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Testimony

Before the Committee on Finance, U.S.  
Senate

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# FARM PROGRAM PAYMENTS

## USDA Should Correct Weaknesses in Regulations and Oversight to Better Ensure Recipients Do Not Circumvent Payment Limitations

Statement of Lawrence J. Dyckman, Director  
Natural Resources and Environment





Highlights of [GAO-04-861T](#), testimony before the Committee on Finance, U.S. Senate

# FARM PROGRAM PAYMENTS

## USDA Should Correct Weaknesses in Regulations and Oversight to Better Ensure Recipients Do Not Circumvent Payment Limitations

### Why GAO Did This Study

Farmers receive about \$15 billion annually in federal payments to help produce major crops, such as corn, cotton, rice, and wheat. The Farm Program Payments Integrity Act of 1987 (1987 Act) limits payments to individuals and entities—such as corporations and partnerships—that are “actively engaged in farming.”

This testimony is based on GAO’s report, *Farm Program Payments: USDA Needs to Strengthen Regulations and Oversight to Better Ensure Recipients Do Not Circumvent Payment Limitations* (GAO-04-407, April 30, 2004). Specifically, GAO (1) determined how well USDA’s regulations limit payments and (2) assessed USDA’s oversight of the 1987 Act.

### What GAO Recommends

GAO recommended, among other things, that USDA (1) develop measurable standards for a significant contribution of active personal management; (2) clarify regulations on what constitutes a scheme or device to effectively evade payment limits; (3) improve its selection method for reviewing farming operations and (4) develop controls to ensure it uses all tools to assess compliance with the act.

USDA agreed to act on most recommendations, but it stated that its regulations are sufficient for determining active engagement in farming and assessing whether operations are designed to evade payment limits. We disagree.

[www.gao.gov/cgi-bin/getrpt?GAO-04-861T](http://www.gao.gov/cgi-bin/getrpt?GAO-04-861T).

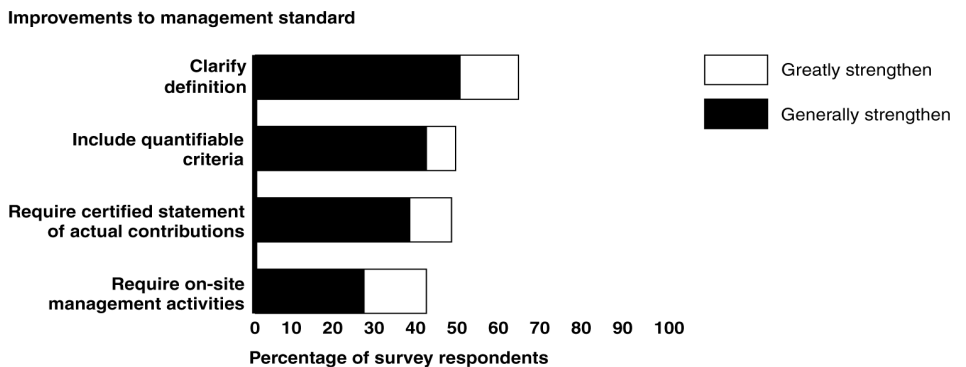
To view the full product, including the scope and methodology, click on the link above. For more information, contact Lawrence J. Dyckman, at (202) 512-3841 or [dyckmanl@gao.gov](mailto:dyckmanl@gao.gov).

### What GAO Found

GAO’s survey of USDA’s field offices showed that for the compliance reviews the offices conducted, about 99 percent of payment recipients asserted they met eligibility requirements through active personal management. However, USDA’s regulations to ensure recipients are actively engaged in farming do not provide a measurable standard for what constitutes a significant contribution of active personal management. The figure below shows field offices’ views on whether regulations describing active personnel management could be improved. By not specifying such a measurable standard, USDA allows individuals who may have limited involvement with the farming operation to qualify for payments. Moreover, USDA’s regulations lack clarity as to whether certain transactions and farming operation structures that GAO found could be considered schemes or devices to evade, or that have the purpose of evading, payment limitations. Under the 1987 Act, if a person has adopted such a scheme or device, then that person is not eligible to receive payments for the year in which the scheme or device was adopted or the following year. Because it is not clear whether fraudulent intent must be shown to find that a person has adopted a scheme or device, USDA may be reluctant to pursue the question of whether certain farming operations, such as the ones GAO found, are schemes or devices.

