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Adjustable Cash Rents and Farm Program Payments

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Renewed interest in “adjustable cash rent leases” makes the legal issue of how such leases might affect the division of farm program payments between landowner and farm tenant even more important.

**Renewed interest in adjustable cash rent leases.** The December 5 *Farm Economics Facts and Opinions* discusses how recent increases in commodity prices, especially prices for corn, might impact farmland rents. The issue is available online from the farmdoc website, www.farmdoc.uiuc.edu. Authors Schnitkey and Lattz note much uncertainty about whether higher prices are sustainable longer term.

Schnitkey and Lattz also note that arrangements allowing rent payments to adjust to different price situations are warranted, given the uncertainty of future prices. Leases with self-adjusting rents include crop share leases and adjustable cash rent leases.

**Rules about dividing farm program payments.** Whether a lease meets the technical definition of a “cash” or a “share” lease under federal regulations determines whether the farm operator, alone, or both the operator and the landowner, is to receive certain USDA farm program payments. “Adjustable” cash rental arrangements, which technically may be “share” leases under federal regulations, can be problematic.

Technically, for purposes of certain farm program payments, a lease is a “cash lease” if it “provides for only a guaranteed sum certain cash payment, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).” If the lease is technically a “cash lease”, the operator must receive 100% of the program payments (landowner is not eligible).

A “share lease” is also defined in federal regulations. As a practical matter, a “share lease” (for purposes of program payments) is probably any lease that is not a “cash lease” as previously defined. In a “share lease” situation certain program payments must be divided between the farm operator and the landlord (neither the landlord nor the tenant can receive 100% of the payment).

**Confusion about adjustable cash rent leases.** Adjustable cash rent provisions may change the technical character of the lease from “cash” to “share.” This can happen even though the lease is labeled a Cash Lease, is viewed as a “hybrid” cash lease by farm managers, and is thought to be a cash lease by the landowner and tenant.

For example, if the lease provided for “adjustable” cash rent in the form of a fixed cash rent that would be adjusted upward or downward depending on actual crop yields or
a combination of crop yields and crop prices, it might be viewed as a “share lease” under federal regulations. However, landowner and operator may think they have a “cash lease” and may have agreed that the operator is to receive 100% of the farm program payments. Failure to divide farm program payments between the operator and landowner in what is technically a “share lease” situation can result in ineligibility for future farm program payments and trigger a need to pay back past payments.

**The bottom line.** In considering the use of adjustable cash rents, landowners and tenants also should make sure that the lease is compatible with how they intend to divide farm program payments. See the article titled “*Is Your Lease Compatible with Your Division of USDA Farm Program Payments*” available at www.farmland.uiuc.edu.