

**For:** State and County Offices

**Payment Eligibility and Payment Limitation Provisions for 2013**

**Approved by:** Acting Deputy Administrator, Farm Programs



**1 Overview**

**A Payment Eligibility and Payment Limitation Provisions for 2013**

The American Taxpayer Relief Act of 2012 (Pub. L. 112-240) amended the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246). This amendment extended all payment eligibility and payment limitation provisions, including AGI limitations, for the 2013 crop year, program year, and FY.

All rules and requirements effective for 2012 program payments and benefits are applicable to eligible recipients of 2013 program payment and benefits. This includes the requirements of actively engaged in farming, cash-rent tenant, substantive change, minor child, and spousal provisions. Payments will continue to be limited by direct attribution to person and legal entity. All average AGI limitations for commodity, price support, disaster assistance, and conservation programs are also continued for 2013 including the \$1 million average AGI limitation for 2013 direct payments.

**B Purpose**

This notice provides information and instructions on:

- implementing payment eligibility/limitation provisions and average AGI limitations effective for 2013 program participation until 4-PL and 3-PL (Rev. 1) are updated
- application of the requirements
- using new and/or present forms and business processes for information collection and determinations
- updating 2013 Web-Based Eligibility.

<b>Disposal Date</b>	<b>Distribution</b>
January 1, 2014	State Offices; State Offices relay to County Offices
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### 2 Payment Eligibility and Payment Limitation Provisions for 2013

#### A Actively Engaged in Farming

Actively engaged in farming still requires:

- a significant contribution of:
  - capital, land, equipment, or a combination thereof
  - active person labor, active personal management, or a combination thereof
- that contributions be commensurate with the claimed share of the profit or loss of the farming operation
- the contributions to be at risk for a loss.

**Notes:** Landowner exemption still applies to a person or legal entity as meeting the requirements to be considered actively engaged in farming.

Additional details can be found in 4-PL, Part 3, and Part 4, Section 6.

#### B Member Contribution Requirements of Active Personal Labor and/or Management

**Each** partner, stockholder, or member **must** make a contribution of active personal labor and/or active personal management to the farming operation that must be:

- performed on a regular basis
- identifiable and documentable
- separate and distinct from contributions of any other partner, stockholder, or member of the farming operation.

The failure of any partner, stockholder or member, to meet this requirement will result in a reduction of payments to the payment entity commensurate with the ownership share held by that interest holder.

Exceptions may apply for spouses, minor children, and certain types of legal entities. For details see 4-PL, Part 3, and Part 4, Section 6.

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### 2 Payment Eligibility and Payment Limitation Provisions for 2013 (Continued)

#### C Date for Determination of Ownership Interest

Payment limitation by direct attribution includes prorated payments to the members, stockholders, and shareholders according to the level of ownership interest held.

The date for determination of ownership interest will be June 1. Ownership interest in a legal entity, as of this date, will be used for direct attribution for the entire program year.

Additional details can be found in 4-PL, Part 5.

#### D Substantive Change

Any change to a farming operation that results in an increase in the number of persons and legal entities for payment limitation purposes must be bona fide and substantive. The following are examples of changes considered substantive and the requirements associated with each.

**An increase in base acres** in the farming operation of 20 percent from the previous year will qualify an increase of 1 person or legal entity for payment limitation purposes, unless the State Office determines the change in the farming operation was of a magnitude and complexity that supports additional persons and/or legal entities in the farming operation for payment limitation purposes.

**Transfer of land or equipment** by sale or gift from a present member to a new member that meet the following requirements.

- Must be at least commensurate with the new member's claimed share of the farming operation.
- The sales transaction or gifting **must** be based on fair market value of the land or equipment.
- The sale **cannot** be financed by the former owner of the land or equipment.
- The former owner **cannot** retain any residual control of the land or equipment.
- No agreement to re-purchase the land or equipment at a later date; and complete documentation of the transaction will be required.

For complete details and requirements for the recognition of additional eligible persons and legal entities for payment limitation purposes consult 4-PL, Part 2, Section 5.

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### 2 Payment Eligibility and Payment Limitation Provisions for 2013 (Continued)

#### E Cash Rent Tenant Provisions

A person or legal entity that rents land for a fixed amount of cash or commodity must provide significant contributions of either of the following to the farming operations to be considered eligible to receive program benefits on rented land:

- active personal labor, or
- equipment **and** active personal management.

