U.S. Department of Agriculture

Office of Inspector General

# Audit Report

## Agreed-Upon Procedures – Farm Service Agency Average Crop Revenue Election Program, Sheridan County, Montana

Report No. 03099-199-KC
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TO: Michael T. Scuse
Deputy Under Secretary
for Farm and Foreign Agricultural Services

ATTN: Jonathan W. Coppess
Administrator
Farm Service Agency

FROM: Gil H. Harden /s/
Assistant Inspector General
for Audit

SUBJECT: Agreed-Upon Procedures – Farm Service Agency Average Crop Revenue Election Program, Sheridan County, Montana

This report presents the results of the Agreed-Upon Procedures performed on the Farm Service Agency's (FSA) implementation of the Average Crop Revenue Election Program (ACRE) in Sheridan County, Montana, in 2009. This report contains no recommendations and, therefore, no further action by the Farm Service Agency is required.

We determined whether allegations that the Sheridan County FSA Office provided incorrect program information to producers about ACRE could be substantiated and whether alleged misinformation may have influenced producers to erroneously sign up for ACRE. We also reviewed how the ACRE signup register was implemented and whether it was administered by the county office according to procedures.

The review included such tests of program and accounting records as considered necessary to meet the review objective. This engagement to apply the Agreed-Upon Procedures was performed in accordance with applicable government auditing standards and statement of standards for attestation engagements established by the American Institute of Certified Public Accountants.

If you have any questions, please contact me at (202) 720-6945, or have a member of your staff contact Ernest M. Hayashi at (202) 720-2887.

Attachment

# FSA Average Crop Revenue Election Program, Sheridan County, Montana

## Executive Summary

We have performed the procedures described in Exhibit A which were agreed to by the Office of Inspector General, the Farm Service Agency (FSA), and the Office of the Under Secretary for Farm and Foreign Agricultural Services. This review addresses the allegations raised by several producers enrolled in the Average Crop Revenue Election Program (ACRE) in Sheridan County, Montana.

ACRE provides an alternative revenue-based safety net to the Direct and Counter-Cyclical Payment Program's (DCP) existing price-based safety net for crop years 2009 through 2012. To enroll, producers must first irrevocably elect ACRE on a farm-by-farm basis. Producers who elect to participate in ACRE agree to forgo counter-cyclical payments. Additionally, they agree that FSA will reduce their direct payments by 20 percent and their marketing assistance loan rates by 30 percent. Loan deficiency payment (LDP) rates for ACRE producers are thus calculated by reducing the marketing assistance loan rate by 30 percent before subtracting the posted county price.[1]

In Sheridan County, Montana, 27 producers enrolled in ACRE by the August 14, 2009, deadline. An additional 36 producers were placed on a signup register. Those placed on the register were allowed until September 30, 2009, to complete applications for sign up. By the end of September 2009, the price of durum wheat had dropped significantly, triggering LDPs for durum wheat, the main crop in Sheridan County, Montana. For the first time in several years, producers were eligible to receive LDPs on durum wheat. However, in light of the LDPs being triggered for durum wheat, most producers realized that the program's 30-percent reduction in loan rates meant that they could only receive significantly reduced LDPs, if any at all. Only 3 of the 36 producers utilized the register to enroll in ACRE, one of whom appealed his ACRE election. Of the 27 Sheridan County producers who enrolled in ACRE by the August 14, 2009, deadline, 23 appealed to rescind or to reverse their ACRE enrollment. FSA estimated that it could be at risk to provide relief up to $2.7 million.[2]

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[1] Marketing assistance loans are marketing tools available to producers beginning upon harvest. For farmers who forgo the use of marketing assistance loans, loan deficiency payments rules apply. County and regional loan rates are based on each commodity's national loan rate and vary by county or region, and are based on the average prices and production of the county or region where the commodity is stored.

The LDP payment rate equals the amount by which the applicable loan rate exceeds the posted county price for the respective commodity. The LDP amount equals the LDP rate times the quantity of the commodity for which the LDP is requested.

The posted county price is the local market price established by the Commodity Credit Corporation. Posted county prices are announced daily for wheat, feed grains, and soybeans; and weekly for other oilseeds.

[2] This amount is based upon the number of acres of durum wheat planted on the enrolled ACRE farms in 2009 in Sheridan County and assumes that relief could be granted in the form of cancelled ACRE contracts and/or producers being allowed to qualify for an LDP for which they would have been entitled if they were not in ACRE.

