farm Program Payments Made after Individuals' Deaths, Fiscal Years 1999 through 2005



Source: GAO's analysis of FSA's and Social Security Administration's data.

Note: Farm program payments made through entities are based on program year data.

[a]Includes payments made 1 day after death to 1 year after death.

Three cases illustrate how FSA's lack of management controls can result in improper payments to deceased individuals. In the first case, FSA provided more than $400,000 in farm program payments from 1999 through 2005 to an Illinois farming operation on the basis of the ownership interest of an individual who had died in 1995.[9] According to FSA's records, the farming operation consisted of about 1,900 cropland acres producing mostly corn and soybeans. It was organized as a corporation with four shareholders, with the deceased individual owning a 40.3-percent interest in the entity. Nonetheless, we found that the deceased individual had resided in Florida. Another member of this farming operation, who resided in Illinois and had signature authority for the operation, updated the operating plan most recently in 2004 but failed to notify FSA of the individual's death. The farming operation therefore continued to qualify for farm program payments on behalf of the deceased

[9]In addition, before the period of our review the operation received farm program payments on behalf of the deceased individual from 1995 through 1998.

individual. As noted earlier, FSA requires farming operations to certify that they will notify FSA of any change in their operation and to provide true and correct information. According to USDA regulations, failure to do so may result in forfeiture of payments and an assessment of a penalty. FSA recognized this problem in December 2006 when the children of the deceased individual contacted the FSA field office to obtain signature authority for the operation. FSA has begun proceedings to collect the improper payments.

In the second case, FSA provided more than $200,000 in farm program payments from 1999 through 2002 to an Indiana farming operation on the basis of the ownership interest of an individual who had died in 1993. According to FSA's records, the farming operation was a corporation, and the deceased individual held 100-percent ownership interest in the entity. The corporation operated farms in two counties, but upon the death of the individual, the corporation failed to notify the FSA field office in either county of the death. The corporation therefore continued to receive farm program payments on behalf of the deceased individual until 2002, when it filed a new farm operating plan with FSA that no longer included the deceased individual as a member. When we brought this case to the attention of FSA officials, they were unaware that the individual had died in 1993 and acknowledged that FSA provided improper payments to the farming operation from 1993 through 2002. According to agency officials, they intend to take action against the farming operation to recover the improper payments.

In the third case, FSA provided about $260,000 in farm program payments from 1999 through 2006 to a corporation on the basis of the ownership interest of an individual who had died in 1993. According to FSA records, the farming operation had 14 shareholders, with the deceased individual holding a 14-percent interest. We found that another member of this farming operation, who had signature authority for the operation, updated the farm's operating plan in 2004 but failed to notify FSA of the death of this member who we found had resided in a metropolitan area several hundred miles from the farm. The farming operation therefore continued to receive farm program payments on behalf of the deceased individual. FSA was unaware that the individual had died in 1993, but said it would investigate and if improper payments were made it would take action against the farming operation to recover the payments.

USDA recognizes that its farm programs have management control weaknesses, making them vulnerable to significant improper payments. In its *FY 2006 Performance and Accountability Report* to OMB, USDA

reported that poor management controls led to improper payments to some farmers, in part because of incorrect or missing paperwork.[10] In addition, as part of its reporting of improper payments information, USDA identified six FSA programs susceptible to significant risk of improper payments with estimated improper payments totaling over $2.8 billion in fiscal year 2006, as shown in table 3.

Table 3: USDA Estimates of Improper Payments, Fiscal Year 2006

Dollars in millions

Program	Estimated improper payments	Average percent error rate
Direct and Counter-Cyclical Payments Program	$424	4.96
Conservation Reserve Program	64	3.53
Disaster assistance programs[a]	291	12.30
Noninsured Assistance Program[b]	25	22.94
Loan deficiency payments provided under the Marketing Assistance Loan Program	443	9.25
Other benefits provided under the Marketing Assistance Loan Program	1,611	20.26
Total/average	**$2,858**	**11.17**

Source: USDA's *FY 2006 Performance and Accountability Report.*

Note: USDA's estimates include improper payments made to deceased individuals but USDA does not separate these payments from other improper payments.

[a]Disaster assistance payments are direct federal payments to crop producers when either planting is prevented or crop yields are abnormally low because of adverse weather and related conditions.

[b]The Noninsured Assistance Program provides financial assistance to producers of non-insured crops when low yields, loss of inventory, or prevented planting occur due to natural disasters. Assistance is limited to crops not eligible for coverage under the federal crop insurance program.

[10]See U.S. Department of Agriculture, *FY 2006 Performance and Accountability Report* (Washington, D.C.: Nov. 15, 2006).

Complex Farming Operations and a Lack of Management Controls Raise the Potential for Improper Payments to Deceased Individuals

Farm program payments made to deceased individuals indirectly—that is, as members of farming entities—represent a disproportionately high share of post-death payments. Specifically, payments to deceased individuals through entities accounted for $648 million—or 58 percent of the $1.1 billion in payments made to all deceased individuals from 1999 through 2005. However, payments to individuals through entities accounted for $35.6 billion—or 27 percent of the $130 billion in farm program payments FSA provided from 1999 through 2005. Similarly, we identified 39,834 of the 172,801 deceased individuals as receiving farm program payments through entities when we compared FSA's databases with the Social Security Administration's Death Master File.

