U.S. Department of Agriculture
Office of Inspector General
Great Plains Region
Audit Report

Farm Service Agency
1998 Loan Deficiency Payments
in Cass County, North Dakota

Report No.
03099-40-KC

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL
Great Plains Region
P.O. Box 293
Kansas City, Missouri 64141

DATE: September 25, 2000

REPLY TO
ATTN OF: 03099-40-KC

SUBJECT: 1998 Loan Deficiency Payments in Cass County, North Dakota

TO: Scott B. Stofferahn
State Executive Director
Farm Service Agency

This report presents the results of our review of 1998 loan deficiency payments (LDP) in Cass County, North Dakota. The review was initiated in response to a request. We determined whether producers entered into delayed pricing contracts prior to making the LDP requests but did not disclose this information to county office (CO) personnel. Farm Service Agency (FSA) personnel did not become aware of the contracts until LDP spot-checks disclosed that the farm-stored commodities had been delivered to warehouses prior to the LDP requests. We found that 4 of 15 producers did not meet the beneficial interest requirements at the time of their LDP requests. FSA procedures did not specifically require producers to disclose that such contracts existed, but did rely on producer certifications that beneficial interest had been retained. One warehouse also provided producers with data that was somewhat misleading (i.e., delivered grain shown as being in open storage even though it had been applied to existing sales contracts). As a result, the producers received LDP benefits of about $21,670 to which they were not entitled. In addition, the producers could be subject to the repayment of liquidated damages totaling about $5,420.

BACKGROUND

Sections 131 through 136 of the Federal Agriculture Improvement and Reform Act of 1996 required implementation of a nonrecourse marketing loan assistance and LDP program on 16 commodities for the 1996 through 2002 crop years. The FSA was responsible for program administration.

The Act provided that eligible producers could request price support loan or LDP benefits on eligible commodities from the date of harvest through the final loan availability date. However, producer eligibility was dependent on meeting the beneficial interest requirements at the time of request.
FSA Handbook 6-LP, paragraph 17, contains the definitions applicable to beneficial interest. These definitions generally provide that a producer must have (1) control of the

commodity, (2) risk of loss, and (3) title to the commodity at the time LDP benefits are requested. To have control of a commodity, the producer must retain the ability to make all decisions regarding the commodity including moving or selling the commodity. The producer must also be responsible for any damage to the commodity and be eligible for any indemnity to be paid on such commodity. Also, to retain title, the producer must not have sold the commodity.

Paragraph 17 also provides, in part, that a sales contract, including advance sales contracts, contracts to sell, price later contracts and contracts for future delivery, gives the buyer an interest in the commodity at a time specified in the contract or at a time implied by law. Also, once beneficial interest in a commodity is lost, the commodity remains ineligible for a loan or LDP even if a producer regains control, risk of loss, and title. Producers in Cass County, North Dakota, were generally signing three different types of pricing contracts including delayed pricing, future delivery, or installment sales.

FSA Handbook 7-LP, paragraph 500, also provides, in part, that farm-stored loans and LDP's are subject to spot-check during and after the loan availability period. The purpose of the spot-checks is to provide CO's with reasonable assurance that the quantities certified for program benefits are, in fact, stored on the farm.

OBJECTIVES

The primary objective of this review was to determine whether selected producers in Cass County, North Dakota, met the beneficial interest requirements at the time of their requests for 1998 crop LDP benefits.

AUDIT SCOPE AND METHODOLOGY

The audit, which was conducted in January and February 2000, included interviews with agency and warehouse officials and a review of supporting program records. At the outset of the review, CO personnel advised us that the beneficial interest problems generally involved the production delivered to three warehouses located in Minnesota and North Dakota. Program records showed that a total of 652 Cass County producers received 1998 crop LDP benefits on production that was delivered to those warehouses. We judgmentally selected 15 producers for review. This included five producers at each of the three identified warehouses based on factors such as timing of the LDP requests, crop(s) involved, and quantities delivered.

We also examined the production evidence furnished by three other judgmentally selected producers in Clay County, Minnesota, who delivered grain to one of the three warehouses.