In late September 2009, ACRE producers alleged that the register was not used consistently or equitably because some producers were allowed to extend the deadline by 45 days while others were not informed of this option. According to Notice DCP-220, "Using Register for DCP Enrollment and ACRE Election and Enrollment," dated July 27, 2009, a producer may request that a farm be placed on the register when the county office cannot schedule an appointment to elect and/or enroll in ACRE on or before August 14, 2009, due to workload, computer, or other county office-related issues. Additionally, in the Montana State FSA Office Memo DCP-012, "DCP and ACRE Register," dated May 12, 2009, the State office permitted the use of the register to allow producers more time to acquire signatures of landowners. Nevertheless, Notice DCP-220, "Using Register for DCP Enrollment and ACRE Election and Enrollment," dated July 27, 2009, stated the register cannot be used to circumvent the deadline. However, producers claimed that those on the register used the extra time (between August 14 and September 30) to observe market trends, including the falling price of durum wheat, and make a more informed decision.

Additionally, after the LDPs were triggered, several producers claimed that Sheridan County FSA Office staff gave incorrect information regarding ACRE's LDP calculations. These producers claimed that both in meetings with the program technician and in the informational meetings held by FSA on February 26 and 27, 2009, and March 2, 2009, by Montana State University's Extension Service, they were told that if they enrolled in ACRE, their direct payments would be reduced by 20 percent, their marketing assistance loan rate by 30 percent, and their LDP rates by 30 percent. They additionally claimed they were told they would forgo their counter-cyclical payments. Thus, rather than the actual 30-percent reduction in loan rate, producers thought they would receive LDPs which would be reduced by 30 percent. On December 8, 2009, the program technician wrote to the Sheridan County FSA Committee, stating that she provided incorrect information to Sheridan County producers and that she also did not provide the CCC-509 Appendix, dated April 29, 2009, to ACRE enrollees at the time of their enrollment.[3] On January 4, 2010, *AGWEEK* published an article highlighting the concerns of producers in Sheridan County who claimed they were misinformed.

We worked with FSA at the Headquarters level to develop agreed-upon procedures in order to determine the facts and circumstances surrounding FSA's implementation and administration of ACRE in Sheridan County, Montana. Specifically, we reviewed how the ACRE signup register was implemented and whether it was administered by the county office according to procedures. We also determined whether allegations that the Sheridan County FSA Office provided incorrect program information to producers about ACRE could be substantiated and whether alleged misinformation may have influenced producers to erroneously sign up for ACRE.

Between February and October 2010, we reviewed background information regarding the alleged misinformation, FSA Handbooks, Federal Register, Code of Federal Regulations, FSA Notices, State and county office employee emails, and ACRE and LDP appeal requests. We also reviewed CCC-509 contracts, appendices to the CCC-509, archived LDP and PCP rates, the register for DCP enrollment and ACRE election, and county office correspondence regarding

[3] CCC-509 Appendix, "Appendix to Form CCC-509, Direct and Counter-Cyclical Program (DCP) Contract or Average Crop Revenue Election (ACRE) Program Contract," dated April 29, 2009.

ACRE appeals. We also interviewed State and county office employees, producers, and Montana State University Extension Service employees.

**Alleged Abuse of ACRE Signup Register**

To address claims that the register in Sheridan County was used inappropriately, we interviewed 12 of the 36 producers placed on the register and determined that 8 of the 12 producers were not aware of being placed on the register, nor did they request to be. The program technician admitted during her interview that she placed producers on the register without their knowledge. Further, the program technician placed producers with uninitiated[4] contracts on the register, which is in violation of Montana State FSA Office's Memo DCP-012, "DCP and ACRE Register," dated May 12, 2009. While the program technician claimed that many producers were placed upon the register in order to allow time to secure necessary signatures from landowners, our review disclosed that 24 of the 36 producers on the register either had power of attorney or were landowners themselves and thus could have signed the application. The program technician informed two of the producers we interviewed that they could have until September 30, 2009, to decide whether to enroll, so long as they ensured that they did not obtain all signatures before the August 14, 2009, deadline.