The complex nature of some types of farming entities, in particular, corporations and general partnerships, increases the potential for improper payments. For example, a significant portion of farm program payments went to deceased individuals who were members of corporations and general partnerships. Deceased individuals identified as members of corporations and general partnerships received nearly three-quarters of the $648 million that went to deceased individuals in all entities. The remaining one-quarter of payments went to deceased individuals of other types of entities, including estates, joint ventures, limited partnerships, and trusts. With regard to the number of deceased individuals who received farm program payments through entities, they were most often members of corporations and general partnerships. Specifically, of the 39,834 deceased individuals who received farm program payments through entities, about 57 percent were listed in FSA's databases as members of corporations or general partnerships. Table 4 shows the number and percent of farm program payments FSA made to deceased individuals through entities from 1999 through 2005.

Table 4: Farm Program Payments Made to Deceased Individuals through Entities, Program Years 1999 through 2005

Dollars in millions

	Deceased individuals		Payments to deceased individuals	
Entity type	**Number**	**Percent**	**Total**	**Percent**
Corporations[a]	14,197	35.6	**$321.5**	49.6
Estates	2,262	5.7	**8.2**	1.3
General partnerships	8,575	21.5	**136.7**	21.1
Irrevocable trusts	4,377	11.0	**35.7**	5.5
Joint ventures	2,073	5.2	**19.4**	3.0
Limited partnerships	2,391	6.0	**30.7**	4.7
Revocable trusts	3,866	9.7	**28.8**	4.4
Other[b]	2,093	5.3	**67.1**	10.4
Total	**39,834**	**100.0**	**$648.1**	**100.0**

Source: GAO's analysis of FSA's data.

[a]Includes limited liability companies.

[b]Includes charitable organizations, individuals operating as a small business, and individuals receiving payments through more than one entity.

As we reported in 2004, some farming operations may reorganize to overcome payment limits to maximize their program benefits.[11] Large farming operations are often structured as corporations or general partnerships with other entities embedded within these entities. Deceased individuals are sometimes members of these embedded entities. For example, as shown in table 4, 8,575 deceased individuals received payments through general partnerships from 1999 through 2005. Of these, 687 received farm program payments because they were members of one or more entities that were embedded in the general partnership. Generally, these partnerships are consistent with the 1987 Act, as amended, whereby an individual can qualify for up to three payments by being a member of three entities within one general partnership. Furthermore, of the 172,801 deceased individuals identified as receiving farm program payments, 5,081 received more than one payment because (1) they were a member of more than one entity, or (2) they received payments as an individual and were a member of an entity.

[11]GAO-04-407.

According to FSA field officials, complex farming operations, such as corporations and general partnerships with embedded entities, make it difficult for FSA to prevent making improper payments to deceased individuals. In particular, in many large farming operations, one individual often holds signature authority for the entire farming operation, which may include multiple members or entities. This individual may be the only contact FSA has with the operation; therefore, FSA cannot always know that each member of the operation is represented accurately to FSA by the signing individual for several reasons. First, it relies on the farming operation to self-certify that the information provided is accurate and that the operation will inform FSA of any operating plan changes, which would include the death of an operation's member. Such notification would provide USDA with current information to determine the eligibility of the entity to receive the payments. Second, FSA has no management controls, such as computer matching of its payment files with the Social Security Administration's Death Master File, to verify that an ongoing farming operation has failed to report the death of a member.

Conclusions

FSA has a formidable task—ensuring that billions of dollars in program payments are made only to estates and individuals that are eligible to receive them. Our review, however, demonstrates that FSA field offices do not always conduct the necessary annual determinations to ensure that estates are eligible to receive farm program payments. FSA's performance of these determinations for estates that have been kept open for more than 2 years could serve as an effective deterrent to making improper program payments. However, these determinations can only be a deterrent if they are consistently and thoroughly conducted. As we have found, some FSA field offices have failed to conduct eligibility determinations or have not conducted them consistently and documented the results of their determinations.

FSA has relied on farming operations to report the death of a member whose ownership interest makes the operation eligible for program payments. However, it appears that some individuals who certify program eligibility forms for farming operations are either not taking seriously their obligation to notify FSA of the death of a member of the operation or are deliberately withholding this information to maximize their receipt of farm program payments. Our matching of FSA's farm payment database with the Social Security Administration's Death Master File indicates that FSA's reliance is misplaced, in at least some instances. We previously reported that we found examples of farming operations where recipients may circumvent the payment limits by organizing large farming operations to

maximize program payments. The complex nature of these entities—such as entities embedded within other entities—increases the potential that deceased individuals will receive farm program payments because the status of these individuals is not easy for FSA to ascertain. Currently, FSA does not have effective management controls to verify that an individual receiving farm program payments, either directly or indirectly through an entity, is still alive. The lack of these controls increases the risk of improper payments being made over time.

The shortcomings we have identified underscore the need for improved oversight of federal farm programs. Such oversight can help to ensure that program funds are spent as economically, efficiently, and effectively as possible, and that they benefit those engaged in farming as intended.

Recommendations for Executive Action

To provide reasonable assurance that FSA does not make improper payments to estates and deceased individuals, we recommend that the Secretary of Agriculture direct the Administrator of the Farm Service Agency to

- instruct FSA field offices to conduct all annual estate eligibility determinations as required;
- implement management controls, such as matching payment files with the Social Security Administration's Death Master File, to verify that an individual receiving farm program payments has not died; and
- determine if improper program payments have been made to deceased individuals or to entities that failed to disclose the death of a member, and if so, recover the appropriate amounts.

In addition, we have referred the cases we identify in this report to USDA's Office of Inspector General for further investigation.

