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Payment limitations in the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill)*

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This article will provide a summary of a few of the major payment limitation provisions in the new 2008 farm bill.

Payment Limitations

Limitation on payments

The limit on direct payments under the Act is $40,000 per person (for those not participating in the “average crop revenue election” program). The limit on counter-cyclical payments is $65,000, again for those not participating in the ACRE program. There is no longer a limit on marketing assistance benefits. Act § 1603(b), amending 7 U.S.C. § 1308.

Meaning of “person”

The 2008 Act changes the definition of “person” to mean a natural person and does not include a legal entity. All payments are deemed attributed to a natural person, taking into account direct and indirect ownership interests. Payments to a legal entity are to be attributed to those persons who have a direct or indirect ownership interest in the legal entity.

Payments made to a joint venture or general partnership cannot exceed the amount determined by multiplying the maximum payment amount by the number of persons and legal entities comprising the ownership of the joint venture or general partnership. Thus, those joint ventures and general partnerships are not subject to the attribution rules applicable to other types of entities.

The attribution of ownership in other types of legal entities is traced through four levels of ownership.

For marketing cooperatives, the attribution rules do not apply to the cooperative association of producers but apply to the producers as persons.

Payments made to children under the age of 18 are attributed to the parents of the child.

Revocable trusts are considered to be the same person as the grantor of the trust. For irrevocable trusts and estates, the Secretary is to administer the rules in a manner that will “. . . ensure the fair and equitable treatment of the beneficiaries of the trusts and estates.” Act § 1603(b), amending 7 U.S.C. § 1308(a)(4)

Cash rent tenants

The payment limitation rules define a cash rent tenant as a person or legal entity that rents land for cash or “. . . for a crop share guaranteed as to the amount of the commodity to be paid in rent.” The provision goes on to state that a “. . . cash rent tenant who makes a significant contribution of active personal management, but not of personal labor, with respect to a farming operation shall be eligible to receive a payment . . . only if the tenant makes a significant contribution of equipment to the farming operation.” Act § 1603(b).

Federal agencies

The legislation states that a “Federal agency” is not eligible to receive any payment, benefit, or loan under Title I (commodity programs) or Title XII (crop insurance and disaster assistance) of the 2008 farm bill. However, a lessee of land owned by a Federal agency may receive payments. Act § 1603(b).

State and local governments

Under the Act, “a State or local government, or political subdivision or agency of the government, shall not be eligible to receive any payment, benefit, or loan . . .” under Title I (commodity programs) or Title XII (crop insurance and disaster assistance) of the 2008 farm bill. Again, a lessee of land owned by a State or local government or political subdivision or agency of the government may receive payments. Act § 1603(b).

Changes in farming operations

Changes will not be approved in a farming operation unless the changes are “bona fide and substantive.” The addition of a family member to a farming operation is considered a bona fide and substantive change.

If an ownership interest in land or a commodity is transferred as the result of the death of a program participant, the new owner may, if eligible to participate, succeed to the contract of the prior owner and receive payments without regard to the payments received by the new owner. However, payments may not exceed the amount the prior owner was entitled to receive under the terms of the contract at the time of death of the prior owner. Act § 1603(b).

Public schools
A special rule applies to public schools owned by a unit
goVERNment. A State or local government, or political
Subdivision or agency of government, is eligible to receive a
payment for land owned by the State or local government,
or political subdivision or agency of the government, that is
used to maintain a public school. However, except for states
with a population of less than 1,500,000, a State cannot
receive more than $500,000. That limitation presumably ap-
plies to payments received each year. Apparently, states with
a population of less than 1,500,000 do not face a limitation

Repeal of the “three-entity” rule
The Act repeals the so-called three-entity rule that limited the
number of entities through which an individual could receive
program payments. Under the three-entity rule, an individual
who received payments as an individual could not receive payments
from more than two entities. An individual who did not
receive payments as an individual could receive payments from
up to three entities. Individuals who could potentially receive payments from more than the allowed number of entities
were required to designate from which entities they would receive payments. Act § 1603(c), amending 7 U.S.C. § 1308-1.