**Alleged Misinformation by the County Office Program Technician**

Based on our interviews with the program technician assigned to ACRE, ACRE producers, producers placed on the register, county office employees, and county office employees in surrounding counties, we could not substantiate the program technician's assertions made to the State office and county committee that she misinformed producers. In the course of our interview, the program technician admitted that she herself drafted appeal letters to be submitted to FSA, which she provided to producers, including the extension agent. Those appeal letters claim that the program technician misinformed producers and the county office misused the register. We interviewed a total of 21 producers enrolled in ACRE, including 18 of the 24 producers who appealed their ACRE election and 3 producers who did not appeal their ACRE election. Of the 21 ACRE producers interviewed, 16 stated that the program technician did not misinform them prior to or at the time of enrollment. Further, we could not corroborate the claims of the five producers who maintained that they were misinformed. Additionally, one of these five producers has withdrawn his appeal to rescind or to reverse his ACRE enrollment.

Additionally, the program technician's treatment of the CCC-509 Appendix, dated April 29, 2009, was inconsistent. Though another program technician in the county office provided her with amended appendices in time to distribute before the August 14, 2009, deadline, the program technician for ACRE claimed that the documents were thrown out. Further, while the program technician initially claimed in the letter to the county committee that she did not provide the appendix to any producers at the time of enrollment, our review of producers' ACRE files disclosed that two producers dated and initialed the amended appendix on the date of their

[4] According to FSA, the term "initiating" refers to the process of entering the ACRE contract into the computer system. A contract is "initiated" when signature dates are entered into the computer system. An "initiated" contract is therefore one which has been started but not completed. "Uninitiated" contracts have not been started.

enrollment, proving at least two producers were in possession of the appendix.[5] When presented with this information, the program technician modified her claim, informing us that she did not always provide producers with the appendix at the time of enrollment but sent them in the mail at a later date. In the course of interviewing the program technician, she gave responses directly contradictory to evidence obtained during our review and often times at odds with her prior assertions. Only after being shown direct evidence contradicting her initial statement did she recant her previous responses and provide a voluntary sworn statement.

**Alleged Misinformation at FSA Informational Meetings**

We could not substantiate producers' (including the extension agent's) claims that they were misinformed at two FSA informational meetings held 6 months before the decision date, on February 26 and 27, 2009, and at an informational meeting directed by Montana State University's Extension Service on March 2, 2009. We obtained evidence through our email review and interviews that contradicts producers' claims that these informational meetings provided misinformation regarding how LDPs were to be calculated for ACRE producers. While the county executive director claimed in our interview that she was asked in the first meeting if LDP payments would be reduced like direct payments and loan rates, she claimed to have answered that she did not believe so but would check with the State office for clarification. After emailing the State office, she received the response: "The loan rate for the farm is reduced by 30% so that would affect the LDP rate." This message was then forwarded to all county office staff, including the program technician. Therefore the program technician and all county office staff who presented at the informational meetings had access to the correct information. We have confirmed this through email review. For subsequent meetings, the county executive director, district director, county committee members, and Montana State University professors present do not remember a question or response explaining how LDPs would be affected for ACRE enrolled producers.

We did not perform an audit with the objective to express an assessment of the internal control structure or compliance with applicable laws, regulations, and procedures as a whole. This engagement to apply the agreed-upon procedures was performed in accordance with applicable government auditing standards and statement of standards for attestation engagements established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of FSA. Consequently, we make no representations regarding the procedures described either for the purpose for which this report has been requested or for any other purpose.

The Agreed-Upon Procedures performed and the facts obtained associated with each procedure performed are detailed in exhibit A.

[5] Regardless of whether or not producers received the CCC-509 Appendix, dated April 29, 2009, at the time of enrollment, producers certified in the application that they had received and understood the contents of the CCC-509 Appendix, dated April 29, 2009. The Appendix is not required to be attached or filed in the producer's file.

## Exhibit A: Procedures Performed and Results

I. Obtain county committee meeting minutes, and track dates of county committee's discussion and approval of the ACRE contract.

*Our review of the minutes from July 8, 2009, through February 10, 2010, disclosed that the county committee approved nine ACRE contracts on August 4, 2009, but did not document discussion. We also found that the county executive director and/or acting county executive director approved all other ACRE contracts.*

II. Obtain a step-by-step explanation of county office employee responsibilities when each producer comes in to sign up for ACRE. Where are these procedures documented? Were those steps documented and performed for each ACRE contract/participant?

