



TOP PRODUCER
2008 Seminar

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Who is Kennedy & Coe, LLC?

- **INTRODUCTIONS**

- Kennedy and Coe, LLC - An Accounting Firm Specializing in Services to Agricultural Producers
- Wayne Myers, Director of Farm Program Services
- Farm Program Services - Special Resource Group within the Firm
- Farm Program Service Staff located in Goodland, Kansas
- Thirty Years of Farm Program Experience

- **DESCRIPTION OF SERVICES**

- Providing Expert Analysis of Program Regulations and Procedures
- Assisting Producers in Reorganization to Maximize FSA Payments while Complimenting Tax, Financial and Estate Planning
- Assisting Producers with FSA Appeals at the County, State, and National Levels
- Providing Technical Information to Other Accountants and Attorneys as they Deliver Services that may Impact Farm Program Payments
- Litigation Support
- An Array of Services to Clients in Selecting their “Best” Program Options





2008 FARM BILL

CHALLENGES & OPPORTUNITIES

- Legislative Comparison between the House and Senate Bills
- Focus on What's likely in Final Bill
 - Attribution Rule
 - Actively Engaged in Farming
 - Separate Person for Payment
 - Cash Rent Tenant Rule





2008 FARM BILL

CHALLENGES & OPPOTUNITIES

- Focus on What's likely in Final Bill
 - (Continued)
 - Husband & Wife Provision
 - Family Member Provision
 - Substantive Change Provision





2008 FARM BILL CHALLENGES & OPPOTUNITIES

- Caution During the Interim Period Between Farm Bills – What Could Get You in Trouble!
- Important Issues Relating to Payment Eligibility for 2008





Farm Program Eligibility

FSA Determinations & Rules

- “Actively Engaged in Farming”
- Qualifying As a Separate “Person”
- “Cash-Rent Tenant” Rule
- “Separate & Distinct Person”
- “Substantive Change” Requirement
- Updating “Farm Operating Plans”
- FSA “End-of-Year Review” Audit





2007 FARM LEGISLATION COMPARISON





COMMON PROVISIONS





THREE ENTITY RULE

2007 House Bill	2007 Senate Bill
Individuals may draw payments from any number of entities, but all payments attributed to individual	Individuals may draw payments from any number of entities, but all payments attributed to individual





ACTIVELY ENGAGED IN FARMING

2007 House Bill	2007 Senate Bill
Individuals may draw payments from any number of entities, but all payments attributed to individual	Individuals may draw payments from any number of entities, but all payments attributed to individual





DESIGNATION RULE

2007 House Bill	2007 Senate Bill
Silent	Silent





CASH RENT TENANT RULE

2007 House Bill	2007 Senate Bill
<p>Cash rent tenant must provide significant labor or a combination of significant management and equipment to remain eligible for program payments</p>	<p>Cash rent tenant must provide significant labor or a combination of significant management and equipment to remain eligible for program payments</p>





HUSBAND/WIFE

2007 House Bill	2007 Senate Bill
<p>If either spouse is determined actively engaged in farming, the other spouse is determined to have automatically met the requirements as well.</p>	<p>If either spouse is determined actively engaged in farming, the other spouse is determined to have automatically met the requirements as well.</p>





ADJUSTED GROSS INCOME (AGI) MEANS TEST

2007 House Bill	2007 Senate Bill
Imposes a hard cap at \$1 million. If AGI is between \$500,000 and \$1 million, 67% must come from agricultural production.	2009 - \$1 million unless 67% ag 2010-2012 - \$750,000 unless 67% ag *limit remains at \$2.5 million for conservation programs





COMMODITY PROGRAMS




PAYMENT LIMITATIONS

	2007 House Bill	2007 Senate Bill
Direct Decoupled Payments (DP)	\$ 60,000	\$ 40,000
Counter-Cyclical Payments (CCP)	\$ 65,000	\$ 60,000
Loan Deficiency Payments (LDP)	Unlimited	Unlimited
Revenue-based CCP option	Optional program in which CC payments would be based on the difference between target national-level crop revenues and actual national-level crop revenues. Direct payments remain intact.	Optional Average Crop Revenue (ACR) program would replace DCP program - fixed component of \$15 per acre on 100% of base acres, CCP triggered when actual state revenues fall below targets