For each sample producer, we compared the production evidence furnished to the Cass and Clay CO's with that maintained at the warehouse. This included copies of the supporting assembly sheets, scale tickets, settlement sheets, sales contracts, and Forms CCC-666 LDP, Loan Deficiency Payment Application and Certification.

The audit was conducted in accordance with Government Auditing Standards. Accordingly, the audit included tests of program and accounting records as deemed necessary to meet the audit objectives.

DETAILS

The audit disclosed that 4 of the 15 sample producers did not meet the beneficial interest requirements at the time of their requests for LDP benefits. In each case, the quantities claimed for LDP benefits were covered by delayed pricing contracts issued by two warehouses. Three producers had delivered their commodities to Warehouse 1 and one producer delivered the crop to Warehouse 2. The CO records showed that each of the producers certified that they retained beneficial interest when, in fact, they had entered into various types of sales contracts prior to the time of the LDP requests. One of the sample producers could not remember the circumstances surrounding the 1998 grain deliveries. Another producer did not believe that beneficial interest was lost until the warehouse paid for the grain. Due to the loss of beneficial interest, we concluded that the producers received LDP benefits of about $21,670 to which they were not entitled. Also, the producers are subject to the repayment of liquidated damages totaling about $5,420.

FSA Handbook 6-LP, paragraph 17, provides, in part, that producer eligibility for program benefits is dependent on having a beneficial interest in the commodity and being in compliance with the highly erodible land and wetland conservation provisions at the time of the LDP request. Beneficial interest consists of retaining title to the commodity, control of the commodity, and risk of loss. Also, FSA Handbook 7-LP, paragraph 521A, provides, in part, that producers acknowledge the terms and conditions shown on forms CCC-666 LDP or CCC-709 at the time signing. This includes not making any misrepresentations as to the eligibility of a commodity for LDP benefits. Paragraph 521B, further provides, in part, any producer determined to have violated the terms and conditions of the applicable forms shall be subject to liquidated damages.

The following table contains summary information on the four cited producers:

Producer	LDP Quantity Under Delayed Pricing or Price Later Contract (Bushels)	LDP Rate	Ineligible LDP Benefit Amount (Contract Quantity times LDP Rate)	Liquidated Damages (Ineligible Quantity times LDP Rate times 25 Percent Liquidated Damage Rate)	Total Recovery Amount *
A	43,225.22	$0.17	$7,348.29	$1,837.07	$9,185.36
B	374.18	$0.31	$116.00	$29.00	$145.00
C	744.47	$0.62	$461.57	$115.39	$576.96
	12,906.33	$0.62	$8,001.92	$2,000.48	$10,002.40
	349.20	$0.37	$129.20	$32.30	$161.50
	1,782.10	$0.25	$445.53	$111.38	$556.91
	1,046.34	$0.25	$261.59	$65.40	$326.99
	6,945.01	$0.41	$2,847.45	$711.86	$3,559.31
D	6,141.09	$0.22	$1,351.04	$337.76	$1,688.80
Total			$20,962.59	$5,240.64	$26,203.23

* The amounts shown do not reflect impact of any share differences described below.

Producer A

On October 8, 1998, CO personnel disbursed LDP benefits of $7,348.29 (LDP No. 1256) to Producer A based on a reported 100 percent interest in 43,225.22 bushels of 1998 crop wheat delivered to Warehouse 1 from August 7 through August 13, 1998. The supporting form CCC-666 LDP showed a request and approval date of August 24, 1998. However, warehouse records showed that the entire quantity claimed for LDP benefits was covered by two price later contracts (Nos. 21516 and 21517). The contracts were dated August 8 (5,408.66 bushels) and August 13, 1998, (37,816.56 bushels), respectively and showed that title passed to the buyer at the time of delivery to the warehouse. However, the producer certified that he retained beneficial interest in the commodity even though such interest was lost upon delivery of the crop to the warehouse. Therefore, the producer was not entitled to the LDP benefits of $7,348,29 because the beneficial interest requirements were not met at the time of the LDP request on August 24, 1998. The producer could also be subject to the repayment of liquidated damages totaling $1,837.07 (43,225.22 ineligible bushels times $0.17 LDP rate times 25 percent liquidated damage rate).