According to GAO’s survey and review of case files, USDA is not effectively overseeing farm payment limitation requirements. That is, USDA does not review a valid sample of farm operation plans to determine compliance and thus does not ensure that only eligible recipients receive payments, and compliance reviews are often completed late. As a result, USDA may be missing opportunities to recoup ineligible payments. For about one-half of the farming operations GAO reviewed for 2001, field offices did not use available tools to determine whether persons were actively engaged in farming.

**Field Offices’ Views on Whether Specific Improvements Would Strengthen Active Personal Management**



Source: GAO survey results.

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Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the Committee's interest in the U.S. Department of Agriculture's (USDA) implementation of the Farm Program Payments Integrity Act of 1987 (1987 Act). My testimony today is based on our recent report on this subject, which was requested by the Chairman of the Senate Committee on Finance and which is being publicly released today.<sup>1</sup>

Between 1999 and 2002, USDA paid farmers an average of \$15 billion annually to help support the production of major commodities, including corn, cotton, rice, soybeans, and wheat. These payments go to 1.3 million producers: individuals and entities such as corporations, partnerships, and trusts. Annually, almost two-thirds of these payments go to about 10 percent of the producers.

After hearing several concerns about farm payments going to individuals not involved in farming, the Congress enacted the 1987 Act, which, among other things, set eligibility conditions to limit the number of payments going to recipients and to ensure that only individuals and entities "actively engaged in farming" received payments. To be considered actively engaged in farming, an individual recipient must make significant contributions to the farming operation in two areas: (1) capital, land, or equipment and (2) personal labor or active personal management. An entity is considered actively engaged in farming if the entity separately makes a significant contribution of capital, land, or equipment, and its members collectively make a significant contribution of personal labor or active personal management to the farming operation. For both individuals and entities, their share of the farming operation's profits or losses must also be commensurate with their contributions to the farming operation and those contributions must be at risk.

My testimony today focuses on two primary issues discussed in the report: (1) how well USDA's regulations for active engagement in farming help limit farm program payments and (2) the effectiveness of USDA's oversight of farm program payments' requirements for active engagement in farming.

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<sup>1</sup>U.S. General Accounting Office, *Farm Program Payments: USDA Needs to Strengthen Regulations and Oversight to Better Ensure Recipients Do Not Circumvent Payment Limitations*, [GAO-04-407](#), (Washington, D.C.: April 30, 2004).

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In summary, we found the following:

- Individuals may circumvent the farm payment limitations because of weaknesses in USDA's regulations. These regulations are designed to ensure recipients are actively engaged in farming. However, they do not provide a measurable standard for what constitutes a significant contribution of active personal management. By not specifying such a measurable standard, USDA allows individuals who may have limited involvement with the farming operation to qualify for payments. According to our survey of USDA's field offices, in the compliance reviews they conducted, about 99 percent of payment recipients asserted they met eligibility requirements through active personal management. Moreover, USDA's regulations lack clarity as to whether certain transactions and farming operation structures that we found could be considered schemes or devices to evade, or that have the purpose of evading, payment limitations. Under the 1987 Act, if a person has adopted such a scheme or device, then that person is not eligible to receive payments for two years.
- According to our survey and review of case files, USDA is not effectively overseeing farm program payments. That is, USDA does not review a valid sample of farm operation plans to determine compliance and thus does not ensure that only eligible recipients receive payments. Also, USDA's compliance reviews are often completed late. As a result, USDA may be missing opportunities to recoup ineligible payments. Further, for about one-half of the farming operations we reviewed for 2001, field offices did not use available tools to determine whether persons were actively engaged in farming.

In our report to you, we made eight recommendations to the Secretary of Agriculture to strengthen FSA's oversight of farmers' compliance with the 1987 Act. In commenting on the report, USDA agreed to act on most of the recommendations. However, USDA stated that its current regulations are sufficient for determining active engagement in farming and for assessing whether operations are schemes or devices to evade payment limitations. We still believe measurable standards and clarified regulations would better assure the act's goals are realized.

