Farm Service Agency

Farm Program Fact Sheet

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USDA United States Department of Agriculture

Beneficial Interest Requirements for Loans and Loan Deficiency Payments (LDP), Excluding Sugar and Tobacco

Loan and LDP Eligibility

For a commodity to be eligible for a loan or a loan deficiency payment (LDP), the producer must have beneficial interest in the commodity in addition to other eligibility requirements.

Beneficial Interest

A producer retains beneficial interest in the commodity if all of the following remain with the producer:

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

For LDP's, the producer must retain beneficial interest in the commodity from the time of harvest through the date the LDP is requested.

For loans, the producer must retain beneficial interest in the commodity from the time of harvest through the date the loan is redeemed or Commodity Credit Corporation (CCC) takes title to the commodity.

Once beneficial interest in the commodity is lost, the commodity remains ineligible for a loan or an LDP even if the producer regains control, risk of loss, and title.

Control

A producer is considered to have control of the commodity if the producer retains the ability to make all decisions affecting the commodity, including movement, sale, and the request for a loan or an LDP.

Risk of Loss

A producer is considered to have the risk of loss in the commodity if the producer is responsible for loss of or damage to the commodity. If the commodity is insured, any indemnity must be payable to the producer.

Title

A producer is considered to have transferred title to the commodity if the producer has sold or delivered the commodity to the buyer or delivered warehouse receipts to the buyer. Title may be considered to be transferred before the producer receives payment for the commodity.

Selling Equity

If a producer receives any payment that would give the buyer any share of the equity in the commodity, such commodity is immediately ineligible for a loan and an LDP. If a producer sells any equity in the commodity after it has been pledged as collateral for a loan, repayment of the loan principal and charges, plus interest, is required.

Option to Maintain Beneficial Interest

An option to purchase is an agreement allowing the buyer, at the buyer's option, to enter into a contract at a later date to buy the commodity. The option does not give the buyer any interest in the commodity and expires at a specified time.

Payments

If a producer has entered into an option to purchase, the producer may receive a payment and retain beneficial interest if such option to purchase contains a provision written as follows:

"Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in (Insert Applicable Code of Federal Regulations Listed Below), shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of : (1) the maturity of any Commodity Credit Corporation loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option."

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Applicable Code of Federal Regulations References:

- *7 CFR Part 1421 (for wheat, feed grains, oilseeds, rice, and farm-stored peanuts)*
- *7 CFR Part 1427 (for cotton)*

Insertion of this language into a sales contract does not mean that the producer retains beneficial interest when a payment is made under such a contract.

Sales Contracts and Loss of Beneficial Interest

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 set forth in the contract or at a time implied by law.

If a producer has or will receive a payment in return for the sales contract, beneficial interest is lost when the payment is made.

A producer will lose beneficial interest upon signing any contract which contains clauses restricting the producer's decision to obtain a loan or LDP from CCC, such as:

- the buyer may require the producer to obtain a loan or an LDP
- the producer may obtain a loan or an LDP, only with prior approval obtained from the buyer.

An addendum to a contract to remove any restrictive clause must be agreed upon by all parties in order for CCC to consider the addendum valid. Such addendum must be before:

- ginning in the case of cotton
- harvest for commodities, except cotton.

Subject to CCC Determination

All loans or LDP's requested shall be subject to a determination by CCC of such producer's eligibility to receive a loan or an LDP, based on a review of any option to purchase or sales contract involving the commodity.