Producer B

On October 2, 1998, CO personnel disbursed LDP benefits of $3,336.00 (LDP No. 1134) to the producer based on a reported two-thirds interest in 16,141,98 bushels of 1998 crop wheat that were delivered to Warehouse 1 from August 7 through August 12, 1998. The supporting form CCC-666 LDP showed a request and approval date of September 4, 1998. However, warehouse records showed that the producer's share included at least 374.18 bushels that were covered by a price later contract (No. 21611). That contract showed, in part, that title passed to the buyer on the date of delivery (August 12, 1998). Based on other production evidence obtained from the warehouse, we concluded that the producer might have had other price later contracts covering 1998 crop wheat production. However, the warehouse did not timely provide us with data on any other associated sales contracts during the audit. Therefore, we concluded that the producer was not eligible for LDP benefits of at least $116 (374.18 ineligible bushels times $0.31 LDP rate) and question the remaining amount. Also, the producer could be subject to the repayment of liquidated damages totaling at least $29 (374.18 ineligible bushels times $0.31 LDP rate times 25 percent liquidated damage rate).

Producer C

On October 23, 1998, CO personnel disbursed LDP benefits of $2,125.40 (LDP No. 1912) to the producer based on 100 percent interest in 3,428.07 bushels of 1998 crop soybeans that were delivered to Warehouse 1 from September 25 through October 4, 1998. The supporting form CCC-666 LDP showed a request and approval date of October 5, 1998. However, the form also showed that the producer only had a two-thirds interest in the quantity claimed for program benefits. This was confirmed through a review of the supporting warehouse records. Our analysis of the warehouse records also disclosed that the quantity claimed for program benefits included a portion (744.47 bushels) of 2,000 bushels that were delivered in conjunction with a price later contract (No. 3704), dated October 13, 1997. (Note: The 2,000 bushels under the subject price later contract included 906.33 bushels delivered in conjunction with LDP No. 1913 and 1,093.67 bushels delivered in conjunction with the subject LDP and LDP No. 2846. The 1,093.67-bushel figure represented the producer's share (1,165.41 bushels) of two loads (1,224.31 bushels) claimed for program benefits under the subject LDP and one load (523.77 bushels) claimed for benefits under LDP No. 2846 less 71.74 bushels that remained in open storage. As a result, we determined that the producer's LDP benefits should have been limited to $955.43 [1,541.02 eligible bushels (3,428.07 bushels claimed times 0.6667 producer's share) – 744.47 bushels applied to price later contract times $0.62 LDP rate]. Therefore, the producer's LDP benefits were overstated by $1,169.97 ($2,125.40 amount paid - $955.43 amount due). The producer could also be subject to the repayment of liquidated damages totaling $292.49 [1,887.05 ineligible bushels (3,428.07 bushels claimed – 1,541.02 eligible bushels) times $0.62 LDP rate times 25 percent liquidated damage rate] for this LDP.

On October 24, 1998, CO personnel disbursed LDP benefits of $8,335.78 (LDP No. 1913) to the producer based on a reported 100 percent interest in 13,444.82 bushels of 1998 crop soybeans that were delivered to Warehouse 1 from September 23 through October 5, 1998. The supporting form CCC-666 LDP showed a request and approval date of October 5, 1998. However, our analysis of the associated warehouse records disclosed that the quantity claimed for LDP benefits included 12,906.33 bushels that were applied to seven future delivery contracts (Nos. 3704, 4680, 5034, 5035, 5091, 5096, and 5107). The contracts showed dates that ranged from October 13, 1997, to June 23, 1998. Therefore, the producer did not meet the beneficial interest requirements on 12,906.33 bushels at the time of the LDP request. As a result, we determined that the producer received excess LDP benefits of $8,001.92 (12,906.33 bushels applied to price later contract times $0.62 LDP rate). The producer could also be subject to the repayment of liquidated damages totaling $2,000.48 (12,906.33 ineligible bushels times $0.62 LDP rate times 25 percent liquidated damage rate).