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## Background

The 1987 Act requires that an individual or entity be actively engaged in farming in order to receive farm program payments. To be considered actively engaged in farming, the act requires an individual or entity to provide a significant contribution of capital, land, or equipment, as well as a significant contribution of personal labor or active personal management to the farming operation. Hired labor or hired management may not be

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used to meet the latter requirement. The act's definition of a "person" eligible to receive farm program payments includes an individual, as well as certain kinds of corporations, partnerships, trusts, or similar entities. Recipients must also demonstrate that their contributions to the farming operation are in proportion to their share of the operation's profits and losses and that these contributions are at risk. The 1987 Act also limits the number of entities through which a person can receive program payments. Under the act, a person can receive payments as an individual and through no more than two entities, or through three entities and not as an individual. The statutory provision imposing this limit is commonly known as the three-entity rule. Under the Farm Security and Rural Investment Act of 2002, "persons"—individuals or entities—are generally limited to a total of \$180,000 annually in farm program payments, or \$360,000 if they are members of up to three entities.<sup>2</sup>

Some farming operations may reorganize to overcome payment limits to maximize their farm program benefits. Larger farming operations and farming operations producing crops with high payment rates, such as rice and cotton, may establish several related entities that are eligible to receive payments. However, each entity must be separate and distinct and must demonstrate that it is actively engaged in farming by providing a significant contribution of capital, land or equipment, as well as a significant contribution of personal labor or active personal management to the farming operation.

Within USDA, the Farm Service Agency (FSA) is responsible for enforcing the actively engaged in farming and payment limitation rules. FSA field offices review a sample of farming plans at the end of the year to help monitor whether farming operations were conducted in accordance with approved plans, including whether payment recipients met the requirement for active engagement in farming and whether the farming operations have the documents to demonstrate that the entities receiving payments are in fact separate and distinct legal entities. FSA selects its sample of farming operations based on, among other criteria, (1) whether

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<sup>2</sup>Under the Farm Security and Rural Investment Act of 2002, each of the income support programs has a separate payment limit. For example, a recipient generally may only receive up to \$40,000 in direct payments, up to \$65,000 in counter-cyclical payments, and up to \$75,000 in loan deficiency payments and marketing assistance loan gains, for a total of \$180,000 per year. Benefits received through commodity certificate gains and marketing loan forfeitures do not count against the payment limitations. Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134, 213.

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the operation has undergone an organizational change in the past year by, for example, adding another entity or partner to the operation and (2) whether the operation receives payments above a certain threshold. These criteria have principally resulted in sampling farming operations in areas that produce cotton and rice—Arkansas, California, Louisiana, Mississippi, and Texas.

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## Individuals May Circumvent Farm Payment Limitations Because of Weaknesses in FSA's Regulations

Many recipients meet one of the farm program payments' eligibility requirements by asserting that they have made a significant contribution of active personal management. Because FSA regulations do not provide a measurable, quantifiable standard for what constitutes a significant management contribution, people who appear to have little involvement are receiving farm program payments, according to our survey of FSA field offices and our review of 86 case files. Indeed, most large farming operations meet the requirement for personal labor or active personal management by asserting a significant contribution of management. Survey respondents provided information on 347 partnerships and joint ventures for which FSA completed compliance reviews in 2001; these entities comprised 992 recipients, such as individuals and corporations that were members of these farming operations. Of these 992 recipients, 46 percent, or 455, asserted that they contributed active personal management; 1 percent, or 7, asserted that they contributed personal labor; and the remaining 53 percent (530) asserted they provided a combination of active personal management and personal labor to meet the actively engaged in farming requirement.

While FSA's regulations define active personal management more specifically to include such things as arranging financing for the operation, supervising the planting and harvesting of crops, and marketing the crops, the regulations lack measurable criteria for what constitutes a significant contribution of active personal management. FSA regulations define a "significant contribution" of active personal management as "activities that are critical to the profitability of the farming operation, taking into consideration the individual's or entity's commensurate share in the farming operation." In contrast, FSA provides quantitative standards for what constitutes a significant contribution of active personal labor, capital, land, and equipment. For example, FSA's regulations define a significant contribution of active personal labor as the lesser of 1,000 hours of work annually, or 50 percent of the total hours necessary to conduct a farming operation that is comparable in size to such individual's or entity's commensurate share in the farming operation. By not specifying quantifiable standards for what constitutes a significant contribution of

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active personal management, FSA allows recipients who may have had limited involvement in the farming operation to qualify for payments.

