

## [Final Agency Determination: FAD-247](#)

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**Subject:** Request dated August 27, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2012 and subsequent crop years regarding the interpretation of 7 CFR, Part 400, subpart U as it relates to “Criteria for Reinstatement of Eligibility” published at 7 CFR §400.682. This request is pursuant to 7 C.F.R. § 400, subpart X.

### **Background:**

Referenced policy and procedure in request:

Section 400.681 of subpart U states, in relevant part:

(b) Once the person has been determined to be ineligible:

(1) All policies in which the ineligible person is the sole insured will be void for the period specified in § 400.681(a);

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(3) If the applicant or policyholder is a corporation, partnership, or other business entity, and an ineligible person has a substantial beneficial interest in the applicant or policyholder, the application may be accepted or existing policies remain in effect, although the ineligible person will be removed from the policies and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(4) If the applicant or policyholder is a corporation, partnership, or other business entity that was created to conceal the interest of a person in the farming operation or to evade the ineligibility determination of a person with a substantial beneficial interest in the applicant or policyholder, the corporation, partnership or other business entity will be disregarded, the individual shareholders or partners will be

personally responsible, and any shareholder or partner that is ineligible will be removed from the policy and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

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Section 400.682 of subpart U states, in relevant part:

A person who has been determined ineligible may have eligibility reinstated as follows:

(d) Timing of reinstatement of eligibility. After eligibility has been reinstated, the person must complete a new application for crop insurance coverage on or before the applicable sales closing date. If the date of reinstatement of eligibility occurs after the applicable sales closing date for the crop year, the person may not participate until the following crop year. If the National Appeals Division determines that the person should not have been placed on the Ineligible Tracking System, reinstatement will be effective at the beginning of the crop year for which the producer was listed on the Ineligible Tracking System and the person will be entitled to all applicable benefits under the policy.

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### **Interpretation Submitted**

The question before the Agency is whether a policyholder *that has never been ineligible for crop insurance*, must submit a new application for crop insurance coverage after an ineligible person with a substantial beneficial interest (SBI) in the policyholder has regained eligibility. There is no support for a contrary interpretation found within the guiding regulations. The requester's suggested interpretation of 7 C.F.R. § 400.682(d) is that *7 C.F.R. § 400.682 does not require a policyholder who has never been determined ineligible for crop insurance to complete a new application for crop insurance coverage, at the time that an SBI regains eligibility, to ensure full policy coverage*. The requester's interpretation is the only reasonable way to apply the guiding Federal Regulations and complies with 7 C.F.R. § 400.681(b)(3) which specifically states the following:

If the applicant or policyholder is a corporation, partnership, or other business entity, and an ineligible person has a substantial beneficial interest in the applicant or policyholder, the application may be accepted or existing policies remain in effect, although the ineligible person will be removed from the policies and the policyholder share under the policies will be reduced commensurate with the ineligible person's share.

In accordance with 7 C.F.R. § 400.681(b)(3), a policyholder whose SBI is determined ineligible does not have its policy voided. Instead, the policyholder's share is simply reduced in proportion to the SBI share. It follows that, when an SBI regains eligibility, full coverage is reinstated without requiring the policyholder to submit a new application for a crop insurance policy. The requester respectfully suggests that 7 C.F.R. § 400.682(d) cannot be read to require that an eligible and continuous policyholder must re-apply for crop insurance when an SBI in that policyholder regains eligibility.

### **Final Agency Determination**

FCIC agrees with the requestor's interpretation. If the policyholder remains eligible and the policy remains in effect, even if an SBI in the policyholder has been determined ineligible, no new application is necessary.

In accordance with 7 C.F.R. § 400.765(c), this Final Agency Determination is binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. Any appeal of this decision must be in accordance with 7 C.F.R. § 400.768(g).

**Date of Issue:** November 27, 2015