UNIVERSITY OF VERMONT EXTENSION
CULTIVATING HEALTHY COMMUNITIES

Farm Business Entities and Conservation Payment Limits

FBFS023 - 9/17 Annette M. Higby, Attorney at Law; Mark Cannella, Farm Business Management Specialist

NRCS Payment Limitations

The United States Federal Register provides guidelines that specify limitations and eligibility for conservation program payments. This fact sheet provides an abbreviated summary for farm owners. This information is provided for general educational purposes and should not be construed as legal advice. Every farm situation is different and there are many factors to consider in relation to choosing an appropriate legal structure for a farm business. You should contact an attorney or a federal conservation program representative for further guidance and the most current resources.

See Federal Register Vol 74, Number 10, 7 CFR Part 1466
https://www.gpo.gov/fdsys/pkg/CFR-2015-title7-vol10/pdf/CFR-2015-title7-vol10-part1466.pdf (25 pages)

See Federal Register Vol 80, Number 241, 7 CFR Part 1400
https://www.fsa.usda.gov/Internet/FSA_Federal_Notices/activelyengaged.pdf (12 pages)

Producers utilizing NRCS conservation programs are subject to a payment limitation imposed by the 2014 farm bill. The payment limitation for the EQIP program is $450,000 for contracts entered into after February 7, 2014 through the fiscal year 2018. There can be no waiver of the EQIP payment limit as was the case under previous farm bills. Payments received for technical assistance are excluded from the limitation, however. In addition, payments made under a State Conservation Reserve Enhancement Program are not included or subject to the payment limit.

The payment limit for the Conservation Security Program, a program which may also help producers comply with RAPs is $200,000 for fiscal years 2014 through 2018.

Producers participating in NRCS programs must also meet an adjusted gross income limit of $900,000 per year or less. The limit is applied to each member in a general partnership, or to the entity and to each interest holder in an entity.

The rules requiring that a producer or entity be actively engaged in agriculture to be eligible for USDA price support or price loss programs generally do not apply to NRCS programs, although NRCS must determine that the producer is engaged in agriculture. The producer must show an annual minimum of $1,000 of agricultural products produced or sold from the operation.

Farm Business Entities and Conservation Payment Limits, page 2

FBFS023 - 9/17

General Partnerships or Joint Venture

Each person in a general partnership or joint venture has a separate payment limit. Each partner can receive up to $450,000 in EQIP payments. Each partner in a general partnership or joint venture must be jointly and severally liable for the obligations of the business. Spouses active in the general partnership (have a share of profits and losses in the operation and who make contributions to the farming operation that are at risk) should also be eligible for a separate payment. Unlike corporations or LLCs, general partnerships do not enjoy limited liability. Each partner's personal assets are at risk. Each partner is personally liable for the debts incurred by the business or by another partner in the conduct of the business.

Limited Liability Entities

For entities that enjoy limited liability – a corporation, a limited liability partnership or an LLC, there is one payment limit. The entity may only receive one EQIP payment of up to $450,00. Shareholders in a corporation, partners in a Limited Liability Partnership or members of an LLC are not personally liable for the debts and other obligations of the business. Their risk is limited to the amount of capital they have invested in the business.

Individuals

A person may have more than one farming operation if the person is a member of one or more general partnerships or joint operations or entities. Payments received by one individual involved in more than one farming operation, however, may not exceed the $450,000 EQIP payment limit. The payments are tracked and then attributed to individuals based on their pro-rata share in an entity.

Entity Formation and Changes

Any change in a farming operation that would increase the number of persons or legal entities eligible for a separate payment must be bona fide and substantive. The determination of whether the change is bona fide and substantive is made by NRCS. To be bona fide the change must be related to a need to make a substantive change in the operation, unrelated to a desire to increase the number of payments received by the operation. The rules do provide several examples of when a change is substantive including the addition of a family member to a farming operation.

A family member is a person to whom another member in the farming operation is related as a lineal ancestor, lineal descendent, sibling, spouse, or otherwise by marriage. This would include parents bringing in an adult child or son or daughter-in-law or adult grandchild in to the operation. It would not include a married couple or sole proprietor bringing in a niece or nephew.

Farm Business Entities and Conservation Payment Limits, page 3

FBFS023 - 9/17

The adult family member must have a share of the profits or losses from the farming operation and make contributions to the farming operation that are at risk for loss, with the level of risk being commensurate with the members share of the farming operation.

If these requirements are not met, the increase in persons or legal entities in the farming operation will not be recognized for payment limitation purposes and the new members will not be eligible for program payments.

If the addition of a new member is structured as a general partnership, each member would have a separate payment limit. If structured as a limited liability entity, the entity would have just one EQIP payment not to exceed $450,000.

This information is provided for general educational purposes and should not be construed as legal advice. Every farm situation is different and there are many factors to consider in relation to choosing an appropriate legal structure for a farm business. You should contact an attorney for further guidance.

Annette Hibgy
Attorney at Law
Randolph, VT

Mark Cannella
Farm Business Management Specialist
http://blog.uvm.edu/farmvia/

NORTHEAST EXTENSION RISK MANAGEMENT EDUCATION

USDA United States Department of Agriculture National Institute of Food and Agriculture

This material is based upon work supported by USDA/NIFA under Award Number 2015-49200-24225.