**Note:** Contributions of active personal labor and/or active personal management can only be made by a living person. For a legal entity, contributions can only be made by persons who are members or interest holders of the legal entity.

The cash rent tenant provisions are in addition to the actively engaged in farming requirements for eligibility. Failure to meet the cash rent tenant provisions will result in a reduction of payments through the application of a cropland factor.

Follow procedures and instructions in 4-PL, Part 2, Section 7 for the correct application of the cash rent tenant provisions.

#### F Farm Operating Plans and Determinations of Record

All farm operating plans currently on file and the resultant determinations of record:

- are continuous
- remain effective for 2013 payment eligibility and payment limitation purposes, unless revised.

**Responsibility** - It is the producer's responsibility to timely inform FSA in writing of any changes in farming operation that may affect or alter the determinations of record. Failure to do so may result in a determination of ineligibility and forfeiture of program payments.

**Recommendation** – Review with each producer all information on file about the producer's farming operation during the first instance that program payments and benefits subject to limitation are requested for the current program year.

**Reminders** - The business file process is to be used for collecting data for all farming operations. CCC-901, CCC-902 and CCC-903 remain valid and available for 2013.

Follow procedures and instructions in 4-PL, Part 2, Sections 3, 5, and 8 for the definition of a farming operation and the timely collection of information about the farming operations of eligible program participants.

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### 3 Average AGI Limitations for 2013

#### A Limitations for 2013

The average AGI limitations for 2013 are:

- \$500,000 nonfarm AGI for commodity, price support, and disaster assistance programs
- \$750,000 farm AGI for direct payments under the direct and counter-cyclical program or ACRE
- \$1 million total AGI for direct payments
- \$1 million nonfarm AGI for conservation program benefits.

#### B AGI

AGI for a:

- person, is the amount reported to IRS on the appropriate tax filing documents as AGI
- legal entity, is the comparable measure determined according to CCC rules and FSA procedures.

#### C Farm Income

For AGI determination purposes, farm income is income:

- derived from farming, ranching, or forestry operations and related activities
- reported on IRS Schedule F or other schedule used by the person or legal entity to report income from farming, ranching, or forestry operations to IRS
- from the sale of farm, ranch, or forestry equipment and the provision of production inputs and services to farmers, ranchers, foresters, and farm operations, if the average farm AGI is at least 66.66 percent of the average AGI.

**Note:** Wages earned from farming are not considered farm income.

#### D Average AGI

The average AGI for 2013 payment eligibility purposes will be based on the average of AGI amounts for the 3-year period of 2009, 2010, and 2011.

**Note:** Exclude any years the person or legal entity did not have taxable income.

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### 3 Average AGI Limitations for 2013 (Continued)

#### E Compliance Certification and Written Consent for Disclosure

AGI compliance certification and written consent for disclosure for 2013 **must** be completed by the person or legal entity timely filing CCC-933, applicable to 2013 **only**.

**Note:** See Exhibit 1 for an example of a completed CCC-933.

#### F Compliance Verification

Referral to the IRS of all completed and acceptable 2013 CCC-933's for AGI compliance verification will be announced at a later date.

**Note:** Do **not** refer CCC-933's completed for 2013 to IRS until further notice.

Follow the procedures and instructions in 4-PL, Part 6 for the correct application of average AGI limitations for 2009 through 2013.

### 4 Action

#### A Updating 2013 Web-Based Eligibility

For information about 2013 information and determinations in Web-Based Eligibility, see 3-PL (Rev. 1), paragraph 31.

#### B State Office Action

State Offices shall review and provide the information in this notice to all County Offices.

#### C County Office Action

County Offices shall review and follow the contents of this notice.

Example of CCC-933

The following is an example of a completed CCC-933.