Agency Comments and Our Evaluation

We provided FSA with a draft of this report for review and comment. FSA agreed with our recommendations and already has begun to take action to implement them. For example, FSA has issued a notice (Notice PL-158, May 31, 2007) to its field offices emphasizing the current payment eligibility rules, procedures, and review requirements for payments with respect to deceased individuals and estates. This directive instructs these offices to review the eligibility of all estates that have been open for more than 2 years and requested 2007 farm program benefits. Furthermore,

according to FSA, it is currently working with the Social Security Administration to obtain access to the Death Master File of deceased individuals. FSA intends to develop a process for matching its payment data against the Death Master File on at least an annual basis. According to FSA, it will then have a reliable means for identifying deceased individuals who may also be payment recipients. In addition, once implemented, FSA will no longer have to depend on the farming operation to notify the agency of an individual's death.

Despite its concurrence with our recommendations, FSA did not agree with our use of the term "improper payments" in this report. FSA suggested that we revise the report to refer to the payments as at most "questionable" in view of current eligibility regulations, rather than improper. Specifically, the agency stated that the payments we describe do not meet the definition of improper payments under IPIA. We disagree. We believe three cases we highlight in examples in the report do meet the definition of improper payments under IPIA. IPIA defines improper payments as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. This definition would include any payment made to an ineligible recipient either directly or through an entity. Our examples are consistent with this definition. Furthermore, officials in FSA's field offices agreed with our findings and told us they intend to recover the payments. For the remaining farm program payments identified in the report, we continue to believe that the potential exists for improper payments because of the lack of FSA management controls and the complexity of some of the farming operations involved. Under current circumstances, FSA cannot be assured that millions of dollars in farm program payments are going to those who met eligibility requirements and thus should have received these payments.

FSA's written comments are presented in appendix II. FSA also provided us with suggested technical corrections, which we have incorporated into this report, as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to appropriate congressional committees; the Secretary of Agriculture; the Director, OMB; and other interested parties. In addition, this report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or shamesl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.

Sincerely yours,

Lisa Shames
Director, Natural Resources
and Environment

Appendix I: Objectives, Scope, and Methodology

At the request of the Ranking Member of the Senate Committee on Finance, we reviewed the Farm Service Agency's (FSA) implementation of payment eligibility provisions to identify improper payments to estates and deceased individuals. Specifically, we evaluated the extent to which FSA (1) follows its regulations that are intended to provide reasonable assurance that farm program payments go only to eligible estates and (2) makes improper payments to deceased individuals.

To determine how well FSA field offices carry out rules that prohibit payments to ineligible recipients, we reviewed guidance that FSA field offices use to determine farm program payment eligibility, including relevant statutes and regulations and agency policy, including the FSA Handbook on Payment Limitations, 1-PL (Revision 1). We reviewed relevant studies prepared by the U.S. Department of Agriculture's (USDA) Office of Inspector General and the Congressional Research Service, as well as our own past reports. We also reviewed USDA's *FY 2006 Performance and Accountability Report* to understand its assessment of internal controls for its farm programs. In addition, we spoke with FSA officials in headquarters, state offices, and local field offices who are responsible for ensuring that (1) estates are properly reviewed for eligibility and (2) payments are not made to deceased individuals.

We obtained and analyzed FSA's computer databases for information on payment recipients from 1999 through 2005. These databases included FSA's Producer Payment Reporting System, Commodity Certificate file, and Permitted Entity file. The databases contain detailed information on payment recipients: Social Security numbers, payment amounts, the status of recipients as individuals or members of entities, their ownership interest in entities, types of entity, and additional organizational details. The databases also contain information on payments made under USDA's farm programs, including the Direct and Counter-Cyclical Payments Program, Marketing Assistance Loan Program, Conservation Reserve Program, and Environmental Quality Incentives Program. We also compiled data on farm program benefits provided through cooperative marketing associations.[1] Because our analysis covered the years 1999

[1]USDA provides benefits under the Marketing Assistance Loan Program through cooperative marketing associations, an alternative delivery system. Cooperative marketing associations obtain benefits on behalf of their members who deliver a commodity to the cooperative for marketing on a "pool" basis. Benefits, as well as marketing proceeds, are then allocated to members according to their share of the commodity in the pool. 7 C.F.R. pt. 1425.

through 2005, it also included farm payments from programs authorized before the Farm Security and Rural Investment Act of 2002, such as production flexibility contract payments authorized under the Agriculture Market Transition Act and market loss assistance payments and crop disaster assistance payments authorized under various ad hoc legislation. Appendix III provides a list of USDA farm programs we reviewed.

To evaluate FSA's application of regulations and guidance to assess the overall effectiveness of its review process for deciding whether estates are eligible to receive farm program payments, we reviewed a nonrandom sample of estate eligibility determinations. To identify estates for our review, we analyzed FSA's databases. The data showed that 2,841 estates had received payments for more than 2 years between 1999 and 2005, thus requiring FSA to conduct a determination of eligibility. Of these, we examined 181 estates in 26 states and 142 counties. These estates included the 162 (i.e., 162 of 2,841) that received over $100,000 in farm program payments during this period. We also selected the 16 estates (i.e., 16 of 2,841) that (1) had received between $50,000 and $100,000 in farm program payments during this period and (2) had at least one member receiving payments through three other entities, which could indicate circumvention of the three-entity rule. Lastly, we selected the three estates (i.e., 3 of 2,841) that had at least one member receiving payments through seven or more other entities.

For each estate selected, we reviewed case file documents to verify the basis for FSA field offices' decisions to grant eligibility. Specifically, we obtained and reviewed files from FSA field offices that ideally would have included the following information to facilitate FSA's determinations: letters testamentary from a probate court, minutes of the FSA county committee meeting that approved eligibility, explanation letters or documentation for the reason the estate remained active beyond 2 years, farm operating plans, and payment history. States and counties vary widely in the amount and type of documentation they require for probated estates. Consequently, we could not easily determine whether improper payments were made to estates. Furthermore, even in cases in which FSA had not done the required annual determinations, or when relevant documentation was missing or incomplete in the estate file, we could not determine whether improper payments were made without examining each case in depth.

