

cooperating entity not be held responsible for verification or auditing of the certification by the landowner.

In order to avoid a conflict with any policy contained within the Adjusted Gross Income Limitation final rule, NRCS directs respondents to the Adjusted Gross Income Limitation final rule, which is currently being promulgated. However, to clarify some matters raised during the FRPP proposed rule comment period, NRCS will briefly explain the adjusted gross income limitation and identify how this limitation relates to the FRPP. Section 1604 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 1-7-171) prohibits individuals and entities exceeding an average adjusted gross income limitation of \$2.5 million from receiving USDA payments, unless 75 percent or more of their adjusted gross income is derived from farming, ranching or forestry production. Landowners receiving FRPP payments would be subject to this adjusted gross income limitation. The proposed Adjusted Gross Income Limitation rule, 7 CFR part 1400.6, clarifies this income limitation, and sets forth the criteria to be applied in determining whether certain income limits have been exceeded by an individual. Policy on corporate ownership and land sale revenues, as well as administrative procedures, such as income verification, are addressed in 7 CFR part 1400.6. In order to comply with Section 1604 of the Farm Security and Rural Investment Act of 2002, NRCS will comply with the statute and final rule governing the adjusted gross income limitation.

Twelve respondents raised concerns regarding NRCS' appraisal policy. One respondent requested that all appraisals be done in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and that they be reviewed by a Federal appraiser. The same respondent stated UASFLA standards must be used, since the Uniform Standards of Professional Appraisal Practice (USPAP) does not address the "before" and "after" technique used to evaluate conservation easements. To provide cooperating entities maximum flexibility and reduce transaction costs, appraisals conducted for the FRPP shall conform to USPAP or USFLA standards. NRCS acknowledges that the "before" and "after" technique is an appropriate methodology to use in order to determine conservation easement value, and shall be adopted by FRPP. One respondent requested that NRCS address in the final rule how appraisal reports should be submitted and how these reports will be used. Another respondent requested that the

reproduction of appraisal reports for NRCS use be minimized and that an annual meeting between NRCS and the cooperating entity would suffice, while another respondent suggested that providing a copy of the appraisal report is possible, but providing priority rating criteria is not. NRCS concurs with the need to streamline the appraisal submission process. However, due to the complexity of the appraisal review process and the fact that this type of administration issue is more appropriate for manual policy, NRCS has addressed specific appraisal review and process issues in its current policy manual, CPM part 519. CPM part 519 can be accessed via the Internet at: [http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M\\_440\\_519.htm](http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_440_519.htm).

Two local government respondents requested that NRCS adopt alternative real estate evaluation systems used by local governments, which reduce easement acquisition costs, rather than requiring that appraisals be conducted. Considering these comments, NRCS has determined that the adoption of alternative evaluation systems, which under certain circumstances were permitted in the Farmland Protection Program, conflicts with the terms of the FRPP authorizing legislation that states "the Federal share cannot exceed 50 percent of the appraised fair market value of the conservation easement." For this reason, NRCS has determined that only appraisals are appropriate to value FRPP parcels.

In addition, the FRPP is subject to the Department of Transportation regulations at 49 CFR part 24, which the USDA has adopted by reference in its own regulations at 7 CFR 21.1. 49 CFR part 24 implements the Uniform Relocation Assistance and Real Property Policies Act of 1970 (the 1970 Act) and applies to real property acquisition, including the acquisition of partial interests, such as conservation easements. One of the main purposes of the 1970 Act is to ensure that owners of real property to be acquired by the Federal Government or through Federally-assisted acquisitions are treated fairly. Because the FRPP is a voluntary program, the FRPP is exempt from the regulations that govern Federal acquisition. However, FRPP must comply with the terms of the exemption that is set forth at 49 CFR 24.101. Accordingly, cooperating entities receiving FRPP funds must comply with the requirements of 49 CFR 24.101(a)(2) which provides that: (1) Prior to making an offer for the property, the FRPP cooperating entity must advise the landowner that it is unable to acquire the property (e.g. by eminent domain) in

the event negotiations fail to result in an amicable agreement; and (2) inform the owner of what the FRPP cooperating entity believes to be the fair market value of the property. In order to determine the fair market value of a property, an appraisal by a State-certified general or licensed appraiser must be done.

Three respondents requested that NRCS reimburse the entity for the cost of appraisals, while another respondent requested that appraisals older than one year may be acceptable if agreed to by NRCS and the cooperating entity in a Memorandum of Understanding. NRCS is required by law not to exceed "50 percent of the appraised fair market value of the conservation easement." As a result of this statutory requirement, NRCS requires an appraisal. The appraisal shall not be more than one year old prior to easement closure, in order to ensure that the Federal share does not exceed 50 percent of the appraised fair market value. One respondent asked that the appraiser certification be addressed, as well as stated that the Uniform Standard of Professional Appraisal Practice (USPAP) system does not utilize the "before" and "after" technique for partial acquisitions. NRCS believes that the "before" and "after" technique is the appropriate method in valuing conservation easements for the purpose of FRPP. The "before" and "after" technique does not conflict with other methodologies used by USPAP and is therefore adopted as a recommended way to determine FRPP easement values. NRCS has addressed appraisal review in CPM part 519 including administrative and technical reviews of appraisals by NRCS. CPM part 519 can be accessed via the Internet at: [http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M\\_440\\_519.htm](http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_440_519.htm).

The same respondent suggested that the final rule insert the word "general" in the appraiser description to read "State certified general appraiser," while another respondent has asked that the Section 1491.4(e) be reworded as follows: "Prior to FRPP fund disbursement, the value of the conservation easement must be appraised." NRCS acknowledges that "State certified general appraiser" is the correct terminology, it also agrees with the second suggestion which inserts the clarifying language that the value of the conservation easement must be appraised. As a result, NRCS has changed the rule accordingly.

Six respondents provided comments on 1491.4(f), which stated that at the discretion of the Chief, a standard easement will be required as a condition