TARGET PRICES


	2007 House Bill	2007 Senate Bill
Target Prices		
Wheat - bu	\$ 4.15	\$ 4.20
Corn - bu	\$ 2.63	\$ 2.63
Grain Sorghum - bu	\$ 2.57	\$ 2.63
Barley - bu	\$ 2.73	\$ 2.63
Oats - bu	\$ 1.50	\$ 1.83
Soybeans - bu	\$ 6.10	\$ 6.00
Minor Oil Seeds - lb	\$ 0.1150	\$ 0.1274
Upland Cotton - lb	\$ 0.70	\$ 0.7225
Rice - cwt	\$ 10.50	\$ 10.50
Peanuts - ton	\$ 495.00	\$ 495.00





NATIONAL LOAN RATES


	2007 House Bill	2007 Senate Bill
Wheat - bu	\$ 2.94	\$ 2.94
Corn - bu	\$ 1.95	\$ 1.95
Grain Sorghum - bu	\$ 1.95	\$ 1.95
Malt Barley - bu	\$ 2.50	N/A
Feed Barley - bu	\$ 1.90	\$ 1.95
Oats - bu	\$ 1.46	\$ 1.39
Soybeans - bu	\$ 5.00	\$ 5.00
Oil Seeds - lb	\$ 0.107	\$ 0.1009
Upland Cotton - lb	\$ 0.52	\$ 0.52
Cotton Other - lb	\$ 0.7977	\$ 0.7977
Rice - cwt	\$ 6.50	\$ 6.50





NATIONAL DP RATES

	2007 House Bill	2007 Senate Bill
Wheat - bu	\$ 0.52	\$ 0.52
Corn - bu	\$ 0.28	\$ 0.28
Grain Sorghum - bu	\$ 0.35	\$ 0.35
Barley - bu	\$ 0.24	\$ 0.24
Oats - bu	\$ 0.024	\$ 0.024
Soybeans - bu	\$ 0.44	\$ 0.44
Minor Oil Seeds - lb	\$ 0.008	\$ 0.008
Upland Cotton - lb	\$ 0.0667	\$ 0.0667
Rice - cwt	\$ 2.35	\$ 2.35
Peanuts - ton	\$ 36.00	\$ 36.00





OPTIONAL REVENUE-BASED COUNTER-CYCLICAL RATES

	2007 House Bill	2007 Senate Bill
Optional CC Revenues per Acre		
Wheat	\$ 149.92	Target revenues would be determined by each state.
Corn	\$ 344.12	
Grain Sorghum	\$ 131.28	
Barley	\$ 153.30	
Oats	\$ 92.10	
Soybeans	\$ 231.87	
Minor Oil Seeds	\$ 129.18	
Upland Cotton	\$ 496.93	
Rice	\$ 548.06	
Peanuts	\$ 683.83	



OPTIONAL REVENUE-BASED COUNTER-CYCLICAL RATES

	2007 House Bill	2007 Senate Bill
National Payment Yields		
Wheat - bu/a	36.1	Payment yields to be determined by each state.
Corn - bu/a	114.4	
Grain Sorghum - bu/a	58.2	
Barley - bu/a	48.6	
Oats - bu/a	49.8	
Soybeans - bu/a	34.1	
Minor Oil Seeds - lb/a	1167.6	
Upland Cotton - lb/a	634.0	
Rice - cwt/a	51.28	
Peanuts - ton/a	1.496	



CONSERVATION PROGRAMS





REAUTHORIZED OR EXTENDED

	2007 House Bill	2007 Senate Bill
Conservation Programs		
CRP	Yes	Yes
CREP	Yes	Yes
CSP	Collapses 3-tiered system; no new enrollments until 2012	Name changed to Conservation Stewardship Program; Collapses three- tiered system, uses stewardship thresholds
EQIP	Yes	Yes
FPP	Yes	Yes





REAUTHORIZED OR EXTENDED

	2007 House Bill	2007 Senate Bill
Conservation Programs		
GRP	Yes	Yes
WRP	Yes	Yes
WHIP	Yes	Yes
CSIP	N/A	Creates new Comprehensive Stewardship Incentives Program that coordinates management activities for EQIP and CSP





PAYMENT LIMITS

	2007 House Bill	2007 Senate Bill
Payment Limits		
CRP	\$ 60,000	\$ 50,000
CREP	CRP enhancement - proceeds count toward single CRP limit	CRP enhancement - proceeds count toward single CRP limit
CSP	\$ 150,000 over the five-year period of the contract	\$ 240,000 for all contracts in any six-year period
EQIP	\$ 60,000	\$ 450,000
FRPP	N/A	N/A
GRP	N/A	N/A
WRP	N/A	N/A
WHIP	\$ 60,000	N/A
	Note: Limit of \$125,000 total for all programs per year, excluding WRP, FRPP, and GRP payments.	