Some recipients appeared to have little involvement with the farming operation for 26 of the 86 FSA compliance review files we examined in which the recipients asserted they made a significant contribution of active personal management to the farming operation. For example, in 2001, 11 partners in a general partnership operated a farm of 11,900 acres. These partners asserted they met the actively engaged in farming requirement by making a significant contribution of equipment and active personal management. FSA's compliance review found that all partners of the farming operation were actively engaged in farming and met all requirements for the approximately \$1 million the partnership collected in farm program payments in 2001. However, our review found that the partnership held five management meetings during the year, three in a state other than the state where the farm was located, and two on-site meetings at the farm. Some of the partners attended the meetings in person while others joined the meetings by telephone conference. Although all 11 partners claimed an equal contribution of management, minutes of the management meetings indicated seven partners participated in all five meetings, two participated in four meetings, and two participated in three meetings. All partners resided in states other than the state where the farm was located, and only one partner attended all five meetings in person. Based on our review of minutes documenting the meetings, it is unclear whether some of the partners contributed significant active personal management. If FSA had found that some of the partners had not contributed active personal management, the partnership's total farm program payments would have been reduced by about 9 percent, or \$90,000, for each partner that FSA determined was ineligible. State FSA officials agreed that the evidence to support the management contribution for some partners was questionable and that FSA reviewers could have taken additional steps to confirm the contributions for these partners.

According to our survey of 535 FSA field offices, FSA could make key improvements to strengthen the management contribution standard. These offices reported that the management standard can be strengthened by clarifying the standard, including providing quantifiable criteria, certifying actual contributions, and requiring management to be on-site.<sup>3</sup> More than

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<sup>3</sup>Certifying actual contributions could include requiring an affidavit from each recipient delineating management activities performed.

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60 percent of those surveyed, for example, indicated that clarifying the standard would be an improvement. In addition, in 2003, a USDA commission established to look at the impact of changes to payment limitations concluded that determining what constitutes a significant contribution of active management is difficult and lack of clear criteria likely makes it easier for farming operations to add recipients in order to avoid payment limitations.<sup>4</sup>

We also found that some individuals or entities have engaged in transactions that might constitute schemes or devices to evade payment limitations, but neither FSA's regulations nor its guidance address whether such transactions could constitute schemes or devices. Under the 1987 Act as amended, if the Secretary of Agriculture determines that any person has adopted a "scheme or device" to evade, or that has the purpose of evading, the act's provisions—in other words, the payment limitations—then that person is not eligible to receive farm program payments for the year the scheme or device was adopted and the following crop year.<sup>5</sup> According to FSA's regulations, this statutory provision includes (1) persons who adopt or participate in adopting a scheme or device and (2) schemes or devices that are designed to evade or have "the effect of evading" payment limitation rules. The regulations state that a scheme or device shall include concealing information that affects a farm program payment application, submitting false or erroneous information, or creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.<sup>6</sup>

We found several large farming operations that were structured as one or more partnerships, each consisting of multiple corporations that increased farm program payments in a questionable manner. The following two examples illustrate how farming operations, depending on how the FSA regulations are interpreted, might be considered to evade, or have the effect of evading, payment limitations. In one case, we found that a family had set up the legal structures for its farming operation and also owned the affiliated nonfarming entities. This operation included two farming partnerships comprising eight limited liability companies. The two partnerships operated about 6,000 acres and collected more than \$800,000

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<sup>4</sup>See U.S. Department of Agriculture, Office of the Chief Economist, Commission on the Application of Payment Limitations for Agriculture, *Report of the Commission on the Application of Payment Limitations for Agriculture* (Washington, D.C.: August 2003).

<sup>5</sup>7 U.S.C. § 1308-2.

