

For: State and County Offices

**Payment Eligibility and Payment Limitation Determinations for NRCS Programs**

Approved by: Deputy Administrator, Farm Programs



**1 Overview**

**A Background**

The Food Security Act of 1985 (as amended), Sections 1001, 1001C, 1001D, and 1001F, and 7 CFR part 1400, apply to all Title I and Title II programs under the 2018 Farm Bill and to all Title XII programs under the Food Security Act of 1985 (as amended). These statutory and regulatory references provide the rules for administering payment eligibility requirements, including average AGI, foreign persons, and as applicable, payment limitation requirements and multi-year program payments for programs administered by NRCS.

The rules are applicable to the following NRCS-administered programs:

- Agricultural Conservation Easement Program (ACEP)
- Agricultural Management Assistance Program (AMA)
- Agricultural Water Enhancement Program (AWEP)
- Chesapeake Bay Watershed Initiative (CBWI)
- Conservation Stewardship Program (CSP)
- Environmental Quality Incentives Program (EQIP)
- Regional Conservation Partnership Programs (RCPP)
- Wildlife Habitat Incentives Program (WHIP).

**Note:** While program payment limitations do not apply to RCPP and ACEP, other payment eligibility related determinations such as attribution, foreign person requirements, and AGI apply to all the NRCS conservation programs identified above.

FSA and NRCS have agreed to a Statement of Work (SOW) that provides for the implementation, cooperation, expectations, and responsibilities between FSA and NRCS in administering provisions common to the agencies, including all payment eligibility and payment limitation provisions.

This notice is being issued in coordination with a corresponding NRCS bulletin.

<b>Disposal Date</b>	<b>Distribution</b>
May 1, 2021 12-3-20	State Offices; State Offices relay to County Offices

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### 1 Overview (Continued)

#### B Purpose

This notice provides requirements for:

- identifying payment eligibility and payment limitation rules applicable to NRCS-administered programs
- completing required payment eligibility and payment limitation forms
- making and recording determinations for payment eligibility and payment limitation for NRCS-administered programs
- hearing appeals of adverse determinations for payment eligibility and payment limitation
- providing determinations of eligibility to NRCS.

### 2 Payment Eligibility and Payment Limitation Rules Applicable to NRCS-Administered Programs

#### A Program Applicability

The following tables illustrate the payment eligibility and payment limitation rules applicable to NRCS-administered programs.

Program	Payment Limitation			
	Notification of Interest	Attribution and Common Attribution	Substantive Change	Inheritance Adjustment
ACEP	Yes	Yes	No	No
AMA	Yes	Yes	Yes	Yes
AWEP	Yes	Yes	Yes	Yes
CBWI	Yes	Yes	Yes	Yes
CSP	Yes	Yes	Yes	Yes
EQIP	Yes	Yes	Yes	Yes
RCPP	Yes	Yes	No	No
WHIP	Yes	Yes	Yes	Yes

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**2 Payment Eligibility and Payment Limitation Rules Applicable to NRCS-Administered Programs (Continued)**

**A Program Applicability (Continued)**

<b>Program</b>	<b>Payment Eligibility</b>		
	<b>Foreign Person Rules</b>	<b>Federal, State, and Local Government<sup>1/</sup></b>	<b>AGI \$900,000 Limitation</b>
ACEP	Yes	Yes	Yes
AMA	Yes	Yes	Yes
AWEP	Yes	Yes	Yes
CBWI	Yes	Yes	Yes
CSP	Yes	Yes	Yes
EQIP	Yes	Yes	Yes
RCPP	Yes	Yes	Yes
WHIP	Yes	Yes	Yes

<sup>1/</sup> Specific provisions of individual NRCS program rules may extend eligibility to State and local government under certain enrollment options.

**B Notification of Interest Described (7 CFR §1400.107)**

To be eligible for payment, a person or legal entity must provide the name and valid TIN of each person or legal entity (including members, partners, or stockholders in a legal entity).

COC determinations are documented on CCC-903 and recorded in CRM-BP and Business File.

**C Attribution Described (7 CFR §1400.105)**

Payments made directly to a person or legal entity will be combined with the pro-rata interest of the person or legal entity in which the person or legal entity has a direct or indirect ownership interest and will be tracked through 4 levels of ownership in the entity structure.

For purposes of administering direct attribution and determining a person’s or legal entity’s ownership interest in a legal entity, the ownership interests as of June 1 of each year will be used.

Member information is collected on CCC-902 and FSA’s payments are attributed internally through the direct attribution software.

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### 2 **Payment Eligibility and Payment Limitation Rules Applicable to NRCS-Administered Programs (Continued)**

#### **D Common Attribution (Rules for Minor Children) Described (7 CFR §1400.101)**

Payments received by a child under 18 years of age as of June 1 of the applicable program year will be attributed to the parent or any court-appointed person, such as a guardian or conservator, who is responsible for the minor child.