<p>This form is available electronically.</p>		
<p><b>CCC-933</b> U.S. DEPARTMENT OF AGRICULTURE (01-17-13) Commodity Credit Corporation</p>		<p><b>1. Return completed form to:</b></p> <p>Front County FSA Office 1234 Dodge Rd. Somewhere, OK XXXXX-XXXX</p> <p><i>(Name and address of FSA county office or USDA Service Center)</i></p>
<p><b>AVERAGE ADJUSTED GROSS INCOME (AGI) CERTIFICATION AND CONSENT TO DISCLOSURE OF TAX INFORMATION</b></p> <p><i>For the 2013 crop, program, and fiscal years only</i></p>		
<p><b>NOTE:</b> The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a - as amended). The authority for requesting the information identified on this form is 7 CFR Part 1400, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et. seq.), and the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246). The information will be used to determine eligibility for program benefits. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of ineligibility for program benefits.</p> <p>This information collection is exempted from the Paperwork Reduction Act, as it is required for administration of the Food, Conservation, and Energy Act of 2008 (see Pub. L. 110-246, Title I, Subtitle F - Administration) as amended by the American Taxpayer Relief Act of 2012 (see Pub. L. 112-240, Title VII, Extension of Agricultural Programs.) The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided: <b>PLEASE RETURN COMPLETED FORM TO FSA AT THE ABOVE ADDRESS.</b></p>		
<p><b>2. Name and Address of Individual or Legal Entity (Including Zip Code)</b></p> <p>Wildcat Land and Livestock LLC 9560 Circle Rd. Some Town, OK XXXXX-XXXX</p> <p><i>(Use the same name and address as used for the tax return specified in Part B.)</i></p>		<p><b>3. Taxpayer Identification Number (TIN) (Social Security Number for Individual; or Employer Identification Number for Legal Entity)</b></p> <p>XX-XXXXXXX</p>
<p><b>PART A - CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME</b></p>		
<p><b>4. The program year for payment eligibility</b></p> <p><b>A. 2013</b> The period for calculation of the average AGI will be of the 3 taxable years preceding the most immediately preceding complete taxable year for which benefits are requested. For 2013, the 3-year period for the calculation of the average AGI will be the taxable years of 2011, 2010 and 2009.</p>		
<p><b>5. I certify that the average adjusted gross income (both farm and nonfarm income) of the individual or legal entity in Item 2 (for the year selected in Item 4) was:</b></p> <p><b>A.</b> <input checked="" type="checkbox"/> Less than (or equal to) \$1,000,000 <b>B.</b> <input type="checkbox"/> More than \$1,000,000</p>		<p><b>6. Of the average adjusted gross income (both farm and nonfarm income) of the individual or legal entity in Item 2 (for the year selected in Item 4), was at least 66.66 percent from farming, ranching or forestry operations?</b></p> <p><b>A.</b> <input checked="" type="checkbox"/> YES <b>B.</b> <input type="checkbox"/> NO</p>
<p><b>7. I certify that the average adjusted gross farm income of the individual or legal entity in Item 2 (for the program year selected in Item 4) was:</b></p> <p><b>A.</b> <input checked="" type="checkbox"/> Less than (or equal to) \$750,000 <b>B.</b> <input type="checkbox"/> More than \$750,000</p>		
<p><b>8. I certify that the average adjusted gross nonfarm income of the individual or legal entity in Item 2 (for the program year selected in Item 4) was:</b></p> <p><b>A.</b> <input checked="" type="checkbox"/> Less than (or equal to) \$500,000 <b>B.</b> <input type="checkbox"/> More than \$500,000 but less than (or equal to) \$1,000,000 <b>C.</b> <input type="checkbox"/> More than \$1,000,000</p>		
<p><b>PART B - CONSENT TO DISCLOSURE OF TAX INFORMATION</b></p>		
<p>Pursuant to 26 U.S.C. §6103, I hereby authorize the Internal Revenue Service (IRS) to review the following items of "return information" (as defined in 26 U.S.C. §6103(b)(2)) from the returns (as specified below) of the individual or legal entity identified in Item 2 for the taxable years indicated in Item 4:</p> <p><b>Form 1040 and 1040NR filers:</b> farm income or loss; adjusted gross income <b>Form 1041 filers:</b> farm income or loss, charitable contributions, income distribution deductions, exemptions, adjusted total income; total income <b>Form 1065 filers:</b> guaranteed payments to partners, ordinary business income</p> <p><b>Form 1120, 1120A, 1120C filers:</b> charitable contributions, taxable income <b>Form 1120S filers:</b> ordinary business income <b>Form 990T:</b> unrelated business taxable income</p> <p>I understand the IRS will review these items of return information in order to perform calculations, the results of which I authorize to be disclosed to officers and employees of the United States Department of Agriculture (USDA) for use in determining the individual's or legal entity's eligibility for specified payments for various commodity and conservation programs. The calculations performed by the IRS use a methodology prescribed by the USDA. In addition, I am aware that the USDA may use the information received for compliance purposes related to this eligibility determination, including referrals to the Department of Justice.</p> <p>Specially, the IRS will disclose to the USDA the individual's or legal entity's name and TIN, and inform the USDA if, pursuant to its calculations, the average Adjusted Gross Income (AGI) is above or below eligibility requirements as prescribed by the Food, Conservation and Energy Act of 2008. The IRS will also disclose to the USDA the type of return from which the information used for the calculations was obtained.</p> <p>If the IRS is unable to locate a return that matches the taxpayer identity information provided above, or if IRS records indicate that the specified return has not been filed, for any of the taxable years indicated, the IRS may disclose that it was unable to locate a return, or that a return was not filed, for those years, whichever is applicable.</p> <p><b>An approved Power of Attorney (Form FSA-211) on file with USDA cannot be used as evidence of signature authority when completing this form.</b></p> <p>By signing this form:</p> <ul style="list-style-type: none"> <li>- I acknowledge that I have read and reviewed all definitions and requirements on Page 2 of this form;</li> <li>- I certify that all information contained within this certification is true and correct; and is consistent with the tax returns filed with the IRS;</li> <li>- I agree to authorize CCC to obtain tax data from the IRS for AGI compliance verification purposes by filing this form;</li> <li>- I am aware that without this consent to disclosure, the returns and return information of the individual or legal entity identified in Item 2 are confidential and are protected by law under the Internal Revenue Code;</li> <li>- I certify that I am authorized under applicable state law to execute this consent on behalf of the legal entity identified in Item 2 (for legal entity only).</li> </ul>		
<p><b>9. Signature (By)</b></p> <p>/s/ William A. Farmer</p>	<p><b>10. Title/Relationship of the Individual if Signing in a Representative Capacity for a legal entity</b></p> <p>President, Wildcat Land and Livestock LLC</p>	<p><b>11. Date (MM-DD-YYYY)</b></p> <p>03-15-2013</p>
<p><small>The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 945-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.</small></p>		