On November 11, 1998, CO personnel disbursed LDP benefits of $296.80 (LDP No. 2846) to the producer based on a reported two-thirds interest in 1,203.19 bushels of 1998 crop soybeans that were delivered to Warehouse 1 from October 5 through October 10, 1998. The supporting form CCC-666 LDP showed a request and approval date of October 12, 1998. However, our analysis of the associated warehouse records disclosed the quantity claimed for LDP benefits included 349.20 bushels (producer's two-thirds interest in 523.77 bushels) that were applied to a price later contract (No. 3704), dated October 13, 1997. Therefore, the producer's LDP benefits were overstated by $129.20 [349.20 ineligible bushels times $0.37 LDP rate]. The producer could also be subject to the repayment of liquidated damages totaling $32.30 (349.20 ineligible bushels times $0.37 LDP rate times 25 percent liquidated damage rate) for this LDP.

On January 7, 1999, CO personnel disbursed LDP benefits of $445.53 (LDP No. 3845) to the producer based on a reported 100 percent interest in 1,782.10 bushels of 1998 crop soybeans that were delivered to Warehouse 1 from October 23 through October 25, 1998. The supporting form CCC-666 LDP showed a request and approval date of October 30, 1998. However, our analysis of the associated warehouse records disclosed that the quantity claimed for LDP benefits represented the producer's 50 percent interest in 3,564.21 bushels covered by a price later contract (No. 5261), dated October 25, 1998. Therefore, the producer did not meet the beneficial interest requirements at the time of the LDP request and was not eligible for the associated program benefits ($445.53). The producer could also be subject to the repayment of liquidated damages totaling $111.38 (1,782.10 ineligible bushels times $0.25 LDP rate times 25 percent liquidated damage rate) for this LDP.

On January 7, 1999, CO personnel disbursed LDP benefits of $1,170.41 (LDP No. 3846) to the producer based on a reported 100 percent interest in 4,681.64 bushels of 1998 crop soybeans that were delivered to Warehouse 1 from October 13 through October 30, 1998. The supporting form CCC-666 LDP showed a request and approval date of October 30, 1998. However, our analysis of the associated warehouse records disclosed that the quantity claimed for program benefits included 523.87 bushels that were applied to a price later contract (No. 5219), dated October 12, 1998, and 522.47 bushels applied to another price later contract (No. 5286), dated October 28, 1998. As a result, the producer did not meet the beneficial interest requirements in a total of 1,046.34 bushels at the time of the subject LDP request. Therefore, the associated LDP benefits were overstated by $261.59 (1,046.34 ineligible bushels times $0.25 LDP rate). The producer could also be subject to the repayment of liquidated damages totaling $65.40 (1,046.34 ineligible bushels times $0.25 LDP rate times 25 percent liquidated damage rate) for this LDP.

On February 2, 1999, CO personnel disbursed LDP benefits of $2,847.45 (LDP No. 4802) to the producer based on a reported 100 percent interest in 6,945.01 bushels of 1998 crop soybeans that were delivered to Warehouse 1 on January 21 and 22, 1999. The supporting form CCC-666 LDP showed a request and approval date of February 2, 1999. However, the associated warehouse records showed that the 6,945.01 bushels claimed for program benefits were applied to a price later contract (No. 5614) dated December 1, 1998. Therefore, the producer did not meet the beneficial interest requirements at the time of the LDP request and was not eligible for the associated program benefits ($2,847.45). The producer could also be subject to the repayment of liquidated damages totaling $711.86 (6,945.01 ineligible bushels times $0.41 LDP rate times 25 percent liquidated damage rate) for this LDP.