To evaluate the extent to which FSA makes improper payments to deceased individuals, we compared recipients of farm program payments in FSA's computer databases with individuals whose Social Security

numbers were listed in the Social Security Administration's Death Master File, to identify post-death program payments for individuals who were deceased. The Death Master File contains information such as the name and Social Security numbers of deceased individuals in the United States. We assessed the reliability of FSA's data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of our review. Although we did not assess the reliability of the Social Security Administration's Death Master File, it is the most comprehensive list of death information available in the federal government and is generally used by other government agencies and researchers.

Using FSA's databases, we identified the 2.9 million individuals who received payments, either directly or indirectly through an entity, from 1999 through 2005. Payments were attributed to members of an entity by apportioning the payments according to each member's percentage share of that entity.[2] Using these Social Security numbers, we then compared these individuals with individuals listed in the Social Security Administration's Death Master File to determine the extent to which deceased individuals may have received improper payments. The data match showed the number and dollar amount of payments FSA provided to deceased individuals from 1999 through 2005. To gain an understanding of circumstances behind seemingly improper payments, we obtained relevant documents from FSA, including farm operating plans and acreage reports, for selected cases.

We conducted our review between June 2006 and May 2007 in accordance with generally accepted government auditing standards.

[2]Because cooperative marketing associations, loan servicing agents, and designated marketing associations only began reporting program benefits provided to their members to USDA in 2007, we were unable to attribute these benefits to individuals.

Appendix II: Comments from the U.S. Department of Agriculture

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

United States Department of Agriculture

Farm and Foreign Agricultural Services

Farm Service Agency

Operations Review and Analysis Staff

Audits, Investigations and State and county Review Branch

1400 Independence Ave, SW
STOP 0540
Washington, DC 20250-0501

TO: Lisa Shames
Director
Natural Resources and Environment
General Accountability Office

FROM: Teresa C. Lasseter [signature] June 14, 2007
Administrator

SUBJECT: Responding to U.S. Government Accountability Office (GAO) Draft Report: GAO-07-818, Job Code 360718, "FEDERAL FARM PROGRAMS: USDA Needs to Strengthen Controls to Prevent Improper Payments to Estates and Deceased Individuals"

The following are general comments in response to the draft report.

See comment 1.

We would note that the written notification of assignment to the Farm Service Agency (FSA), dated May 25, 2006, did not include any reference or discussion in regard to the Improper Payments Information Act of 2006 (IPIA). The notification listed the main objective of GAO is to provide information on the Department of Agriculture's (USDA) implementation of the Farm Program Payment Integrity Act of 1987. More specifically, the focus was to be on the eligibility of individual decedents' estates and as members of permitted entities to receive program payments. However, the title of the subject report now refers directly to improper payment to estates and deceased individuals.

See comment 1.

During the exit conference, FSA requested that GAO at least include an explanation that the term 'improper payment' as used in this report does not carry the same meaning as under IPIA. The basis for this request was that GAO made no findings during this review that any payments disbursed to program participants included in the audit samplings met the Office of Management and Budget (OMB) definition of "improper payment." Furthermore, no findings were made that FSA issued significant improper payments as defined by OMB. The draft report contains no such explanation or distinction as previously assured by GAO. Therefore, we maintain that it should be made clear to the reader that certain payments found to be made to deceased individuals and estates during the years 1999 through 2005 be considered at most 'questionable' in view of current payment eligibility regulations, rather than under the terms of IPIA.

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The Food Security Act of 1985, as amended, implemented requirements for payment eligibility; imposed limitations on the amount of program payments that an individual or entity could receive; and placed a restriction on the number of entities through which an individual may receive program payments and benefits under specific programs. Program payments were to be limited by "person" defined as an individual, an entity, or in some situations, the combination of an individual and entity. Also for payment eligibility, the individual or entity was required to be determined "actively engaged in farming" to receive program payments and benefits. Rules were promulgated and applied in response to these statutory requirements.

It was recognized that in the administration of programs, participants die and estates are formed. Considerations were made for the eligibility of such deceased individuals and for the estate that may be established for the deceased individual. Likewise for an estate that was established, the payment eligibility standards and limitations for entities were then applicable.

An individual as a "person" can in his or her own name receive program payments of an amount less than or equal to the limitation afforded one "person." Furthermore, that same individual can also receive benefits through an interest held in an entity. This entity, as determined a separate "person," can also receive program payments of an amount less than or equal to the limitation afforded one "person." There are instances when two individuals or an individual and an entity, are considered combined as one "person" for payment limitation purposes. However, under the rules for estates, an heir to an estate will not be combined with the estate unless that individual and the deceased would have been combined as one "person." Accordingly, even though an individual may be the sole heir of an estate, the individual is not combined as one "person" with the estate unless the individual would have been combined as one "person" with the individual who is now deceased. Therefore, it may be considered advantageous for an estate to be kept open if an heir has already reached the payment limitation. This allows heirs to receive program payments that they otherwise would not be eligible for if the estate was settled because the payment limitation was reached.

Regulations at 7 CFR Part 1400 provide that if a deceased individual's estate remains open after two program years from the date of the program year in which the individual died, FSA should determine, on a case-by-case basis, whether the estate is being kept open for the primary purpose of obtaining program payments. Otherwise, after 2 years the estate is not considered eligible for program payments and benefits under programs subject to the payment limitation provisions (7 CFR §1400.206(b)).

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The regulation also provides that if an individual dies before a determination of eligibility is made, information must be provided on behalf of the estate that verifies the individual did make a conscious effort and would have been determined actively engaged in farming if not for the individual's death. If the individual dies after all eligibility determinations were made, the determining authority shall allow that determination to be in effect for the individual's estate for that program year. The following year, however, the individual's estate must meet all necessary requirements to be determined actively engaged in farming (7 CFR §1400.210).