“Person” Eligibility Rules

- Definition of a “Person”
 - Individual
 - Entity (Corporation, Limited Partnership, Limited Liability Company)
 - Trust or Estate
- Combination of Person Rules
 - Individual with Entity - > 50% Ownership
 - Individual with Minor Child’s Interest
 - Revocable Trust with Grantor/1 Beneficiary
 - Irrevocable Trusts with Sole (Income) Beneficiary





“Person” Eligibility Rules

- Combination of Person Rules cont’d
 - Husband and Wife - Except:
 - » Husband and Wife had Farming Interest Prior to Marriage
 - » Neither Spouse has Substantial Beneficial Interest in any other Entity Earning Payment
 - Entities where Two or More Individuals Collectively Own More than 50% Interest in Two or More Entities
 - Estate with Beneficiary where Beneficiary would have been Combined with Decedent





“Actively Engaged In Farming” Rules

- Person must be At Risk
- Person’s Shares must be Commensurate
- Person must be Active By:
 - Significant Contribution of 1 or More:
 - » Capital - Land - Equipment (Left-Hand)
 - Significant Contribution of 1 or More:
 - » Active Personal Labor (Right-Hand)
 - » Active Personal Management (Right-Hand)





“Separate & Distinct Person”

FSA 1-PL (Rev. 1) Paragraph 110

- What Does it Mean?
- What Actions Likely Violate This Rule?
 - Master loan for multiple operations
 - One farming operation loaning or guarantee another operation’s operating note
 - Not having separate bank accounts for each operation
 - Other problem areas may invoke this rule



Cash Rent Tenant Rule

- Person Must Contribute One of the following to Qualify:
 - Significant Contribution of Labor - 1000 hours or 1/2 of Commensurate Share or;
 - Significant Contribution of Both Management and Equipment
- Person cannot Cash Rent Cropland and have it Custom Farmed/Share Rented



Substantive Change Requirements

- When an Operation will Increase “Persons” for Payment from the Prior Year a Substantive Change in the Operation must have Occurred to Include:
 - Addition of a Family Member
 - Addition of a Spouse
 - Change in Land Rental (Landowner Only)
 - » Change Cash Rent to Crop Share





Substantive Change Requirements

- Changes in the Operation cont'd
 - Increase in Cropland (Minimum 20% Increase) being Farmed
 - Change in Ownership through Sale or Gift of Land or Equipment
 - Use of Equipment not Previously Used in the Farming Operation



ATTRIBUTION RULE

- Review Attribution Rule

- Previous farm bills have allowed individuals to draw payments through themselves and two other entities in effect doubling payment limits - Example: An individual could draw \$40,000 in direct payments, then additionally another \$20,000 indirectly through two companies of which they owned 50% interest.
- Under attribution, there is only one true limit per warm body. Payments to entities are attributed to each owner based on their ownership interest. If Direct Payment limit remains \$40,000, then in the above example the individual share of \$20,000 in each of the other two companies would be denied as the individual would have maxed out individually at \$40,000





BE CAUTIOUS IN CHANGING OWNERSHIP UNDER NEW FARM BILL

- Many producers have formed multiple entities as additional payment limits
- In some cases these entities have considerable net worth. Changing ownership in these entities could trigger considerable tax liability.
- Discuss ownership changes with your accountant before making changes. Forfeiting program payments may be less than paying taxes associated with the change.
- We are looking for a grace period to allow producer to effectively make these changes and given how close we are to the FSA “status” date, this may be likely.





Common Problems

- Development of an Estate Plan that has the Effect of Reducing “Persons” for Payment
- Year End Tax Planning where Members of a GP Receive Guaranteed Payment for Labor/Management
- Entities and/or Individuals with an Interest in the Farming Operation Providing Financing or Guaranteeing a Loan





Common Problems

- Partners not Sharing Profits or Losses Based on their Ownership in the Partnership
 - Capital Accounts not Equal
 - Tax K-1 Forms not Commensurate with Ownership
- Cash Rent Tenant Violation
 - Cash Rented Land that is Custom Farmed
 - Cash Rented Land that is Share Rented





FSA Year End Review

Internal Audit

- Take it seriously
- Watch time frame
- Request extension if needed
- Review CCC-502 Farm Operating Plan
- Organize Response around five inputs including land, capital, labor, management
- Add crop insurance and disposition
- Add proof of AGI

