

**§ 1400.402**

the basis of market quotations. If market quotations are unavailable or so infrequent that they do not represent fair market value, the percentage share will be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of the stock or other unit of ownership, including the various rights and privileges that are attributed to each the class.

(c) A citizen of the United States, lawful alien, or legal entity that is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by a person or legal entity who is subject to this part may receive a payment, loan, and benefit without regard to this part.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 19189, Apr. 14, 2010]; 85 FR 52040, Aug. 24, 2020]

**§ 1400.402 Notification.**

(a) Any legal entity, whether foreign or domestic, that executes a program contract or agreement under which a payment, loan, or benefit may be available must provide written notification to the county committee in the county where the legal entity conducts its farming operation if:

(1) Any person, group of persons, legal entity, or group of legal entities holds more than a 10 percent interest in the legal entity; and

(2) The person, group of persons, legal entity, or group of legal entities, in accordance with §1400.401, are ineligible to receive a payment, loan, or benefit.

(b) Written notification must include the name and social security number or taxpayer identification number of the a person or legal entity, if known, and of all persons and legal entities that hold an interest in the legal entity.

(c) The failure of the legal entity to provide this information will result in the ineligibility of the legal entity to receive any payment, loan, or benefit.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52040, Aug. 24, 2020]

**7 CFR Ch. XIV (1–1–21 Edition)**

**Subpart F—Average Adjusted Gross Income Limitation**

**§ 1400.500 Applicability.**

(a) A person or legal entity, other than a joint venture or general partnership, will not be eligible to receive, directly or indirectly, certain program payments or benefits described in §1400.1 if the average adjusted gross income of the person or legal entity exceeds \$900,000 for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by the Deputy Administrator.

(b) Determinations made under this subpart for conservation programs are:

(1) Applicable starting with the 2015 fiscal year, except for AMA which is applicable with the 2014 fiscal year;

(2) Based on the year for which the conservation program contract or agreement is approved; and

(3) Applicable for the entire term of the subject agreement or contract.

(c) Vendors that receive payment for technical services provided in conjunction with programs made subject to this subpart by regulation or statute, but who are not beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government in connection with the programs.

(d) Payments to an escrow agent, or other legal entity of similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to an eligible program participant, are not subject to this subpart so long as the party ultimately receiving the payment is eligible under this subpart.

(e) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes as defined in §1400.3 are not subject to this subpart.

(f) The Administrator or NRCS Chief may waive the limitation under this section on a case-by-case basis for the protection of environmentally sensitive land of special significance. A waiver request must be in writing and:

(1) Show that use of conservation program funding on or adjacent to environmentally sensitive land of special significance is critical to the success of a project that provides conservation

benefits to multiple producers or land-owners in a community, watershed, or other geographic area;

(2) Demonstrate that the proposed action achieves enduring protection of environmentally sensitive land of special significance through use of a long-term agreement that is greater than 15 years in duration or through use of a deed restriction on the land; or

(3) Present evidence that otherwise demonstrates, as determined by the Administrator or the NRCS Chief, that the waiver is necessary to address the critical natural resources referenced in the definition of environmentally sensitive land of special significance.

[73 FR 79273, Dec. 29, 2008, as amended at 79 FR 21097, Apr. 14, 2014; 85 FR 52040, Aug. 24, 2020]

**§ 1400.501 Determination of average adjusted gross income.**

(a) Except as otherwise provided in this subpart, average adjusted gross income means:

(1) For a person filing a separate tax return, the amount reported as “adjusted gross income” on the final federal income tax return for the person for the applicable tax year;

(2) For a person filing a joint tax return, the amount reported as “adjusted gross income” on the final federal income tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which the income would have been declared and reported if the persons had filed two separate returns and that this calculation is consistent with the information supporting the filed joint return;

(3) For a corporation, including a subchapter S corporation, the total reported “taxable income” as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;

(4) For a tax exempt legal entity, the “unrelated business taxable income” of the legal entity as reported to the Internal Revenue Service on the final federal income tax return, less any other income CCC determines to be from non-commercial activities;

(5) For a limited liability company, limited partnership, limited liability partnership, or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year, or the amount of net increase in the estate’s or trust’s value resulting from its business or investment interests.

(b) For purposes of applying this subpart and calculating the 3-year average referenced in §1400.500, that average will be for the adjusted gross income for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. For a legal entity that is not required to file a federal income tax return, or a person or legal entity that did not have taxable income in one or more tax years, the average will be the adjusted gross income, including losses, averaged for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. A new legal entity will have its adjusted gross income averaged only for those years of the base period for which it was in business; however, a new legal entity will not be considered “new” to the extent it takes over an existing operation and has any elements of common ownership or interests with the preceding legal entity, or with persons or legal entities with an interest in the “old” legal entity. When there is this commonality, income of the “old” legal entity will be averaged with that of the “new” legal entity for the base period.

[73 FR 79273, Dec. 29, 2008, as amended at 79 FR 21097, Apr. 14, 2014; 85 FR 52040, Aug. 24, 2020]

**§ 1400.502 Compliance and enforcement.**

(a) To comply with the average adjusted gross income limitation, a person or legal entity, including all interest holders in a legal entity, general