

venture, a grantor or a revocable trust, or as a participant in a similar entity (as determined by the Secretary); and

(iii) A State, political subdivision, or agency thereof.

In determining who is a "person" for purposes of section 1001D, an "entity" is specifically defined to be the same as an "entity" as provided in section 1001(e)(2)(A)(ii) of the 1985 Act. Notably, section 1001D does not contain such a mandate to use the definitions in sections 1001(e)(2)(A)(i) and (iii). Accordingly, this final rule provides that the definition of an "entity" shall be the same for purposes of sections 1001 and 1001D of the 1985 Act. Further, in order to provide consistency in the application of both sections 1001 and 1001D, the final rule also provides that the definition of an "individual" will be the same for both purposes.

As to the respondents' suggestion that private schools be exempted from income limits, the definition of "entity" in the 1985 Act does not include States, political subdivisions, and agencies thereof (which include a public school or university), but does include charitable organizations and other nonprofit organizations (including churches and private schools). Furthermore, the 2002 Act does not exempt any charitable or nonprofit organization from the average adjusted gross income limitation. Also, this final rule does not extend the average adjusted gross income limitation to States, counties, political subdivisions, agencies thereof, or recognized Indian tribes because Governmental organizations do not have "income" similar to the other listed individuals and entities. Although a private institution may indeed serve some of the same purposes as some public institution, there is no statutory authority to treat them the same within the context of this rule. Accordingly, this comment was not adopted and this provision of the proposed rule is not changed in the final rule. However, the final rule does recognize the special nature of some activities of such charitable organizations as was set out in the proposed rule.

A respondent commented that the disqualification should include all payment methods for certain benefits, including commodity certificates issued under marketing assistance loans. The respondent believed that the use of such certificates undermines the intent of Congress to limit program payments. Under the 2002 Act, the average adjusted gross income limitation applies to loan deficiency payments and marketing loan gains, but does not include certificate transactions or to

other forms in which loan benefits might otherwise be obtained (such as loan forfeitures). Accordingly, the provisions of this rule cannot be extended to include such transactions.

Other comments on this section included: the \$2.5 million level is too high; the adjusted gross income limitation will force landowners to switch from share leases to cash leases and thus place the operators at substantially greater risk; and the adjusted gross income limitation is not equitable in that a test based on the assets of the potential recipient would be a more equitable test for payment eligibility. The dollar amount of the average adjusted gross income limitation and the disqualifications are provided by statute. There is no discretion to modify the amount or impose an alternative requirement for payment eligibility. Therefore, the final rule makes no changes in this provision.

Section 1400.601 Determination of Average Adjusted Gross Income

Comments were received from 14 respondents on this section of the proposed rule. The comments dealt primarily with the manner in which average adjusted gross income is determined, either by tax information or comparable measure, and the definition of income from farming, ranching and forestry operations. It was commented that "comparable measure" needed to be better defined. Other concerns were that compliance with the average adjusted gross income limitation would be adversely affected if income from various sources that the respondents believed were agricultural or farm-related, but do not fit in certain taxing categories for Internal Revenue Service (IRS) purposes, would not be considered income from farming, ranching or forestry operations. One respondent commented that there are occasions when 2 or more corporations are allowed to file a single, consolidated tax return and suggested that a certification indicating the amount each entity would have paid if separate returns had been filed should be allowed to be submitted.

The term "adjusted gross income," for IRS purposes, applies only to taxpayers who are "individuals." As previewed in the proposed rule, this final rule provides, for individuals, that adjusted gross income be generally based on the IRS definition of that term and associated filings. Section 1001D(a)(1) of the 2002 Act takes into account the limited IRS use of this term by providing that the Secretary is to fashion a "comparable measure" for other entities. Here also, as indicated in

the proposed rule, prior years' tax filings will be the starting point of reference. Due to the severe penalties associated with the filing of a false tax return, such information may be the most credible evidence available to make income determinations.

While this rule defines the adjusted gross income for the different types of program participants, it does not specify the line item on tax returns for participants from which critical information will be gathered since such references may likely change from year-to-year. However, the CCC forms that will be used to make these determinations will specify the specific lines from various IRS forms that will be used to the extent practicable. Also to the extent practicable, for information from the entity that is needed which cannot be ascertained solely from the IRS forms, CCC will specify in its forms what other information is needed.

For individuals, the adjusted gross income would generally be the amount so specified on the individual's final (including amendments) income tax return for the applicable year. Where there is a joint return filed, the adjusted gross income specified on the joint return will be used unless a certified public accountant or attorney provides a certified statement delineating the distribution of income and expenses of the individual seeking payments had such individual filed a separate return. Accordingly, it is possible that one tax return will be used by more than one individual for purpose of this rule.

For corporations, including a "subchapter S corporation," the adjusted gross income will be the final taxable income plus charitable contributions. Charitable contributions are included in order to provide equitable treatment vis-a-vis individuals. For an individual, charitable deductions are deducted from adjusted gross income, along with a variety of other items, to determine the individual's taxable income. Generally, the other items deducted from an individual's adjusted gross income, such as personal exemptions and child care credits, do not have a corresponding relevancy on a corporate return.

No change is made in the final rule to response to the comment about the treatment of corporations filing a single, consolidated tax return. Certifications of average adjusted gross income are required from a payment entity and all individuals and entities with an interest in the payment entity. If one corporation is a subsidiary of another corporation, the average adjusted gross income of the parent corporation would include the average adjusted gross income of the