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February 28, 2018

Steven J. Peterson
Acting Administrator
Farm Service Agency
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Dear Acting Administrator Peterson:

We write today with concerns about farm program payments being made to estates of deceased farmers. As you know, the Farm Service Agency (FSA) recently issued guidance for reviewing payment eligibility of estates after the death of the farmer. Under current law, FSA requires farmers to be “actively engaged in farming” in order to receive most program benefits. To be considered actively engaged, a farmer must make significant contributions to the farming operation in active personal labor or active personal management or both. The Farm Service Agency’s recently issued notice (PL-275) suggests that FSA will consider an estate to be actively engaged, and thus eligible for farm program payments, for two crop years after the farmer dies. Additionally, after two crop years, FSA will allow local FSA County Committees to extend that determination on a case by case basis.

There are some circumstances in which it may be reasonable for a deceased farmer’s estate to receive farm program payments, however these should be limited to the current crop year, after which the payments should be attributed to the heir(s) payment limit(s). It is difficult to understand why an estate should remain eligible for farm program payments without needing to consider actively engaged eligibility, payment limitations, and the adjusted gross income limitations of the heirs and direct recipients of the program benefits. Even if an estate remains open for several years, FSA should attribute any payments to the heirs’ payment limit(s) on a pro-rata basis which could avoid the potential for double-dipping. As you know, in the past the Government Accountability Office has criticized USDA’s payments to estates which have in some instances allowed the heirs of those estates to avoid payment limits as the payments to the heirs were able to exceed the payment limits by collecting payments through the estate as well as through their own property. (e.g. GAO-07-818 and GAO-13-503).

We must be careful stewards of taxpayer money and work to avoid wasteful payments. As we prepare to write the next Farm Bill, we write to request information so we can understand more about USDA payments to an estate after the death of a farmer. We ask that you provide the following information no later than March 16, 2018.

1. Please describe in detail how FSA conducts compliance review of estates to ensure that actively engaged in farming requirements are met. Include in this explanation a description of whether all estates are reviewed and when such reviews of done.

2. Please describe how USDA can determine that an estate meets the requirements of actively engaged in farming after a farmer's death. Please be specific.
3. The FSA notice indicates that a report listing estates that have been open for more than two program years has been provided to all state office ("Active Estates Report"). Please provide to us a copy of the most recent version of this report.
4. In addition to the estates listed on the report, how many additional active estates exist in USDA's records that were not established during the current program year?
5. Please provide the following information on USDA's efforts in the past two years:
 - a. total number of active estates reviewed for compliance with actively engaged in farming requirements;
 - b. number of estates that were found to be in compliance with actively engaged in farming requirements and the total dollar amount of benefits properly provided to such estates; and
 - c. number of estates that were found not to be in compliance with actively engaged in farming requirements, the total dollar amount of benefits improperly provided to such estates, and amount of such improperly awarded benefits recovered to the federal government.
6. Describe what review or reporting is conducted of county committee determinations with respect to estates that have been active for more than 2 years. What have the results been of any such reviews?
7. Does FSA check its records to determine if heirs of estates are separately receiving payments? If so, how often are such checks done? If not, why not?
8. Is it possible for heirs of an estate to receive payments from an estate and payments to themselves that when combined exceed a single payment limit?
9. Does FSA check its payments to ensure that estate's heirs are not collecting payments from an estate, that when combined with their own payments allow that individual to exceed payment limits?
10. Can an heir that exceeds the adjusted gross income limitation receive payments indirectly through an estate?
11. Can an heir that is not actively engaged in farming receive payments indirectly through an estate?
12. Are any changes in regulation or statute necessary to require payments to estates to be attributed to the heirs to avoid heirs exceeding payment limits, violating AGI limits or actively engaged in farming requirements? If so, please describe any such changes needed.

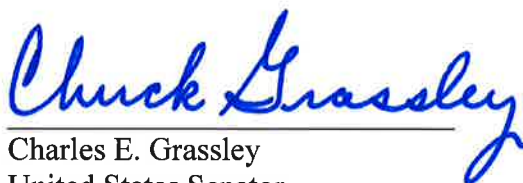
13. Does FSA conduct any data mining or additional review of estates that would be susceptible to being left open longer than necessary? E.g. An estate or heir that has payments that are close to the payment limit or would exceed the payment limit if combined. If so, what criteria are used for the review and what have been the results?

Thank you. We look forward to your prompt response.

Sincerely,



Debbie Stabenow
Ranking Member



Charles E. Grassley
United States Senator