Producer D

On September 28, 1998, CO personnel disbursed LDP benefits of $1,351.04 (LDP No. 929) to the producer based on a reported 50 percent interest in 12,282.17 bushels of 1998 crop wheat delivered to Warehouse 2 from August 1 through August 7, 1998. The supporting form CCC-666 LDP showed a request and approval date of September 1, 1998. However, the associated warehouse records showed that the producer's share (6,141.09 bushels) was covered by two installment sale contracts (Nos. 72105 and 72106). The contracts were dated August 20 and August 24, 1998. Each contract showed, in part, that the seller could not pledge the commodity for a loan. For that reason, we concluded that the producer lost beneficial interest at the time of contract signing and was not eligible for the associated LDP benefits. Also, the producer could be subject to the repayment of liquidated damages totaling $337.76 (6,141.09 ineligible bushels times $0.22 LDP rate times 25% liquidated damage rate).

Beneficial interest requirements remain today but allow each producer to go back to the last day when beneficial interest was maintained when claiming loan deficiency payments.

Recommendation No. 1

Notify all producers of the need to request LDP benefits prior to delivery in cases where the commodity is covered by sales or delayed pricing contracts that specify the loss of beneficial interest at the time of delivery.

FSA Response

The agency's August 22, 2000, response to the draft report (see exhibit B) showed that the CO would publicize the beneficial interest requirements, including the impact of sales contracts on beneficial interest. The response also contained copies of prior State office news releases pertaining to the beneficial interest requirements.

OIG Position

We agree with your management decision for Recommendation No. 1.

Recommendation No. 2

Collect the LDP and liquidated damages due from the cited producers. Also, identify any other producers who claimed 1998 crop LDP benefits on commodities that were delivered to Warehouse 1. Require those producers to provide copies of any associated price later contracts, assembly sheets showing settlement data or evidence that any applicable storage charges were paid. Also, notify the producers that applicable LDP benefits, including any liquidated damages, will be subject to recovery if the needed information is not provided within a reasonable period of time and where the evidence shows that beneficial interest was lost prior to the request for LDP benefits.

FSA Response

The written comments on the draft report (see exhibit B) showed that the cited producers would be notified of the amounts due and that the COC would make individual determinations as to the applicability of liquidated damages. However, the response also showed that the identification of similar cases could prove to be extremely costly and would probably have to be delayed for at least a year to due to the limited availability of staff resources.

OIG Position

We concur with the State office position concerning the identification of similar cases. To reach management decision for Recommendation No. 2, we will need a response showing the date and the amount determined, plus liquidated damages that will be requested for repayment from the cited producers.

In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days describing the actions taken or planned and the timeframes for implementation for the one recommendation for which a management decision has not been reached. Please note the regulation requires a management decision to be reached on all findings and recommendations within a maximum 6 months from report issuance, and final action to be taken within 1 year of each management decision. Correspondence concerning final actions should be addressed to the Office of the Chief Financial Officer.

We appreciate the cooperation and courtesies extended to us by members of your staff during the audit.

/S/
EDWIN D. LINDERMAN
Regional Inspector General
for Audit

EXHIBIT A – SUMMARY OF MONETARY RESULTS

Finding No.	Condition	Amount	Category
1	Beneficial Interest Requirements Not Met	$27,088.73	Questioned Costs – Recovery Recommended

USDA

United States Department of Agriculture

Farm Service Agency

North Dakota State Office
PO Box 3046
Fargo ND 58108-3046
Tel: 701-239-5224 Fax: 701-239-5696
www.fsa.usda.gov/edso/nd/nd.htm

DATE: August 22, 2000

TO: Edwin D. Linderman
Regional Inspector General for Audit
Great Plains Region
P.O. Box 293
Kansas City, MO 64141

FROM: for Scott B. Stofferahn Russell Bubach
State Executive Director

SUBJECT: 1998 Loan Deficiency Payments – Cass County
03099-40-KC

REF: Your Memo Dated August 7, 2000

We have reviewed the draft report of the above audit. We concur with the findings in the report. The Cass County FSA Office will proceed with collection of the overdisbursements for the producers listed in the report.

Response to the recommendations:

Recommendation No. 1

The Cass County Office will publicize the beneficial interest requirements and address the impact of sales contracts on beneficial interest.