*Because these employees stated to us that they followed the procedures in Handbook 1-DCP Revision 3, "Direct and Counter-Cyclical Program and Average Crop Revenue Election for 2009 and Subsequent Crop Years," dated July 24, 2009, we did not find it necessary to obtain verbal step-by-step explanations from each county office employee on their responsibilities when each producer came into the office to sign up for ACRE. While the program technician disregarded a litigation hold and failed to attach initiated contract reports to the register (see result IV.1), nothing came to our attention during the course of our review to indicate that the Sheridan County FSA Office staff did not follow FSA Handbook 1-DCP Revision 3, "Direct and Counter-Cyclical Program and Average Crop Revenue Election for 2009 and Subsequent Crop Years," dated July 24, 2009, for producers that signed up for ACRE.*

III. ACRE FILE REVIEWS - Determine the following for each of the approved ACRE contracts in Sheridan County:

1. The date the initial application was received.

   *The initial applications were received from July 23, 2009, to August 21, 2009.*[6]

2. Dates of the interviews with FSA staff and whom.

   *Because program procedures did not require appointments and interviews with producers to be documented if they signed up with ACRE before the deadline, we were unable to determine the exact dates of interviews with ACRE producers. Likewise, due to a lack of documentation, we were unable to determine the exact dates of interviews with the three producers who signed up after the deadline. Our interviews with Sheridan County producers and county office staff disclosed that*

[6] The three producers who enrolled from the signup register enrolled on August 17, 20, and 21, 2009.

*producers only met with the program technician assigned to ACRE to discuss the program, sometimes on more than one occasion.*

3. The date the contract was signed by the producer and the county office, etc.

   *Producers enrolled in ACRE signed their contracts from July 23 to August 21, 2009.*[7] *Our review also disclosed that the contracts were approved by the county committee and/or county executive director from August 4 to August 31, 2009.*

4. If the appropriate documents were signed for each participant in ACRE to make the ACRE participation valid.

   *We determined all producers enrolled in ACRE signed the form to make ACRE participation valid, namely Form CCC-509, "Direct and Counter-Cyclical Program (DCP) Contract and Average Crop Revenue Program (ACRE) Contract", dated April 16, 2009.*[8]

5. If the correct appendix was used and attached to each signed ACRE contract.

   *Our review disclosed that two contracts had only the first page of the correct, amended appendix, which was initialed and dated on the day of application.*[9] *The correct appendix was not attached to any other signed ACRE contract that we reviewed. However, this was not a requirement.*

6. If the agency followed the prescribed procedures for approving ACRE contracts.

   *The Sheridan County FSA Office staff followed FSA Handbook 1-DCP revision 3, "Direct and Counter-Cyclical Program and Average Crop Revenue Election for 2009 and Subsequent Crop Years," and did not implement any additional requirements for approving ACRE contracts.*

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[7] The three producers who enrolled from the signup register enrolled on August 17, 20, and 21, 2009.

[8] The CCC-509 Appendix, dated April 29, 2009, was not necessary to make the ACRE contract valid. However, by signing the contract the producer certified to have received and agreed to the contents of the appendix. One ACRE contract for one farm did not have the appropriate signature. A landowner mistakenly signed for a farm without having power of attorney for his wife. However, the landowner completed all other ACRE contracts for his farms appropriately. Further, all other contracts were properly signed and valid.

[9] This contradicts the program technician's initial claim from her letter to the county committee that she did not provide any producers with the correct, amended form CCC-509 ACRE Appendix at the time of enrollment. She later modified this statement.

IV. Register Review

1. Determine when the applicants on the register initially submitted applications.

   *The three producers who enrolled in ACRE from the register submitted applications on August 17, 20, and 21, 2009. The applications for the producers on the register who did not enroll were printed out but not initiated into the computer system. Montana State FSA Office Memo DCP-012, "DCP and ACRE Register," dated May 12, 2009, requires that program technicians attach initiated contract reports to the register to ensure all applications were already underway by the August 14 deadline. However, the Sheridan County program technician failed to do so. Because the program technician admitted to shredding these applications after printing them, we cannot ascertain whether these contracts were signed. Shredding the applications was a direct violation of the litigation hold placed on FSA (AS-2157 Keepseagle v. Schafer), which stipulates that FSA staff were not to shred or otherwise destroy any documents. The notice clearly states that all FSA employees and contractors (at county, State, and national offices) are covered by this litigation hold and shall, until further notice, not destroy written documents of any sort.*

2. Determine when the applicants on the register visited the county office to discuss the ACRE contracts with the county office staff.