Changes in the “actively engaged” rule
The legislation makes minor changes in the “actively en-
gaged” requirement for payment eligibility.

In order to receive payments, under the new language, a person
is considered to be actively engaged in a farming operation if
(1) the person makes a significant contribution (based on the
total value of the farming operation) to the farming operation
of (a) capital, equipment, or land; and (b) personal labor or
active personal management; (2) the person’s share of the
profits or losses from the farming operation is commensurate
with the contributions of the person to the farming opera-
tion; and (3) the contributions of the person are at risk.

A legal entity is considered to be actively engaged in a farming
operation if – (1) the legal entity separately makes a significant
contribution (based on the total value of the farming operation)
of capital, equipment, or land; (2) the stockholders or members
collectively make a significant contribution of personal labor or
active personal management to the operation and (3) the entity’s
share of the profits or losses from the farming operation is commensurate with the contributions of the entity to the farm-
ing operation; and (4) the contributions of the entity are at risk.

The legislation recognizes six special classes of producers for
the actively engaged test – (1) for landowners, a contribution
of owned land is considered to meet the actively engaged in
farming operation test if the returns from the land are based
on the production on the land, the shares of profits or losses
are commensurate with the contributions to the farming
operation, and the contributions are at risk; (2) for an adult
family member, if a majority of the participants in a farming
operation are family members, an adult family member is
considered to be actively engaged in the farming operation
if the adult family member makes a significant contribution,
based on the total value of the farming operation, of active
personal management or personal labor, the shares of profits
or losses are commensurate with the contributions to the
farming operation, and the contributions are at risk; (3) for
a sharecropper, a significant contribution of personal labor is
considered to be actively engaged in farming with respect to
the farming operation if the share of profits or losses is com-
mensurate with the contributions to the farming operation
and the contributions are at risk; (4) for growers of hybrid
seed, the existence of a hybrid seed contract is not taken into
consideration; (5) for persons or entities receiving custom
farming services, the test is met if the general requirements
for actively engaged are met or the landlord, adult family
member, sharecropper, or grower of hybrid seed require-
ments are satisfied – and no other rules with respect to
custom farming shall apply; and (6) if one spouse or estate of
a deceased spouse is determined to be actively engaged, the
other spouse is considered to have met the requirements.

The 2008 legislation identifies two situations of persons who
are not considered to be actively engaged – (1) a cash rent
landlord if the landlord receives cash rent or a crop share
guaranteed as to the amount of the commodity to be paid in
rent and (2) other persons who fail to meet the standards for

Adjusted gross income limitation
A person or legal entity is not eligible to receive any farm
program benefits if the average adjusted non-farm income
of the person or entity exceeds $500,000. The calculation
involves the last three preceding taxable years.

Moreover, a person or legal entity is not eligible to receive
a direct payment during a crop year if the average adjusted
gross farm income of the person or legal entity exceeds
$750,000. The benefits affected by the two rules include
direct payments, counter-cyclical payments, marketing loan
Gains, loan deficiency payments, a payment or benefit under
Section 196 of the 1996 farm bill, a payment or benefit un-
der Section 1506 of the 2008 farm bill (the milk income loss
contract program), and a payment or benefit under Title IX
of the Trade Act of 1974 or subtitle B of the Federal Crop In-

Conservation program limits
For an array of conservation benefits, a person or legal entity
is not eligible to receive benefits if average adjusted nonfarm
income of the person or entity exceeds $1,000,000 unless
not less than 66.66 percent of the average adjusted gross
income of the person or entity is average adjusted gross farm
income. Those limitations can be waived if it is determined
that “environmentally sensitive land of special significance”
would be protected. Act § 1604(a), amending 7 U.S.C. §
1308-3a(e).