

Testimony of Glen Keppy
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Farm Service Agency
United States Department of Agriculture
before the
Committee on Finance
United States Senate
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Mr. Chairman, and members of the committee, thank you for the opportunity to appear before you to review the Department of Agriculture response to the GAO audit, "Federal Farm Programs USDA Need to Strengthen Controls to Prevent Improper Payments to Estates and Deceased Individuals." I am pleased to be able to share administrative procedures and additional oversight steps taken by the Farm Service Agency (FSA) since review of the GAO draft report. We will provide a brief overview of our county office review procedure, an update on actions taken by the FSA and additional actions that are in the process of being implemented.

We appreciate the opportunity to be here today to respond to the recent GAO Report. Before delving into the details, I think it is important to correct a few misconceptions.

First, it is something of a misnomer to describe payments as going to "deceased farmers" in the same manner as people used to joke about dead people voting in Chicago. The statutes passed by Congress recognize that farm payments are really designed to support farming operations rather than individuals. When a family farmer passes away, it is quite often the case that the farming operation would continue by the heirs. It would be unfairly disruptive to the operation to have one unfortunate event create an even bigger problem for a farming operation.

Second, the concept of "improper payments," as applied by GAO's report, covers more than just payments made to an ineligible recipient or for an ineligible service, duplicate payments, payments for services not received, and payments that are for the incorrect amount. More specifically, when an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an "improper payment."

So far as we know, the issue raised by the GAO goes solely to the question of whether FSA can sufficiently document the propriety of the payments that have been made to the estates of deceased farmers. On that limited issue, FSA has made some progress, but still has work to do. We appreciate GAO noting these issues and we are working hard to resolve the situation by taking several steps.

FARM PROGRAM OVERVIEW

The Farm Service Agency (FSA) has responsibility for the administration of multiple commodity and conservation programs under which payments are issued to producers.

Some of these programs have limitations on the amount of payments which may be received by a “person.” A “person” for payment limitation purposes may be an individual, or an entity such as a corporation, or the combination of individuals and entities. For example, a corporation and the majority stockholder could be combined as one “person” for payment limitation purposes. Also under these programs, payments may be issued well after the payment was earned. For example, counter-cyclical payments under the Direct and Counter-cyclical Payment Program (DCP) may be issued up to two years and three months after the producer has deceased.

During the course of farming operations, participants die and estates are formed. Often, an individual may have met all eligibility requirements to receive a program payment but dies before the payment is actually issued. In such instances, the payment must be issued to the taxpayer identification number of the individual who actually earned the payment.

Estates are legal entities and may receive program payments if they meet eligibility requirements. FSA has a long standing policy of requiring a review of estates that request program benefits which are still open two years after the year in which the producer died. The purpose of this policy is to make sure that the estate is still in existence and not being kept open only for the purpose of receiving program payments which could not otherwise be received.

GAO AUDIT

GAO recently completed a review of program payments during the years 1999 through 2005. GAO’s objectives were to determine the extent to which individual decedents’ estates receive farm program benefits beyond the 2 years allowed by the payment eligibility rules, and the extent that estates, as members of entities, receive farm program benefits beyond the 2 years allowed. Also reviewed was the extent to which program payments were issued to deceased individuals.

In the audit, GAO questioned the level of documentation used to support the determinations made by county committees that an estate was not kept open for the purpose of obtaining program payments. Some county committees did a more comprehensive review than others. In addition, FSA did not complete the reviews of active estates as diligently as required by policy. However, GAO did not find any instance in this sample of an estate being kept open only for the purpose of obtaining program benefits. In other words, no fraud was detected.

FSA issued over \$130 billion in farm program payments and benefits for the years 1999 through 2005. GAO found that during this period, FSA issued a significant number of farm program payments to deceased individuals. It should be noted that again GAO made no findings of waste, fraud or abuse in this review.

I want to be clear about the fact that there are several circumstances under which it is legal for payments to be issued to deceased individuals. In fact, in some cases, we are

required to issue such payments. I appreciate this opportunity to outline a few of those circumstances.