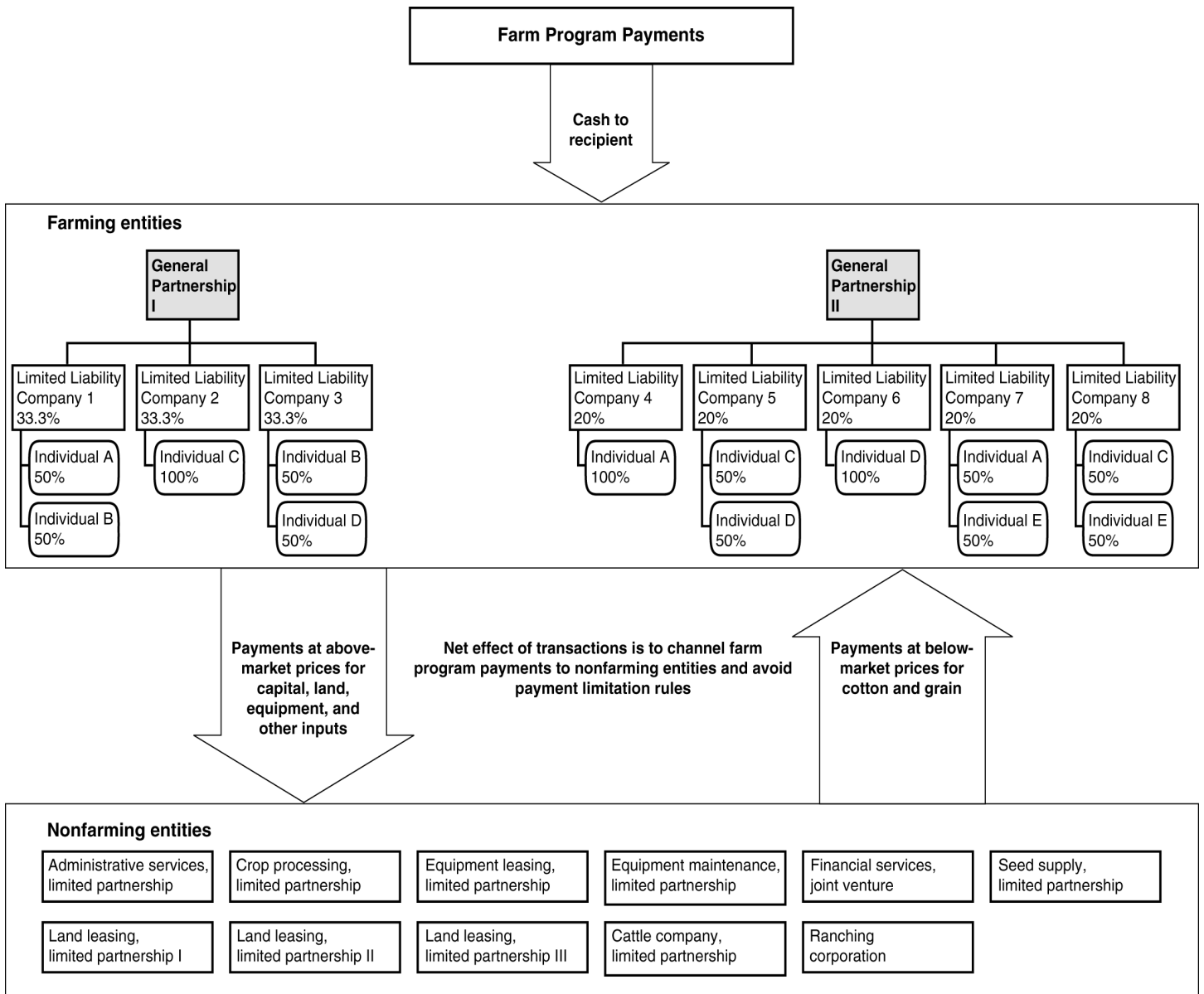
<sup>6</sup>7 C.F.R. § 1400.5.



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in farm program payments in 2001. The limited liability companies included family and non-family members, although power of attorney for all of the companies was granted to one family member to act on behalf of the companies, and ultimately the farming partnerships. The operation also included nonfarming entities—nine partnerships, a joint venture, and a corporation—that were owned by family members. The affiliated nonfarming entities provided the farming entities with goods and services, such as capital, land, equipment, and administrative services. The operation also included a crop processing entity to purchase and process the farming operation’s crop. According to our review of accounting records for the farming operation, both farming partnerships incurred a small net loss in 2001, even though they had received more than \$800,000 in farm program payments. In contrast, average net income for similar-sized farming operations in 2001 was \$298,000, according to USDA’s Economic Research Service. The records we reviewed showed that the loss occurred, in part, because the farming operations paid above-market prices for goods and services and received a net return from the sale of the crop to the nonfarming entities that appeared to be lower than market prices because of apparent excessive charges. The structure of this operation allowed the farming operation to maximize farm program payments, but because the farm operated at a loss these payments were not distributed to the members of the operation. In effect, these payments were channeled to the family-held nonfarming entities. Figure 1 shows the organizational structure of this operation and the typical flow of transactions between farming and nonfarming entities.