It should also be noted that the ND State Office issued news releases to all major ND news organizations dated 7/24/98, 6/22/99, and 7/18/00, on beneficial interest requirements. The releases included information on sales contracts. The 7/18/00 release is also posted on the ND State Office web site. Copies of the news releases are attached.

Recommendation No. 2

The listed producers will be notified of the overpayments. Liquidated damages will be reviewed by the County Committee for determinations of applicability according to policy.

To comply with the requirement to identify all producers who delivered to Warehouse 1, the County Office will need to review all LDP folders for these producers. That will involve a substantial commitment of man hours during a time when the staff is busy servicing producers with current year programs. In addition, not all production evidence from this warehouse involved scale tickets.

The current estimate is that there are 500 LDP's issued to producers who delivered to this warehouse. The County Office believes that it will take approximately 1/2 hour per file to determine if there is a problem requiring producer notification. The production evidence needs to be reviewed to determine type used and if a contract has already been provided. A conservative estimate means that the review will require 250 hours, in effect, one employee for an entire year. Also, due to current year loan and LDP activity, other program workload, and staffing limitations, the review may be delayed until June 2001.

There already is a two year delay from the time of the original disbursements to the producers. Another year may pass before a final determination of refund would be made. We question the justification for completing this requirement, based on the man hours involved, the delay in producer notification, and the unknown dollar value of any potential refund compared to cost involved to determine if a refund is required.

Other

Regarding the audit, we believe that it may have helped get the attention of the warehouses involved so that similar problems do not occur in the future. Future audits of this type in other areas of the State may need to be considered. The impact of sales contracts on beneficial interest is not always understood by producers. When elevator operators improperly process their sales contracts, it further confuses the producer and makes it more difficult for the County Office to administer the program. Selected audits can show the grain trade that the Agency is serious about compliance with program provisions.

Enclosures

Loss of Beneficial Interest Can Impact LDP's and Loans

Fargo, N.D., July 18, 2000–Farm Service Agency officials remind North Dakota producers about 2000 crop beneficial interest rules for Loan Deficiency Payments (LDP's). A LDP must be applied for before selling, feeding, or losing ownership in the crop.

Sales contracts, including options to purchase, priced later, and delivery contracts can impact beneficial interest. Once beneficial interest is lost, the commodity remains ineligible for loan or LDP even if the producer regains control, risk of loss, and title at a later date. State Executive Director Scott Stofferahn said: "Many contracts give the buyer an interest in the commodity at a time set forth in a contract, even if no payment has been made to the seller. Some of the contracts provide for storage to be earned as of a specified date, even when the commodity remains on the farm. Any of these conditions may impact beneficial interest."

If selling the crop directly from the field, form CCC-709 must be on file in the producer's county office prior to harvesting. If a crop is being put up as silage, dry bales or grain, a LDP can be applied for anytime while the crop is in storage, but before it is sold or fed.

Producers who farm acreage that is not enrolled in the Agriculture Market Transition Act (AMTA) program will be allowed to file for LDP's on this year's production. The rule is only for 2000 crop production on non-participating AMTA farms. Farmers must meet all other eligibility requirements.

FSA News & Information - National FSA Press Releases

- **USDA News & Information** - National USDA Press Releases

Scott Stofferahn, State Executive Director
North Dakota State Farm Service Agency
1025 28th Street SW
P.O. Box 3046
Fargo, ND 58108
Phone: (701) 239-5224
Fax: (701) 239-5696

Send Comments or questions to Scott Stofferahn, State Executive Director

USDA

United States Department of Agriculture

NEWS RELEASE

Farm Service Agency
North Dakota State Office
1025 28th SW, P.O. Box 3046
Fargo, N.D. 58108-3046
Phone(701) 239-5225
FAX:(701) 239-5696

Scott Stofferahn, State Executive Director

Contact: Jim Meisenheimer
(651) 602-7719

For Immediate Release

Release No. 2

BENEFICIAL INTEREST NEEDED FOR LOAN & LOAN DEFICIENCY PAYMENTS

Fargo, N.D., June 22, 1999--State Executive Director Scott Stofferahn reminds producers that in order to be eligible for Commodity Credit Corporation loans and loan deficiency payments they must retain beneficial interest in the commodity. Beneficial interest in a commodity is retained if all of the following remain with the producer: control of the commodity, risk of loss, and title to the commodity.