One example that GAO fails to recognize is that under DCP, counter-cyclical payments may be legally issued up to two years and three months after program enrollment. The same taxpayer identification number must be used for the entire program payment period to properly track the issuance of program benefits. It is not mentioned by GAO that 60 percent of the payments in question were issued less than 3 years after the date of death.

Another example relates to disaster assistance. Crop loss and livestock disaster assistance programs disburse benefits after the emergency has occurred. The applicant obviously would not have been deceased at the time of application or when the disaster losses occurred. However, by the date of payment disbursement, the applicant may have died. In such an instance, the disaster assistance would be issued under the taxpayer identification number of the now deceased individual for the surviving spouse and heirs of the family farm. This support is rightfully and legally theirs. Such a situation could arise under recently enacted disaster legislation which provides disaster benefits for crop years 2005, 2006, and part of 2007, even though signup for this program is not scheduled to begin until later this year. This discrepancy could lead to producers who had crops in one of these years but died before being eligible for disaster payments. For the estate to obtain the payment, they would have to use the producer's taxpayer ID, resulting in legitimate payments being made even several years after the producer died.

A third example of legitimate payments to deceased persons involves estates entangled in litigation. Payments to these estates can sometimes be extended by several years due to the litigation. Again, although the named recipient might be deceased, the estate legitimately continues receiving the payments until legal issues are resolved.

It is important to note that GAO concluded that 58 percent of the questioned farm program payments were not made to deceased individuals at all or to their estates, but rather to entities in which they held an interest when they were alive. In other words, more than half of the payments went to entities which we have no reason to believe were ineligible. GAO noted that the complex nature of some types of farming entities makes it more difficult for FSA to determine if the producer information is accurate.

GAO also pointed out that FSA is reliant on the farming operations to self-certify that the information provided is accurate, and that the operation will timely inform FSA of any operational changes, including the death of an interest holder. FSA is working on a system that will change this reliance on self-certification. We plan to obtain information from the Social Security Administration's database as a means of determining that a payment recipient is deceased.

I want to stress again that GAO made no findings that FSA made improper payments to any entities that were otherwise eligible even though a change of stockholders may have occurred with the entity due to death.

AGENCY ACTIONS

In response to the GAO report, FSA implemented several courses of action that follow the guidance recommended by the report.

As I referenced a moment ago, an FSA directive issued to field offices in May 2007 required the review of all active estates in existence for more than 2 years and are to receive 2007 payments. These reviews are to be completed by August 31. All state FSA offices must report this information to the National Office by September 15, 2007. These reviews will be completed prior to the issuance of final 2007 DCP and Conservation Reserve Program (CRP) payments on or about October 1, 2007.

To assist the field offices, a list of all active estates on record at FSA with a creation date of 2004 was provided to all offices on June 19, 2007. A listing of active estates on record at FSA with a creation date of 2004 and earlier, and that received 2006 program benefits, was provided on July 10, 2007.

I mentioned our efforts to coordinate with the Social Security Administration and I'll share with you a little more detail about how that would work. FSA would utilize a data-matching process similar to the process that GAO used in the audit. Data from the Social Security Administration's Death Master File will be compared with FSA producer payment history files and the Service Center Information Management Systems. This will provide a means of identifying deceased producers before the issuance of payments. FSA will not be in total reliance on the information being provided from program participants of certain changes in entities due to death of stockholders.

SUMMARY

Mr. Chairman, while GAO has identified weaknesses, FSA has taken steps to remedy these weaknesses and to put in place additional safeguards against improper payments. As mentioned, estates are legitimate entities that may be determined eligible to receive program payments. FSA issued directives for a thorough review of agency records for the completion of the required reviews of estates for program payment eligibility purposes. Steps have been taken with Agency Information Technology personnel for the linkage of information from the Social Security Administration's Death Master File with Agency producer files to identify deceased individuals and to determine if the issuance of a program payment is appropriate.

We are committed to ensuring that payments are accurately calculated and properly issued. We appreciate the interest by GAO and this committee in holding us accountable for the payments we administer.

Mr. Chairman, thank you for the opportunity to provide this testimony. I would be happy to respond to questions of committee members at this time.