**Figure 1: Large Operation Containing Farming and Nonfarming Entities**



Source: GAO analysis of FSA compliance files and statements.

Note: Percentages shown are share of ownership.

Similarly, we found another general partnership that farmed more than 50,000 acres in 2001 and that conducted business with nonfarming entities,

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including a land leasing company, an equipment dealership, a petroleum distributorship, and crop processing companies, with close ties to the farming partnership. The partnership, which comprised more than 30 corporations, collected more than \$5 million in farm program payments in 2001.<sup>7</sup> The shareholders who contributed the active personal management for these corporations were officers of the corporations. Each officer provided the active personal management for three corporations. Some of these officers were also officers of the nonfarming entities—the entities that provided the farming partnership goods and services such as the capital, land, equipment, and fuel. The nonfarming entities also included a gin as well as grain elevators to purchase and process the farming partnership's crops. Our review of accounting records showed that even though the farming partnership received more than \$5 million in farm payments, it incurred a net loss in 2001, which was distributed among the corporations that comprised the partnership.<sup>8</sup>

As in the first example, factors contributing to the loss included the above-market prices for goods and services charged by the nonfarming entities and the net return from the sale of crops to nonfarming entities that appeared to be lower than market prices because of apparent excessive charges for storage and processing. For example, one loan made by the nonfarming financial services entity to the farming partnership for \$6 million had an interest rate of 10 percent while the prevailing interest rate for similar loans at the time was 8 percent. Similarly, the net receipts from the sale of the harvested crop, which were sold almost exclusively to the nonfarming entities, were below market price. For example, in one transaction the gross receipt was about \$1 million but after the grain elevators deducted fees for the quality of the grain and such actions as drying and storing the grain, the net proceeds to the farming entity were only about \$500,000. In this particular operation, all of the nonfarming entities had common ownership linked to one individual. This individual had also set up the legal structure for the farming entities but had no direct ownership interest in the farming entities.

It is unclear whether either of these operations falls within the statutory definition of a scheme or device or whether either otherwise circumvents

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<sup>7</sup>In 2003, the operation divided into six new farming partnerships comprised of the same corporations.

<sup>8</sup>The accounting records also showed that the capital (equity) account for each of the corporations carried a negative balance, indicating multiple years of net losses.

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the payment limitation rules. State FSA officials in Arkansas, Louisiana, Mississippi, and Texas, where many of the large farming operations are located, believed that some large operations with relationships between the farming and nonfarming entities were organized primarily to circumvent payment limitations. In this manner, these farming operations may be reflective of the organizational structures that some Members of Congress indicated were problematic when enacting the 1987 Act and the scheme or device provision. The House Report for the 1987 Act states: “A small percentage of producers of program crops have developed methods to legally circumvent these limitations to maximize their receipt of benefits for which they are eligible. In addition to such reorganizations, other schemes have been developed that allow passive investors to qualify for benefits intended for legitimate farming operations.”<sup>9</sup> In our discussions with FSA headquarters officials in February 2004 on the issue of farming operations that circumvent the payment limitation rules, they noted that while an operation may be legally organized, it may be misrepresenting who in effect receives the farm program payments. FSA has no data on how many of the types of operations that we identified exist. However, FSA is reluctant to question these operations because it does not believe current regulations provide a sufficient basis to take action.

Other FSA officials said that USDA could review such an operation under the 1987 Act’s scheme or device provision if it becomes aware that the operation is using a scheme or device for the purpose of evading the payment limitation rules. However, these FSA officials stated it is difficult to prove fraudulent intent—which they believe is a key element in proving scheme or device—and requires significant resources to pursue such cases. In addition, they stated that even if FSA finds a recipient ineligible to receive payments, its decision might be overturned on appeal within USDA. The FSA officials noted that when FSA loses these types of cases, the loss tends to discourage other field offices from aggressively pursuing these types of cases.