Example of CCC-933 (Continued)

CCC-933 (01-17-13)	<b>GENERAL INFORMATION ON AVERAGE ADJUSTED GROSS INCOME – PART A</b>	Page 2 of 2
<p>Individuals or legal entities that receive benefits under most commodity and conservation programs administered by CCC cannot have incomes that exceed certain limits set by law. For entities, both the entity itself, and its members cannot exceed the income limitations. If a member, whether an individual or an entity, of an entity exceeds the limitations, payments to that entity will be commensurately reduced according to that member's direct or indirect ownership share in the entity. (All members of the entity must also submit this form to verify income limitations are met.)</p> <p><b>Adjusted Gross Income</b> is the individual's or legal entity's IRS-reported adjusted gross income consisting of both farm and nonfarm income. A three year average of that income will be computed for the three years of the relevant base period identified on the first page of this form to determine eligibility for the applicable program year. Individuals or legal entities with average <b>adjusted gross income</b> greater than \$1 million shall be ineligible for direct payments under the Direct and Counter-cyclical Program</p> <p><b>Adjusted Gross Farm Income</b> is the part of the yearly adjusted gross income that is farm income. The amount is computed separately for each year and then averaged. <b>Farm income means income</b> related to the following: production of crops, livestock, fish and aquaculture for food; the feeding and rearing of livestock; products produced or derived from livestock; production of specialty crops and unfinished raw forestry products; processing packing, storing and transporting farm, ranch and forestry commodities including renewable energy; production of farm-based renewable energy; the sale of land used for agriculture; sale of land or sale of easements and development rights to agricultural land, water and hunting rights, and environmental benefits; rental or lease of land or equipment used in farming, ranching, forestry operation; payments and benefits from risk management practices, crop insurance indemnities, catastrophic risk protection plans, conservation program and government farm program payments. Individuals or legal entities with average adjusted gross <b>farm income</b> greater than \$750,000 shall be ineligible for direct payments under the Direct and Counter-cyclical Program</p> <p><b>Adjusted Gross Nonfarm Income</b> is the difference for the year between the filer's <i>adjusted gross income</i> and the filer's <i>adjusted gross farm income</i>. The difference is computed separately for each year and then averaged. Individuals or legal entities with average adjusted gross <b>nonfarm income</b> that exceeds \$500,000 shall be ineligible for commodity program payments, price support benefits, disaster assistance programs, and for the Milk Income Loss Compensation Program. Additionally, individuals or legal entities with average adjusted gross <b>nonfarm income</b> exceeding \$1 million will be ineligible for new contracts or participation in conservation programs after October 1, 2008, unless at least 66.66% of their total average adjusted gross income (sum of farm and nonfarm income) is generated from activities related to farming.</p>		
<b>HOW TO DETERMINE ADJUSTED GROSS INCOME</b>		
<p><b>Individual</b> – Internal Revenue Service (IRS) Form 1040 filers, specific lines on that form represent the adjusted gross income and the income from farming, ranching, or forestry operations.</p> <p><b>Trust or Estate</b> – the adjusted gross income is the total income and charitable contributions reported to IRS.</p> <p><b>Corporation</b> – the adjusted gross income is the total of the final taxable income and any charitable contributions reported to IRS.</p> <p><b>Limited Partnership (LP), Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Similar Entity</b> – the adjusted gross income is the total income from trade or business activities plus guaranteed payments to the members as reported to the IRS.</p> <p><b>Tax-exempt Organization</b> – the adjusted gross income is the unrelated business taxable income excluding any income from non-commercial activities as reported to the IRS.</p>		