   *Based on our review of the register, producers phoned or called the office on August 14, 2009, and requested to be placed on the ACRE signup register. Review of the register also disclosed that the producers were shown as being given an appointment date to complete their ACRE signup. However, there was no information available in the ACRE files to determine the exact date that producers initially met with county office staff or if they made their appointments to complete their ACRE signup. Further, we are unable to determine the accuracy of the register. For example, one producer listed on the register as calling at 7:30 am on August 14, 2009, did not remember calling on that day. Rather, in our interview, he claimed to have spoken with the program technician several days before the deadline, which the program technician supported in our interview with her.*

3. Determine when the applicants on the register were provided information and by which program technician.

   *According to the register and our interviews, the program technician was the sole point of contact for producers. As noted on the register, producers had appointments from August 17 until August 28, 2009. However, due to lack of documentation, we were unable to verify whether each producer met with her on the designated date and what, if any, information was provided. While the register documents appointment times for each producer, at least 8 of these appointments were not kept as 8 of the 12 producers we interviewed did not know they had been placed on the ACRE signup register nor did they remember receiving an appointment date.*

4. Determine when and how the applicants got on the register.

   *The program technician placed all producers on the register on August 14, 2009. However, we determined that at least two producers were informed about the ACRE signup register before the last day of ACRE signup by the program technician.*[10] *Based on the register, of the 36 producers placed on the register, 22 producers telephoned the office and 14 producers made office visits on August 14, 2009. According to the register, the 36 producers were given an appointment date after August 14, 2009, to complete ACRE signup. Of the 12 producers on the register that we interviewed, 4 producers requested to be placed on the register. However, 8 of the 12 producers did not know they had been placed on the register.*

5. Determine the reason for each applicant being on the register.

   *Notice DCP-220, "Using Register for DCP Enrollment and ACRE Election and Enrollment," dated July 27, 2009, states that a producer may request that a farm be placed on the register only when the county office cannot schedule an appointment to elect and/or enroll ACRE or DCP on or before August 14, 2009, due to workload, computer, or other county office-related issues. Additionally, in Montana State FSA Office Memo DCP-012, "DCP and ACRE Register," dated May 12, 2009, the State office permitted the use of the register to allow producers more time to acquire signatures of landowners. According to the program technician and review of the ACRE signup register, the ACRE applicants were placed on the register because they needed additional signatures from land owners and had already expressed an interest in ACRE.*

6. Determine the legitimacy of being on the register.

   *While Notice DCP-220, "Using Register for DCP Enrollment and ACRE Election and Enrollment," dated July 27, 2009, states that use of the register to circumvent the deadline is not permitted, according to interviews with three producers, the program technician claimed that they could use the extended deadline to defer their decision on whether to enroll in ACRE. The program technician confirmed that she placed other producers on the register without their knowledge because she claimed they expressed an interest in obtaining signatures from landowners, but the producers had not completed the ACRE signup. However, 24 of the producers on the register either were landowners or had power of attorney for their farms. Further, in one instance, the program technician urged the producer not to have his landowner sign the contract in order to allow him more time to make a decision (see result VI).*

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[10] During our email review, we discovered an email from a county producer, who is a key member of the Montana Grain Growers Association, which explained that the ACRE signup register was made available around August 7, 2009, before August 14, the date the register was supposed to become available; therefore, producers who signed up before that date were not informed of the possibility of delaying completion of paperwork. The producer thus claims that the program was "unevenly applied."

7. Determine if any of the producers on the register had power of attorney for the landowners or were owner-operators and could have signed up for the program and were instead placed on the register.

   *We determined that 14 producers were owner-operators for 19 farms. Further, 20 producers had power of attorney for 39 farms. Of the 36 producers on the register, 24 producers were either owner-operators or had power of attorney.*[11]

8. Determine whether any county or State office employees or committee members are on the register, and if so why.

   *No county or State office employees or committee members were on the ACRE signup register. However, a county committee member informed us that the program technician asked him if he would like to be placed on the ACRE signup register before the ACRE signup deadline of August 14, 2009.*

   Determine whether there was any documented followup by the county office to get producers to the office to sign contracts.