To implement these requirements, county FSA committees (COCs) are instructed to annually review all estates that requested program benefits and that were in existence more than two program years after the program year in which the individual died. COCs are to determine that the estate has proven to be active and that the estate is being kept open for reasons other than for obtaining program benefits. For deceased individuals and estates, all requirements must be met to be determined actively engaged in farming and eligible for program benefits for the year requested. The district directors are also required to review and concur with these findings and determinations (Handbook 1-PL (Rev. 1), paragraph 333; effective since May 8, 1992).

As outlined in the notification of assignment, GAO's objectives were to determine the extent to which individual decedents' estates receive farm program benefits beyond the 2 years allowed by the payment eligibility rules and the extent that estates, as members of entities, receive farm program benefits beyond the 2 years allowed. GAO additionally reviewed the extent to which program payments were issued to deceased individuals.

GAO selected a non-random sample of estates that had been in existence for more than two program years and that received program payments for the years 1999 through 2005. This sampling process relied on relatively high dollar amounts of program payments ($50,000 to $100,000) as the basis for selection. The estates in this judgmental sample were reviewed for compliance with applicable payment eligibility and payment limitation requirements. GAO found that 21 percent had eligibility reviews completed every year as required; 38 percent had been reviewed at least once between the years 1999 through 2005; and over 40 percent were not reviewed for the years 1999 through 2005.

See comment 2.

Other findings included that over 12 percent of the estates had been receiving payments for more than 10 years. GAO found that one estate had received over $700,000 in program benefits from 1999 through 2005 without any FSA review. No mention was made whether this entity was still an open estate or if the entity was misnamed or improperly coded in the payment system. The information available in the report was insufficient for FSA to conduct further research on this specific case. Nonetheless, estates are considered legitimate entities and if all requirements are met, considered

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eligible for program benefits beyond the two-year time period from the date of establishment. Since there are many legitimate reasons for estates to remain open for extended periods of time, the fact that payments are made for multiple years to an estate does not constitute fraud or program abuse in and of itself.

See comment 3.

The level of documentation used to support the determinations made by COCs that an estate was not kept open for the purpose of obtaining program payments was also questioned. Some COCs did a more comprehensive review than others. This report mentions weaknesses in FSA's implementation of the 1987 amendments in the failure to systematically review estates as required for payment eligibility. However, GAO did not find any instance in this judgmental sample of an estate being kept open for the purpose of obtaining program benefits. Furthermore, GAO made no findings of improper payments to estates included in this audit sampling.

See comment 4.

FSA issued over $130 billion in farm program payments and benefits for the years 1999 through 2005. GAO found that during this period of time, FSA issued farm program payments to over 172,000 deceased individuals, either as individuals or as members of an entity. The amount disbursed to such individuals was $1.1 billion (8/10 of one percent of total payments made) which included all commodity, price support, conservation, disaster and livestock assistance, loan deficiency, tobacco, wool, peanuts, milk, wildlife habitat enhancement cost-share, and any other disbursements of record in the producer payment history file. GAO determined that 40 percent of the $1.1 billion went to individuals deceased for 3 or more years.

See comment 5.

Figure 1 of the draft report illustrated the relationship that GAO found between the amount of farm program payments issued to deceased individuals (in millions of dollars) to the number of years payments were provided after the date of death. What is not mentioned is that 60 percent of the $1.1 billion issued in all farm program payments for the years 1999 through 2005, and not just the payments subject to the rule at 7 CFR Part 1400, were issued less than 3 years after the date of death. GAO fails to include that under the Direct and Counter-Cyclical Payment Program (DCP), counter-cyclical payments may be issued up to 3 years after the applicable program year. The same taxpayer identification number must be used for the entire program payment period, which may be up to 3 years.

See comment 6.

Crop loss and livestock disaster assistance programs disburse benefits on an after-the-fact basis. GAO provided information in Table 3 that showed the highest error rate for "improper payments" was under the Noninsured Crop Disaster Assistance Program. Under these types of programs, it is the individual that suffered the crop or livestock loss necessary for qualification. This individual may not have been deceased at the time of application or when the disaster losses occurred. However, at the date of payment disbursement, the individual may have since died. The disaster assistance must be issued under the taxpayer identification number of the now deceased individual as the surviving spouse and heirs are not otherwise eligible for such program benefits even though the check might be payable to the estate or spouse under our rules in 7 CFR Part 707.

Aside from estate matters GAO emphasized that 58 percent of $1.1 billion of the reported farm program payments "made" with respect to the affairs of deceased individuals in the 1999-2005 period were not made to them at all or to their estates but rather to entities in which they had an interest in their lifetimes. GAO noted that the complex nature of some types of farming entities increases the likelihood of improper payments. This complex nature of many large farming operations makes it more difficult for FSA to ensure that improper payments are not made. Another factor noted is the reliance on the farming operations to self-certify that the information provided is accurate, and that the operation will timely inform FSA of any operational changes, including the death of an interest holder.

See comment 1.

The current rule provides for the application of payment eligibility directly to the individual and to the entity which are program participants. The same rule provides for the application and control of the limitations on program payments by "person" as defined by the 1985 Act. The current rule does not provide or require the application of the payment eligibility and limitation standards by attribution, either directly or indirectly to individuals or entities. GAO made no findings that FSA made improper payments to any entities that were otherwise eligible even though a change of stockholders may have occurred within the entity due to death.

The following are comments on the recommendations for executive actions.