<b>GENERAL INFORMATION ON CONSENT TO DISCLOSURE OF TAX INFORMATION – PART B</b>		
<p>This consent allows IRS's access to, and use of, certain items of return information to perform calculations, using a methodology prescribed by the USDA, that will assist USDA in its verification of a program participant's compliance with the adjusted gross income (AGI) limitations necessary for participation in, and receipt of, commodity, conservation, price support or disaster program benefits. This consent also permits the USDA to receive certain items of return information for its eligibility determination.</p> <p>This consent authorizes the disclosure of these items of return information for only the time period specified. Each item of information requested on this form is needed for the IRS to (1) locate, and verify, your tax information; (2) perform the requisite Average AGI calculations; and (3) provide the USDA with the legal entity's name and Taxpayer Identification Number (TIN), the type of return from which the specified items were located for use in the calculation, and whether or not the average AGI is above or below eligibility requirements. The IRS will not provide the USDA with any of the items specified on this consent form that it uses to perform the calculations or the average AGI figure.</p> <p>This form can only be signed by the person authorized under state law to sign this consent for the legal entity identified in Item 2. <u><i>An approved Power of Attorney (Form FSA-211) on file with USDA cannot be used as evidence of signature authority when completing this form.</i></u></p>		
<b>INSTRUCTIONS FOR COMPLETION OF CCC-933</b>		
<b>Item No./Field name</b>	<b>Instruction</b>	
1. Return Completed Form To	Enter the name and address of the FSA county office or USDA service center where the completed CCC-933 will be submitted.	
2. Person or Legal Entity's Name and Address	Enter the person's or legal entity's name and address for commodity, conservation, price support, or disaster program benefits. <i>Enter the name and address as it appeared on the IRS tax returns filed for the taxable years specified in Item 4.</i>	
3. Taxpayer Identification Number	In the format provided, enter the <u>complete</u> taxpayer identification number of the person or legal entity identified in Item 2. <i>This will be either a Social Security Number or Taxpayer Identification Number.</i>	
4. Program Year (2013)	The year for which program benefits are being requested is 2013 only. The program year determines the 3-year period used for the calculation of the average adjusted gross income (AGI) for payment eligibility and the years for which this consent allows access to tax information.	
5. Average Adjusted Gross Income	Select the box next to the response that describes the average adjusted gross income for the applicable 3-year period for the program year entered in Item 4. <b>Select only one response.</b>	
6. Average Adjusted Gross Income from Farming, Ranching or Forestry	Select the appropriate response to indicate whether or not at least 66.66 percent of the average adjusted gross income was derived from farming, ranching, or forestry operations during the applicable 3-year period entered in Item 4. <b>Select "YES" or "NO" as applicable.</b>	
7. Average Adjusted Gross Farm Income	Select the box next to the response that describes the average adjusted gross farm income for the applicable 3-year period for the program year entered in Item 4. <b>Select only one response.</b>	
8. Average Adjusted Gross Nonfarm Income	Select the box next to the response that describes the average adjusted gross nonfarm income for the applicable 3-year period for the program year entered in Item 4. <b>Select only one response.</b>	
9. Signature	Read the acknowledgments, responsibilities and authorizations, <i>before</i> affixing your signature.	
10. Title/Relationship	Enter title or relationship to the legal entity identified in Item 2.	
11. Date	Enter the signature date in month, day and year. <b><i>This form must be returned to FSA within 90 days of the signature date for the consent to be valid.</i></b>	