It is not clear whether either the statutory provision or FSA’s regulations require a demonstration of fraudulent intent in order to find that someone has adopted a scheme or device. As discussed above, the statute limits payments if the Secretary of Agriculture determines that any person has adopted a scheme or device “to evade, or that has the purpose of evading,”

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<sup>9</sup>H.R. Rep. No. 100-391 (1987) (emphasis added).

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the farm payment limitation provisions. The regulations state that payments may be withheld if a person “adopts or participates in adopting a scheme or device designed to evade or that has the effect of evading” the farm payment limitations. The regulations note that schemes or devices shall include, for example, creating fictitious entities for the purpose of concealing the interest of a person in a farming operation. Some have interpreted this provision as appearing to require intentionally fraudulent or deceitful conduct. On the other hand, FSA regulations only provide this as one example of what FSA considers to be a scheme or device. The regulations do not specify that all covered schemes or devices must involve fraudulent intent. As previously stated, covered schemes or devices under FSA regulations include those that have “the effect of evading” payment limitation rules. Finally, guidance contained in *FSA Handbook Payment Limitations, 1-PL (Revision 1), Amendment 40*, does not clarify the matter because it does not provide any additional examples for FSA officials of the types of arrangements that might be considered schemes or devices. This lack of clarity over whether fraudulent intent must be shown in order for FSA to deny payments under the scheme or device provision of the law may be inhibiting FSA from finding that some questionable operations are schemes or devices.

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## Other Weaknesses in FSA’s Oversight May Also Enable Ineligible Farmers to Receive Program Payments

In addition to the weaknesses described above, FSA does not effectively oversee farm program payments in five key areas, according to our analysis of FSA compliance reviews and our survey of FSA field offices. First, FSA does not review a valid sample of recipients to be reasonably assured of compliance with the payment limitations. In 2001, FSA selected 1,573 farming operations from its file of 247,831 entities to review producers’ compliance with actively engaged in farming requirements. FSA’s sample selection focuses on entities that have undergone an organizational change during the year or received large farm program payments. Field staff responsible for these reviews seek waivers for farming operations reviewed within the last 3 to 5 years—the time frame varies by state. As a result, according to FSA officials, of the farming operations selected for review each year, more than half are waived and therefore not actually reviewed. Many of the waived cases show up year after year because FSA’s sampling methodology does not take into consideration when an operation was last reviewed. In 2001, the latest year for which data are available, only 523 of 1,573 sampled entities were

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to be reviewed.<sup>10</sup> Field offices sought and received waivers for 966 entities primarily because the entities were previously reviewed or the farming operation involved only a husband and wife.<sup>11</sup> According to FSA headquarters officials, the sampling process was developed in the mid-1990s and it can be improved and better targeted.

Second, field offices do not always conduct compliance reviews in a timely manner. Only 9 of 38 FSA state offices responsible for conducting compliance reviews for 2001 completed the reviews and reported the results to FSA headquarters within 12 months, as FSA policy requires.<sup>12</sup> FSA headquarters selected the 2001 sample on March 27, 2002, and forwarded the selections to its state offices on April 4, 2002. FSA headquarters required the state offices to conduct the compliance reviews and report the results by March 31, 2003. Six of the 26 FSA state offices that failed to report the results to headquarters had not yet begun these reviews for 470 farming operations as of summer 2003: Arkansas, California, Colorado, Louisiana, Ohio, and South Carolina. Until we brought this matter to their attention in July 2003, FSA headquarters staff were unaware that these six states had not conducted compliance reviews for 2001. Similarly, they did not know the status of the remaining 20 states. Because of this long delay, FSA cannot reasonably assess the level of recipients' compliance with the act and may be missing opportunities to recapture payments that were made to ineligible recipients if a farming operation reorganizes or ceases operations.

