

Husband & Wife Living Trust (A Revocable Trust)

Grantors: *The Husband and the Wife*

1. Trust Agreements must be provided to FSA.
2. The formation of a revocable trust will nullify the "separate farming operations before marriage" exception under the husband and wife rule.
3. If a revocable trust is receiving a payment:
 - A. a tax ID number must be provided to FSA when a grantor is receiving a payment as an individual, a member of a joint operation, or through another entity.
 - B. the grantors are automatically combined with each other and the trust.
4. In order to be eligible for payment, grantors who farm land owned by their revocable trust (for zero dollars or a cash amount) must meet the following requirements:
 - A. "Actively Engaged in Farming"
 - B. Cash-rent tenant rules (see FAQ #3).
5. Grantors cannot directly contribute the assets of the revocable trust to their individual farming operation.

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Frequently Asked Questions

1. Can a husband and wife revise their payment limitation determination and receive two payment limitations after they have been paid as a combined "person"?

No, the determination to consider them as one "person" will be applied to all programs for the program year.

2. If a husband and wife are members of a general partnership, must each file IRS Schedule K-1s?

Yes. FSA may request tax records to verify they are bona fide partners.

3. What contributions are required for the cash-rent tenant rule if the grantors cash-lease the trust's land for cash or zero dollars?

Both spouses must provide either active personal labor, or active personal management and equipment. If the trust's equipment is contributed, a rental agreement must be provided that indicates fair market value and timely payments.

4. What is the difference between a revocable trust and an irrevocable trust?

Irrevocable trusts cannot be modified or terminated, require a tax ID number, and are not combined with the grantor.

5. If a husband and wife are determined to be separate under one of the husband and wife exceptions, can they still be combined for other reasons?

Yes, FSA applies the most restrictive rule.
Example: If they are grantors of a living trust that participates, they will be combined.

6. If a trust participates, who is required to provide active personal labor/management ?

Only the income beneficiaries can make these contributions, if required. Personal actions of the trustee cannot be considered contributions of the trust.



UNITED STATES DEPARTMENT OF AGRICULTURE
California State FSA Office

PAYMENT LIMITATION

Husband and Wife Provisions



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Contact your local FSA Office for additional information regarding signature requirements for your farming operation.

Basic Rules!

General Rule:

A husband and wife are considered one “person” for payment limitation purposes.

In accordance with the Agricultural Act of 1970 and subsequent acts, total payments to a husband and wife cannot exceed a single payment limitation amount.

“Person” Rule:

A husband and wife can request to be separate “persons” on their farm operating plans (CCC-502) and be eligible for two separate payment limitations.

In order to be considered separate “persons”, they would have to meet one of two exceptions (see upper table on this page) and not combined due to other reasons, such as receiving a payment as a husband and wife living trust.

“Actively Engaged in Farming” (“AE”) Rule:

To be eligible for separate payment limitations under this rule, each spouse must make commensurate contributions that are “at risk” of:

- 1) capital, land, and/or equipment, and
- 2) active personal management/labor.

A. Individual Operations: These contributions must be made by each individual spouse.

B. Joint Operations: Only the contributions of active personal labor and/or management must be contributed by each spouse. The joint operation may provide the other contributions.

Some FSA programs (such as DCP, CRP, LDP, and Market Gains) require an “AE” determination.

A husband and wife are considered one “person” for payment limitation purposes, unless one of the following exceptions apply:

Exception	Requirements
Separate Farming Operations Before Marriage	Both of the following must apply: <ul style="list-style-type: none"> • Before marriage, both spouses were separately engaged in unrelated farming operations in at least the previous crop year • All farming operations of both spouses have been maintained separately and distinctly. <ul style="list-style-type: none"> ▶ Bottom Line: A spouse cannot get involved (or ever have been involved) in the same farming operation as the other spouse. These operations include those formed after getting married, agricultural land ownership operations, livestock operations, and nonparticipating farming operations.
Interest in No More Than One Entity	<p>If a spouse receives payment as an individual or as a member of a joint operation, then the husband and wife can be considered separate “persons” as long as neither spouse holds, directly or indirectly, a substantial beneficial interest in an entity that is <u>receiving payment as a separate “person.”</u></p> <p>If a spouse does not receive payment as an individual or as a member of a joint operation, then the husband and wife can be considered separate “persons” as long as neither spouse holds, directly or indirectly, a substantial beneficial interest in <u>more than one entity that is receiving a payment as a separate “person”.</u></p>

Husband and Wife Exceptions Worksheet		Yes	No
1	Did the husband and wife request to be considered two “persons” for payment limitation purposes?	Go to # 2	Combined
2	Did both spouses have separate farming operations for at least the previous crop year before marriage?	Go to # 3	Go to # 4
3	Does either spouse have an interest in any farming operation involving their spouse? Note: This includes farming and ranching operations that are not participating or receiving payment, are dissolved or inactive, were established for other purposes such as land ownership, or are living trusts?	Go to # 4	Separate
4	Is either spouse receiving payment as an individual or as a member of a joint operation?	Go to # 5	Go to # 6
5	Does either spouse have an interest in a farming entity (corporation, LLC, LP, trust, estate...) that is receiving payment ?	Go to # 7	Separate
6	Does either spouse have an interest in more than one farming entity?	Go to # 8	Separate
7	Do both of the following conditions apply for any of the entities that are receiving payment? (Both must apply to answer “yes”.) a. the spouse has at least a 10% interest, directly or indirectly, in the entity b. the spouse is considered a separate “person” by FSA from the entity.	Combined	Separate
8	Do both of the following conditions apply for two or more of the entities that are receiving payment? (Both must apply for at least two entities to answer “yes”.) a. the spouse has a 10% or greater interest, directly or indirectly, in the entity b. the spouse is considered a separate “person” by FSA from the entity.	Combined	Separate

Information provided in this pamphlet does not supersede national operating procedure or regulations provided in 7 CFR §1400.