1) **Instruct the FSA field offices to conduct all annual estate eligibility determinations as required.**

FSA issued Notice PL-158 on May 31, 2007, which emphasized the current payment eligibility rules, procedures, and review requirements for payments with respect to deceased individuals and estates. This directive instructs all field offices to review all estates in existence more than 2 years and have requested 2007 program benefits subject

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to the rule at 7 CFR Part 1400. The review is to be completed and eligibility updated as necessary by August 31, 2007. This is prior to the issuance of the final 2007 DCP direct payments and the issuance of annual rental payments under the Conservation Reserve Program.

2) **Implement management controls, such as matching payment files with the Social Security Administration's Death Master File, to verify that an individual receiving farm program payments is not dead.**

Efforts are currently underway with representatives of FSA and the Social Security Administration for access to the Death Master File of deceased individuals. The purpose is the development of a process for matching of the respective Agency's data on at least an annual basis. FSA will then have the ability and a reliable means by which to identity deceased individuals that may also be payment recipients. Once implemented, FSA will no longer have to depend on the farming operation to notify the Agency of an individual's death.

3) **Determine if improper payments have been made to deceased individuals or to entities that failed to disclose the death of a member, and if so, recover the appropriate amounts.**

The review required by Notice PL-158 will identify any truly improper payments. FSA has in place regulations and procedures to initiate collection of any program payments and benefits found to be issued in error, or to program participants that have been determined ineligible for such payments and benefits.

GAO's Comments

1. We believe the payments we highlight in three examples in the report meet the definition of improper payments under IPIA. IPIA defines improper payments as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. This definition would include any payment made to an ineligible recipient either directly or through an entity. Our examples are consistent with this definition. Furthermore, officials in FSA's field offices agreed with our findings and told us they intend to recover the payments. For the remaining farm program payments identified in the report, we continue to believe that the potential exists for improper payments because of the lack of FSA management controls and the complexity of some of the farming operations involved. Under current circumstances, FSA cannot be assured that millions of dollars in farm program payments are going to those who met eligibility requirements and thus should have received these payments.

2. For each of the three examples discussed in the report, we verified the accuracy of information in FSA's payment system and discussed the estate with the FSA field office where the estate was located. Because the field offices have this information, we do not understand why FSA does not believe the report provided sufficient information to investigate these cases further.

3. We would expect FSA field offices to have appropriate documents to verify acceptable reasons for keeping the estate open. These files could have included the following information to facilitate FSA's determinations: letters testamentary from a probate court, minutes of the FSA county committee meeting that approved eligibility, explanation letters or documentation for the reason the estate remained active beyond 2 years, and farm operating plans. However, when annual determinations were not done or relevant documentation was missing or incomplete in the files, we could not determine with certainty whether improper payments were made to estates. As we discuss on page 4 of this report, the wide variation in state and county documentation required for probated estates made it difficult for us to make eligibility determinations. We continue to believe that the failure of FSA's field offices to conduct annual determinations of eligibility increases the risk of improper payments being made over time.

4. FSA implies that because the $1.1 billion in farm program payments paid to deceased individuals during 1999 through 2005 amounts to only 8/10 of 1 percent of the total payments made during this period, the

amount is negligible. We disagree—a billion dollars is not a negligible sum. In addition, this amount represents only payments made to deceased individuals during this specific period; it does not capture payments made to deceased individuals before and after this period. FSA is obligated to ensure that program funds are spent as economically, efficiently, and effectively as possible. The nation's current deficit and growing long-term fiscal challenges reinforce the importance of this obligation. Implementing management controls, such as matching payment files with the Social Security Administration's Death Master File, to verify that an individual receiving farm program payments has not died is a simple, cost-effective means to achieve this end.

5. FSA is correct that counter-cyclical payments may be made for up to 3 years after an individual has died. However, according to our analysis, only $46.5 million (4.2 percent) of the $1.1 billion in payments made to deceased individuals from 1999 through 2005 were counter-cyclical payments made for the same program year as the year in which the individual died. Furthermore, a farming operation is subject to forfeiture of payments, including counter-cyclical payments, if it has not notified FSA of a change in the farming operation, such as the death of an individual who receives payments as a member of that operation. Many deceased individuals who received counter-cyclical payments during this period also received payments under other programs for which FSA should have been notified of the change in the farming operation. However, the fact that an individual was identified as deceased in our computer matching indicates FSA was not informed that a change in the farm operation had occurred, suggesting that the farming operation was not eligible to receive any of the payments, including the counter-cyclical payments.

6. As noted in the report, the source for information in table 3 (p. 17) is USDA's *FY 2006 Performance and Accountability Report*. The improper payments and the percent error rate for each program in table 3 are USDA's estimates. We acknowledge that improper payments made under the Noninsured Assistance Program are not exclusively the result of payments made to deceased individuals.

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Appendix III: U.S. Department of Agriculture Farm Program Payments, Fiscal Years 1999 through 2005