Payments to a minor child will **not** be attributed to the parents or legal guardians when COC determines that exceptions in 5-PL, paragraph 172 apply.

COC determinations are documented on CCC-903 and recorded in the Subsidiary Web application under Combined Producers according to 3-PL (Rev. 2).

#### **E Substantive Change (Changes in Farming Operations) Described (7 CFR §1400.104)**

Any change in a farming operation that would increase the number of persons to which payment limitation applies must be bona-fide and substantive to allow for recognizing the increase in persons.

COC determinations are documented on CCC-903 and recorded in the Business File Web application according to 3-PL (Rev. 2).

#### **F Inheritance Adjustments Described (7 CFR §1400.1)**

Payments made to an eligible successor as the result of change in ownership interest in land or a commodity due to the death of a program participant cannot exceed the amount the previous owner was entitled to receive at the time of death.

COC determinations are documented on CCC-903 and the payment limitation adjustments are recorded in the Payment Limitation application for inheritance adjustments applicable to FSA programs.

**Note:** NRCS addresses this requirement separately for programs administered by NRCS.

#### **G Foreign Person Rules Described (7 CFR Part 1400, Subpart E)**

Any person who is not a U.S. Citizen or resident alien is ineligible to receive any type of loans or payments unless the person provides land, capital, and a significant contribution of active personal labor to the farming operation.

With respect to a legal entity, any member, partner, or stockholder who is not a U.S. Citizen or resident alien is ineligible for payments with respect to their ownership interest, unless the person makes a significant contribution of active personal labor to the farming operation.

COC determinations are documented on CCC-903 and recorded in the Subsidiary Web application.

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### 2 **Payment Eligibility and Payment Limitation Rules Applicable to NRCS-Administered Programs (Continued)**

#### **H AGI Described (7 CFR Part 1400, Subpart F)**

Any person or legal entity that exceeds the statutory \$900,000 AGI is ineligible for program benefits received directly or indirectly through a legal entity, including a general partnership or joint venture.

Producer certifications, IRS determinations, and State Office/SED determinations are recorded in the Subsidiary Web application.

### 3 **Form Requirements**

#### **A Completing Farm Operating Plans (CCC-902) for NRCS-Administered Programs**

Beginning immediately, new applicants of the NRCS-administered programs listed in subparagraph 1 A subject to payment eligibility and payment limitation requirements must complete and sign CCC-902 (automated) through FSA's Business File application. If the applicant is unable to work directly with a Service Center employee to complete the automated CCC-902, the manual CCC-902 may be used. Upon receipt of a manual CCC-902, the information collected must be entered into the Business File application according to 3-PL (Rev. 2) as represented on the manual CCC-902.

The manual CCC-901 will only be used according to 5-PL to collect names, addresses, taxpayer identification numbers, birthdates for minor children, and citizenship status for embedded legal entities. CCC-901 must only be used in conjunction with a manual CCC-902. If an applicant completes an automated CCC-902 generated in Business File, a manual CCC-901 is **not** required.

**Note:** A manual CCC-901 when filed alone does not adequately collect information to support the required determinations for NRCS-administered programs.

CCC-902's must be completed to the extent necessary to support the COC determinations of eligibility on CCC-903. See Exhibit 1 for identifying the applicable parts of CCC-902 that must be completed. Information collected in the Business File application is the preferred method for completing and generating CCC-902. Manual CCC-902's filed by a program applicant must be data loaded in Business File upon receipt as represented on the manual CCC-902.

**Note:** CCC-901 is not required for embedded entities when the automated CCC-902 is completed through Business File.

CCC-902's and COC determinations of eligibility are continuous from one FY to the next. Persons and legal entities must update their CCC-902 when there are changes made to the farming operation that affect the previous determination. See 5-PL, paragraph 41.

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### 3 Form Requirements (Continued)

#### B NRCS Program Participants Without Determined Farm Operating Plans

Currently, some existing NRCS active program participants have a CCC-902 in Business File that does not have a “determined” status. FSA and NRCS headquarters will provide State FSA and NRCS Offices with a report listing NRCS program participants with **both** of the following:

- a completed CCC-902 with the answer “no” to the question “Is the farm operation applying for a FSA, CCC or NRCS program requiring an actively engaged, cash rent tenant/cropland factor, foreign person, substantive change and/or common attribution determination?”
- CCC-902 in a “filed” status recorded in Business File.

Beginning in FY 2021, these participants must complete CCC-902 for the current program year. COC must make the required determinations of eligibility for rules described in paragraph 2 and record the determinations in Business File or Subsidiary according to 3-PL (Rev. 2).

A sample letter with suggested language that can be used to notify participants of the requirement to complete CCC-902 will be provided with the report to State Offices.

#### C Documenting Determinations on CCC-903

COC or their designee will document the determinations for the NRCS applicant’s eligibility using CCC-903.

**Note:** FSA will hear all administrative appeals for adverse payment limitation and payment eligibility determinations.