Third, FSA staff do not use all available tools to assess compliance. For one-half of the case files we reviewed for 2001, field offices did not use all available tools to determine whether persons are actively engaged in farming. FSA compliance review policy requires field staff to interview persons asserting that they are actively engaged in farming before making a final eligibility decision, unless the reason for not interviewing the

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<sup>10</sup>For 72 of the 1,573 sampled entities, survey respondents did not provide information on whether the reviews for these entities were waived or will be conducted in the future. In addition, we were unable to determine the field offices responsible for reviewing 12 of the 1,573 sampled entities.

<sup>11</sup>State offices may waive selected compliance reviews for farming operations that were previously reviewed and did not receive an adverse determination, and for which the reviewing authority has no reason to believe there have been changes that affect the original eligibility decision.

<sup>12</sup>Three additional FSA state offices submitted the required report after the due date.

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person is obvious and adequately justified in writing.<sup>13</sup> Indeed, 83 percent of the field offices responding to our survey indicated that interviews are helpful in conducting compliance reviews. However, in 27 of the 86 case files we reviewed in six states, field staff did not interview these persons and did not adequately document why they had not done so. In one of the states we visited, field staff had not conducted any interviews. We also found that some field offices do not obtain and review certain key financial information regarding the farming operation before making final eligibility decisions. For example, our review of case files indicated that for one-half of the farming operations, field staff did not use financial records, such as bank statements, cancelled checks, or accounting records, to substantiate that capital was contributed directly to the farming operation from a fund or account separate and distinct from that of any other individual or entity with an interest in the farming operation, as required by FSA's policy.<sup>14</sup> Instead, FSA staff often rely on their personal knowledge of the individuals associated with the farming operation to determine whether these individuals meet the requirement for active engagement in farming.

Fourth, FSA does not consistently collect and analyze monitoring data. FSA has not established a methodology for collecting and summarizing compliance review data so that it can (1) reliably compare farming operations' compliance with the actively engaged in farming requirements from year to year and (2) assess its field offices' conduct of compliance reviews. Under Office of Management and Budget Circular A-123, agencies must develop and implement management controls to reasonably ensure that they obtain, maintain, report, and use reliable and timely information for decision-making. Because FSA has not instituted these controls, it cannot determine whether its staff are consistently applying the payment eligibility requirements across states and over time.

Finally, these problems are exacerbated by a lack of periodic training for FSA staff on the payment limitations and eligibility rules. Training has generally not been available since the mid-1990s.

In conclusion, the Farm Program Payments Integrity Act of 1987, while enacted to limit payments to individuals and entities actively engaged in farming, allows farming operations to maximize the receipt of federal farm

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<sup>13</sup>FSA Handbook Payment Limitations, 1-PL (Revision 1), Amendment 40.

<sup>14</sup>FSA Handbook Payment Limitations, 1-PL (Revision 1), Amendment 40.

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payments as long as all recipients meet eligibility requirements. However, we found cases where payment recipients may have developed methods to circumvent established payment limitations. This seems contrary to the goals of the 1987 Act and was caused by weaknesses in USDA's regulation and oversight. The regulations need to better define what constitutes a significant contribution of active personal management and clarify whether fraudulent intent is necessary to find that someone has adopted a scheme or device. Without specifying measurable standards for what constitutes a significant contribution of active personal management, FSA allows individuals who may have had limited involvement in the farming operation to qualify for payments. Moreover, FSA is not providing adequate oversight of farm program payments under its current regulations and policies.

In our report to you, we made eight recommendations to the Secretary of Agriculture for improving FSA's oversight of compliance with the 1987 Act, including: developing measurable requirements defining a significant contribution of active personal management; clarifying regulations and guidance as to what constitutes a scheme or device; improving its sampling method for selecting farming operations for review; and developing controls to ensure all available tools are used to assess compliance with the act. USDA agreed to act on most of our recommendations. However, USDA stated that its current regulations are sufficient for determining active engagement in farming and assessing whether operations are schemes or devices to evade payment limitations.

Mr. Chairman, this concludes my prepared statement. We would be happy to respond to any questions that you or other Members of the Committee may have.

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For further information about this testimony, please contact Lawrence J. Dyckman, Director, Natural Resources and Environment, (202) 512-3841, or by email at [dyckmanl@gao.gov](mailto:dyckmanl@gao.gov). Ron Maxon, Thomas Cook, Cleofas Zapata, Carol Herrnstadt Shulman, and Amy Webbink made key contributions to this statement.



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