Program or payment name	1999	2000	2001
Agricultural Conservation Program	$11,224,860	$4,196,928	$1,607,309
Agricultural Management Assistance Program	0	0	0
American Indian Livestock Feed Program[a]	3,896,452	6,874,391	6,014,801
Apple and potato market loss assistance programs	0	0	95,091,083
Bioenergy Program	0	0	5,067,405
Commodity certificate exchange gains[b]	96,857,101	585,199,671	1,940,401,941
Conservation Reserve Program	1,434,374,194	1,474,944,804	1,622,326,378
Conservation Security Program	0	0	0
Cottonseed Payment Program	0	77,626,725	81,379,925
Counter-cyclical payments	0	0	0
Crop disaster programs[c]	1,953,245,280	1,231,657,343	1,837,359,477
Dairy Market Loss Assistance Program[d]	209,163,014	122,485,277	673,654,064
Direct payments	0	0	0
Emergency Conservation Program	37,035,860	60,549,402	34,827,766
Emergency Livestock Feed Assistance Program	269,490,514	188,118,895	427,206,152
Emerging Markets Program	0	0	0
Environmental Quality Incentives Program[e]	92,062,452	95,202,256	92,128,786
Grasslands Reserve Program	0	0	0
Grassroots Source Water Protection Program	0	0	0
Hard white wheat incentive payments	0	0	0
Karnal bunt fungus compensation payments	1,426,124	1,392,898	103,083
Klamath Basin water payments	0	0	0
Lamb Meat Adjustment Assistance Program[f]	0	2,516,681	18,692,049
Livestock Compensation Program[g]	3,985,184	22,963,155	44,476,583
Loan deficiency payments[h]	3,468,059,489	6,376,810,238	5,467,029,107
Market Access Program	0	183,731	63,001,400
Market loss assistance payments	2,811,228,359	10,924,186,869	4,645,364,213
Marketing loan gains	1,487,290,059	1,051,012,216	721,295,170
Milk Income Loss Contract payments	0	0	0
Milk Income Loss Transition Program	0	0	0
Noninsured Assistance Program[i]	52,408,755	36,300,893	60,432,706
Oilseed Payment Program[j]	0	459,927,711	920,885,679
Peanut Marketing Assistance Program	0	55,049,077	117,841,300
Peanut Quota Buy-out Program	0	0	0

2002	2003	2004	2005	Total
$779,327	$(20,257)	$(22,175)	$(777)	**$17,765,214**
2,931,841	3,549,373	1,364,417	950,169	**8,795,800**
2,186,408	0	0	473,247	**19,445,300**
19,043	166,512,140	153,593	0	**261,775,859**
60,703,365	148,137,098	150,436,473	99,076,283	**463,420,623**
929,629,241	308,736,262	1,456,993,125	1,223,575,959	**6,541,393,299**
1,778,628,324	1,755,206,253	1,796,767,076	1,788,444,977	**11,650,692,007**
0	0	0	281,127,805	**281,127,805**
0	49,834,565	14,588	0	**208,855,803**
0	1,745,225,805	803,461,729	2,799,538,213	**5,348,225,747**
235,365,230	1,869,337,985	748,830,900	2,806,953,550	**10,682,749,765**
1,722,115	1,204,615	598,526	337,566	**1,009,165,178**
0	4,149,832,019	5,289,289,888	5,235,904,151	**14,675,026,058**
30,195,494	44,760,627	22,177,233	56,918,356	**286,464,739**
(129,387)	(33,187)	100,330,773	69,684,832	**1,054,668,592**
2,509,523	1,608,478	0	0	**4,118,002**
109,147,456	164,913,676	288,867,512	297,598,069	**1,139,920,207**
0	0	1,348,981	2,767,584	**4,116,565**
0	0	0	3,191,760	**3,191,760**
0	0	9,023,427	3,166,216	**12,189,643**
6,197,098	3,022,159	0	0	**12,141,362**
25,430	0	0	0	**25,430**
27,863,580	17,586,607	5,395,203	14,247,253	**86,301,374**
110,399,054	1,203,311,592	(467,556)	(108,096)	**1,384,559,915**
5,287,046,329	666,486,952	573,886,091	3,870,181,854	**25,709,500,060**
99,345,621	95,485,882	124,004,633	33,542,876	**415,564,144**
1,157,868	(470,359)	(779,398)	(755,675)	**18,379,931,878**
636,104,440	190,745,265	114,559,845	321,066,062	**4,522,073,056**
61,339	1,220,761,113	220,703,438	7,006,604	**1,448,532,494**
51,485	559,861,054	6,844,214	1,931,887	**568,688,641**
179,507,950	237,573,300	122,717,376	107,826,455	**796,767,434**
194,199	(20,557)	5,541	(2,905)	**1,380,989,667**
29,959	0	0	0	**172,920,335**
0	1,220,317,818	24,989,195	22,302,136	**1,267,609,149**

Program or payment name	1999	2000	2001
Production flexibility contract payments	5,477,740,513	5,059,047,323	4,101,650,681
Small Hog Operation Payment Program	119,796,535	3,427,613	1,360
Soil and Water Agricultural Assistance Program	0	0	2,790
Sugarcane Payment Program[k]	0	0	105,677,357
Tobacco Disaster Assistance Program[l]	0	2,697,221	470,849,679
Tobacco Buyout Program	0	0	0
Trade Adjustment Assistance for Farmers	0	0	0
Tree Assistance Program	6,641,204	2,008,117	530,970
Wetlands Reserve Program	939	4,710	15,610,939
Wildlife Habitat Incentives Program	0	0	0
Wool & Mohair Market Loss Assistance Program	(4,975)	(300)	45,336,483
Other programs[m]	5,962,635	6,131,614	191,939,583
Total	**$17,541,884,547**	**$27,850,515,460**	**$23,807,786,218**

2002	2003	2004	2005	Total
3,971,755,013	(292,942,256)	(8,252,201)	(2,005,089)	**18,306,993,984**
(5,000)	0	0	0	**123,220,508**
4,574,638	2,694,734	1,859,399	1,133,091	**10,264,651**
88,452,205	0	55,800,000	(1,569)	**249,927,993**
5,924,085	(1,668)	(532)	(261)	**479,468,524**
0	51,122,236	5,033	(80)	**51,127,189**
0	0	9,739,427	14,669,796	**24,409,222**
(10,767)	(524)	1,739,917	3,547,835	**14,456,752**
19,040,526	21,572,999	18,094,066	9,163,339	**83,487,518**
0	0	0	8,406,507	**8,406,507**
358,574	(76,838)	(8,136)	(1,153)	**45,603,655**
15,430,977	17,092,297	1,483,445	1,744,112	**239,784,665**
$13,607,192,583	**$15,622,927,258**	**$11,941,955,066**	**$19,083,602,940**	**$129,455,864,072**

Source: GAO's analysis of FSA's and Natural Resources Conservation Service's data.