### 4 Rollover of Business File and Determinations

#### A FY 2021 and FY 2022 Business File Rollover

Historically, FSA has rolled over CCC-902’s in a “filed” status that included customers who have applied for FSA or NRCS programs and were not subject to “actively engaged in farming” rules. FSA continued this for FY 2021 rollover; however, beginning in FY 2022, CCC-902’s will only roll over to the subsequent Subsidiary year if the latest CCC-902 in FY 2021 is active with a COC determination. CCC-902’s with an “initiated” or “filed” status will not roll over to Subsidiary Year 2022.

**Note:** CCC-902’s with a recorded determination in FY 2021 and prior fiscal years will not be affected by this change.

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### 4 Rollover of Business File and Determinations (Continued)

#### B Reports

Each month, a report is provided to FSA State Offices listing customers with an “initiated” or “filed” CCC-902 that are not in a “determined” status. FSA County Offices must use this report to ensure timely determinations are made for CCC-902’s in a “filed” status.

### 5 Information Sharing

#### A Determination Results

FSA will provide NRCS with the applicable producer certifications and COC determinations from the Business Partner, Business File, and Subsidiary web applications through an automated process.

**Note:** Currently, some determinations are not able to be shared through an automated process. Until the automated processes are in place, FSA County Offices must communicate with local NRCS offices when COC issues an adverse determination affecting the applicant’s eligibility.

NRCS is responsible for ensuring that NRCS administered program payments are made to only eligible NRCS program participants.

### 6 Action

#### A County Office Action

FSA County Offices will work closely with NRCS field offices to:

- accept CCC-902’s for all NRCS conservation program applicants and timely issue determinations of eligibility in accordance with this notice and 5-PL
- record producer certifications and COC determinations in Business Partner, Business File, and Subsidiary, as applicable
- ensure FSA hears all administrative appeals for adverse determinations related to payment limitation and payment eligibility, including AGI
- send notice to current NRCS contract holders who do not have a determined CCC-902 on file and recorded in Business File in a “determined” status.

**Note:** A list of NRCS program participants and sample notification letter will be provided to FSA State Office specialists to assist FSA County Offices.

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### 6 Action (Continued)

#### B State Office Action

FSA State Offices will work closely with NRCS Area Offices and NRCS State Office Staff to:

- ensure County Offices are aware of the contents of this notice
- address questions about payment limitation and payment eligibility and applicability to NRCS conservation programs.

### 7 Contact Information

#### A FSA and NRCS State Office Contact Information

FSA State Offices that require additional information will contact Paul Hanson or Jenae Prescott by either of the following:

- e-mail to [paul.hanson@usda.gov](mailto:paul.hanson@usda.gov) or [jenae.prescott@usda.gov](mailto:jenae.prescott@usda.gov)
- telephone at 202-720-4189.

NRCS State Offices that require additional information will contact:

- FAPD SharePoint for NRCS financial assistance programs
- EPD shared mailbox at [EasementSupport@usda.gov](mailto:EasementSupport@usda.gov) for NRCS easement programs.

#### B FSA and NRCS Service Center Contact Information

FSA County Offices requiring additional information will contact their FSA State Office specialist responsible for payment limitation and payment eligibility.

NRCS Field Offices requiring additional information will contact their applicable Area or State program staff.



**Completing Farm Operating Plans (CCC-902) for NRCS-Administered Programs**

The following tables identify the parts of CCC-902 that must be completed for persons and legal entities applying for NRCS conservation programs.

**Table 1. Completing CCC-902I (individual person) for NRCS Conservation Programs**

Part A Basic Information	Part B Additional Information	Part C Land	Part D Capital Sources	Part E Equipment Information	Part F Custom Services	Part G Labor	Part H Management	Part I Certification
✓	✓	✓				✓ <sup>1/</sup>		✓

<sup>1/</sup> Labor is required if the person identified in Part A is a foreign person

**Table 2. Completing CCC-902E (legal entity) and if necessary, the manual CCC-901 for Embedded Entities for NRCS Conservation Programs**

CCC-902E Parts	AMA, AWEP, CSP, CBWI, EQIP, WHIP	ACEP, RCPP
Part A - Entity Information	✓	✓
Part B - Type of Operation	✓	✓
Part C - Member Information	✓	✓
Part D - Summary of Contributions	✓ <sup>1/</sup>	
Part E - Land Information	✓	✓
Part F - Capital Sources		
Part G - Equipment	✓ <sup>2/</sup>	
Part H - Custom Services		
Part I - Other labor and Hired Labor		
Part J - Management		
Part K - Remarks	✓	✓
Part L - Certification	✓	✓

<sup>1/</sup> Must identify:

- land contributions
- equipment contributions
- labor contributions when foreign persons are members of the farming operation.

<sup>2/</sup> Equipment information is necessary when an increase in persons is approved based on the addition of equipment to the farming operation.