For loans, a producer must retain beneficial interest from harvest through the date the loan is repaid or the Commodity Credit Corporation takes title to the commodity. For loan deficiency payments, a beneficial interest must be retained from harvest through the date the loan deficiency payment is requested.

Sales contracts, including options to purchase, priced later, and delayed delivery contracts can impact beneficial interest. Many of these contracts give the buyer an interest in the commodity at a time set forth in the contract, even if no payment has been made to the seller. Some contracts provide for storage to be earned as of a specified date, even when the commodity remains on the farm. Any of these conditions may impact beneficial interest. Once beneficial interest is lost, the commodity remains ineligible for loan or loan deficiency payment even if the producer regains control, risk of loss, and title at a later date.

- more -

Determination of eligibility is made at the time of loan or loan deficiency request. In some cases, this determination will require a review of the commodity contract before the loan or loan deficiency payment can be approved.

If a commodity is delivered from the field to the buyer, and title passes to the buyer due to a sales contract or cash only transaction, the commodity will not be eligible for a loan deficiency payment. A special loan deficiency payment application called a Field Direct LDP, form CCC-709, is available for producers who normally haul directly to the buyer and want to remain eligible for a loan deficiency payment. **This application must be completed prior to harvest of the crop.**

Stofferahn said: "We want to remind producers of these provisions so that they might be eligible for every option that the Farm Service Agency offers." Additional information concerning market rate repayment options or beneficial interest may be obtained from any county Farm Service Agency office.

#

Farm Service Agency
United States Department of Agriculture
1025 28th Street South
Fargo, North Dakota 58103

News Release Section **July 24, 1998**

Note: Use the following news release in county newsletters and make available to FSA personnel, committee members, and local news media.

HARD RED WINTER WHEAT PRICE AT MARKET REPAYMENT LEVEL

According to Scott Stofferahn, State FSA Director, the repayment rate for 1998 crop Hard Red Winter Wheat (HRW) currently is below the loan rate. Producers with 1998 crop HRW have the option of obtaining a loan on eligible production, or requesting a loan deficiency payment (LDP). The LDP is the difference between the market repayment rate and the county loan rate.

Commodity Credit Corporation (CCC) loan and LDP provisions require that producers retain beneficial interest in a commodity to be eligible for loan or LDP. Beneficial interest in a commodity is retained if ALL of the following remain with the producer:

- control of the commodity
- risk of loss
- title to the commodity

For loans, a producer must retain beneficial interest from harvest through the date the loan is repaid or CCC takes title to the commodity.

For LDP's, beneficial interest must be retained from harvest through the date the LDP is requested.

Sales contracts, including options to purchase, priced later, and delayed delivery contracts can impact beneficial interest. Many of these contracts give the buyer an interest in the commodity at a time set forth in the contract, even if no payment has been made to the seller. Some of the contracts provide for storage to be earned as of a specified date, even when the commodity remains on the farm. Any of these conditions may impact beneficial interest. Once beneficial interest is lost, the commodity remains ineligible for loan or LDP even if the producer regains control, risk of loss, and title at a later date.

Determination of eligibility is made by CCC at the time of loan or LDP request. In some cases, this determination will require a review of the commodity contract before the loan or LDP can be approved.

If the commodity is delivered from the field to the buyer, and title passes to the buyer due to a sales contract or cash only transaction, the commodity will not be eligible for an LDP. A special LDP application called a Field Direct LDP, form CCC-709, is available for producers who normally haul directly to a buyer and want to remain eligible for an LDP. This application must be completed prior to harvest of the crop.

Additional information concerning market rate repayment options or beneficial interest may be obtained from the local County FSA Office, or by calling the North Dakota State FSA Office in Fargo at (701) 239-5224.