Notes: For commodity certificate exchange gains and payments made under the Marketing Assistance Loan Program through cooperative marketing associations, we used program year data. Totals may not add due to rounding. Negative payments represent receivables due to over-disbursements and other payment anomalies in a prior year.

[a]Includes the American Indian Livestock Assistance Program.

[b]Includes cotton user marketing certificate gains.

[c]Includes the Apple & Potato Quality Loss Program, Sugar Beet Disaster Program, Quality Loss Program, Crop Loss Disaster Assistance Program, Florida Nursery Losses Program, Florida Hurricane Charley Disaster Program, Disaster Reserve Flood Compensation Program, Florida Hurricane Nursery Disaster Program, Florida Hurricane Vegetable Disaster Program, Multi-Year Crop Loss Disaster Assistance Program, North Carolina Crop Hurricane Damage Program, Nursery Losses In Florida Program, and Single Year Crop Loss Disaster Assistance Program, as well as Disaster Supplemental Appropriation payments, Crop Disaster North Carolina payments, Crop Disaster Virginia payments, and 1999 Citrus Losses In California.

[d]Includes the Dairy Indemnity Program, Dairy Options Pilot Program, and Dairy Production Disaster Assistance Program.

[e]Includes the Interim Environmental Quality Incentives Program (EQIP) For Colorado River Salinity Control Program, Interim EQIP For Great Plains Conservation Program, as well as Automated Conservation Program Environmental Long Term payments, and Interim EQIP Annual Agreement for Agricultural Conservation Program payments.

[f]Includes the Ewe Lamb Replacement and Retention Program.

[g]Includes the Livestock Assistance Program, Livestock Indemnity Program, Avian Influenza Indemnity Program, Cattle Feed Program, Pasture Flood Compensation Program, and Pasture Recovery Program.

[h]Includes "loan deficiency payment-like" grazing payments for wheat, barley, oats, and triticale.

[i]Includes supplemental appropriations for the Noninsured Assistance Program.

[j]Includes supplemental appropriations for the Oilseed Payment Program.

[k]Includes the Sugar Payment-In-Kind Diversion Program.

[l]Includes the Tobacco Loss Assistance Program and the Supplement Tobacco Loss Assistance Program.

[m]Includes the Yakima Basin Water Program, Flood Compensation Program for Harney County Oregon, Fresh Market Peaches Program, Idaho Oust Program, Livestock Compensation Program-Grants For Catfish Producers, Limited California Cooperative Insolvency Program, New Mexico Tebuthiuron Application Losses Program, New York Onion Producers Program, Potato Diversion Program, Poultry Enteritis Mortality Syndrome Program, Seed Corn Purchase Containing CRY9C Protein Program, Specialty Crops-Base State Grants Program, Specialty Crops-Value Of Production Program, and State Commodity Assistance Program, as well as Consent Decree payments and Interest Penalty payments.

Appendix IV: U.S. Department of Agriculture Estate Eligibility Reviews, by State, Program Years 1999 through 2005

Table 5 shows the variation by state in FSA's conduct of eligibility determinations from 1999 through 2005 for the 181 estates in our sample. Not all states are represented because we chose estates based on criteria other than location. Our sample of 181 estates included the 162 that received over $100,000 in farm program payments during this period. We also selected the 16 estates that (1) received between $50,000 and $100,000 in farm program payments during this period and (2) had at least one member receiving payments through three other entities, which could indicate circumvention of the three-entity rule.[1] In addition, we selected the three estates that had at least one member receiving payments through seven or more other entities.

[1]Under the "three-entity rule," a person—an individual or entity—can receive program payments through no more than three entities in which the person holds a substantial beneficial interest. A person can receive payments (1) as an individual and as a member of no more than two entities or (2) through three entities and not as an individual. FSA defines a substantial beneficial interest as 10 percent or more.

Table 5: Variation in Reviews Conducted by FSA, by State, Program Years 1999 through 2005

State	Number of estates requiring review	Number of estates reviewed	Percent of estates reviewed
Alabama	9	2	22.2
Arizona	1	0	0
Arkansas	12	8	66.7
California	1	0	0
Colorado	2	2	100.0
Georgia	16	5	31.3
Illinois	20	13	65.0
Iowa	1	1	100.0
Indiana	4	2	50.0
Kansas	13	8	61.5
Kentucky	2	0	0
Louisiana	3	1	33.3
Minnesota	1	0	0
Mississippi	3	0	0
Missouri	1	0	0
Montana	4	1	25.0
North Carolina	1	0	0
North Dakota	4	3	75.0
Nebraska	4	1	25.0
New Mexico	1	0	0
Oklahoma	2	2	100.0
Oregon	2	0	0
South Carolina	1	0	0
South Dakota	2	1	50.0
Texas	63	55	87.3
Washington	8	3	37.5
Total	**181**	**108**	**59.7**

Source: GAO's analysis of FSA's data.

Appendix V: GAO Contact and Staff Acknowledgments

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Staff Acknowledgments

In addition to the individual named above, James R. Jones, Jr., Assistant Director; Hamid E. Ali; Kevin S. Bray; Thomas M. Cook; Stephanie K. Fain; Ronald E. Maxon, Jr.; Jennifer R. Popovic; and Carol Herrnstadt Shulman made key contributions to this report.

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