

## Cropland Leasing Update: Farm Service Agency Direct and Counter-Cyclical Program Payments and Flexible Cash Lease Arrangements

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Higher cash rents and more variable crop prices have stimulated additional interest in flexible cash rental arrangements on the part of both landowners and their farm tenants. One of the continuing concerns for those considering a flexible cash rental arrangement is how it will affect Direct and Counter-Cyclical Program (DCP) payments. After the passage of the Food, Conservation, and Energy Act of 2009 (the 2008 Farm Bill), the Farm Service Agency (FSA) revised the regulations effective for the crop years 2009 through 2012 for determining whether a farmland lease is a cash lease or a crop share lease. These revisions made it significantly easier than it was under previous regulations to establish flexible cash rental arrangements that would qualify as cash leases for DCP participation purposes.

Whether a lease arrangement is a cash lease or a share lease determines who receives direct and counter-cyclical program payments from the USDA Farm Service Agency. Cash rent landowners are not eligible for any share of a DCP contract, while share rent landowners are. That is, if a lease is a cash lease the cash rent landowner is not eligible for direct, counter-cyclical, or ACRE payments. If a lease is a share lease, DCP contract payments are shared between the landlord and tenant.

The current policy is outlined in Farm Service Agency Handbook 1-DCP. This handbook is available on-line: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=empl&topic=hbk>. Or, it may be obtained from any Farm Service Agency office. The pertinent section of Handbook 1-DCP is Section 2, "Division of Payments," and Paragraph 352, "Eligibility to Receive Payments and Determining Cash or Share Leases." This section and paragraph are located in the handbook on pages 6-61 through 6-68. This section of the handbook also includes useful examples of lease determinations.

The current policy states that a cash lease is any lease with any fixed monetary amount or production being provided to the landowner. A share lease, on the other hand, shares all crop and crop proceeds between the tenant and landowner and provides for no fixed dollar or production guarantee to the landowner. If there is any fixed monetary amount or production as part of a lease agreement, then a lease will be determined to be a cash lease even though the rest of the crop proceeds are shared by the landlord and tenant.

A newsletter from the FSA State Executive Director in Nebraska provided the following example of how the regulations are currently applied: Assume that a tenant and a landowner enter into a cropland lease arrangement that divides crop proceeds and input costs on a 50/50 share bases. However, the lease agreement requires that the tenant pay the landowner an additional fixed cash payment of \$2000. FSA policy would require a determination that this is a cash lease because of the fixed cash payment.

Flexible cash lease arrangements often include a fixed amount of cash rent, with an additional flex amount, or bonus, based on a share of production or crop proceeds. Handbook 1-DCP states that the payment of a bonus due to higher prices or yields is not, in itself, a violation of DCP regulations. If a bonus is an explicit part of a lease agreement, it will be evaluated using the FSA policy outlined in Handbook 1-DCP. The bonus in this type of flexible cash lease is oftentimes equal to a percentage of the crop proceeds that are in excess of a base amount of crop proceeds on which the fixed part of the cash

rent is based. Under the current FSA policy, the bonus amount in this type of flexible cash rental arrangement can be based on a percentage of the actual crop proceeds and still be a cash lease for DCP payment purposes.

The specific provisions in the flexible cash leases, whether oral or written, will determine whether the lease is a cash lease or a share lease for purposes of participation in the Direct and Counter-Cyclical Program administered by the Farm Service Agency. The rules in effect for the 2009 through 2012 crop years make it relatively easy to set up flexible cash leases that qualify as cash leases for DCP contract payment purposes. However, changes in farm leases should only be made after careful evaluation of FSA regulations and consultation with your local FSA office.