   *While the program technician claimed that a reminder notice was mailed out to each producer listed on the register, there was no documentation in the ACRE files that disclosed that reminder cards were mailed out to producers. Further, there was no documentation of any followup by the county office. Moreover, the fact that the program technician destroyed documentation in ACRE producer files limited our review.*

   Determine which program technician processed their applications.

   *The program technician assigned to ACRE processed all ACRE applications.*

V. Email Reviews – Review all State office email messages to the county office and county office email messages or other available documented communications between the county office and any producers with signed contracts or the extension agent, as well to other third parties conveying information on ACRE as to the apparent misinformation on the ACRE contract. (That is, email messages dated January 1, 2009, to date.) Determine whether there appears to be any apparent coordination, communication, and possible collusion/conspiracy between the State office, the Sheridan County FSA Office program technician (or any other county office employee), and/or the extension agent.

   *We obtained and reviewed State office staff, district director, and the Sheridan County FSA Office staff emails dating from January 1, 2009, through March 18, 2010. Specifically, review of the emails disclosed that the Sheridan County program technician assigned to ACRE drafted an appeal letter and forwarded the letter to her brother (a program technician for another program in the Sheridan County FSA Office). The email advised her brother of*

[11] Ten producers were both owner-operator and had power of attorney.

*the major points that producers would want to discuss with the county committee concerning misinformation and withdrawing from ACRE to receive LDPs. The email specifically referenced two producers. Our review disclosed that one of the producers mentioned in the email had submitted to the Sheridan County FSA Committee a verbatim copy of an appeal letter that the program technician had provided. This producer provided a sworn statement confirming that he received the letter from the program technician and that, despite the letter's claims to the contrary, he had not been misinformed about the LDP rate being reduced by 30 percent at the time of enrollment or at any informational meeting. During our interview with the program technician, she admitted that she had provided this sample appeal letter to additional producers in the county office.*[12]

*The program technician also admitted to providing the extension agent (who is also a producer appealing his ACRE signup) with an appeal letter in addition to the appeal letter she circulated to producers in the office. Further, the program technician and the county extension agent confirmed that they corresponded via email. During our interviews, the program technician stated that she wanted to keep the county extension agent informed about what was happening with the ACRE situation. We also discovered an email chain between the program technician and the county extension agent in which the program technician thanked the county extension agent, stating, "[…] looks like we got some action in DC already cuz I am having to work up numbers. So, maybe tomorrow morning will work on the LDP requests ok." During our interview with the county extension agent, we noticed that he had a stack of emails from the program technician. However, our review of official emails between the program technician and county extension agent only disclosed one email exchange. We determined that the program technician was communicating with the county extension agent via her personal email account. We asked the county extension agent to forward us any emails that the program technician sent him concerning the ACRE situation. However, the email correspondence that the extension agent forwarded consisted of only two emails which appeared altered. The email chain did not disclose who sent and received the email and the second email was missing the subject line.*

VI. Interviews – Interview a sample of producers on the register that did not sign up for ACRE to determine what information they did or did not get, when, from whom, and the circumstances that prevented them from a timely signup for ACRE.

*Of the 12 producers interviewed from the register, 8 did not know they were placed on the register. Of these 12 producers interviewed, we determined that 6 producers listed on the register had enrolled in ACRE: 3 producers had enrolled some of their farm units on or prior to the August 14 deadline, but had additional farm units to possibly enroll. The other*

[12] In the course of our interview, after being presented with the producers' statements that they had not been misinformed, the program technician recanted her claim in her letter to the county committee in which she alleged that she had misinformed all producers. She rather estimated that she may have misinformed approximately 20 percent of the producers that were claiming misinformation. However, only two of the producers which she specified by name were among the five producers maintaining their claims of misinformation. The program technician had written an appeal letter for one producer and had directed the other producer to the State office for more information (see result VII).

*three producers subsequently utilized the register to enroll after the August 14 deadline; two of these producers did not know that they were placed on the register.*
*Nine of the 12 producers that we interviewed and were listed on the register did not utilize the register to sign up for ACRE. (These nine producers included the six producers who were on the register but did not enroll, and the three producers that had enrolled some of their farm units on or prior to the August 14 deadline.) According to our interview with the program technician, the program technician informed them that they could use the additional time to decide whether to enroll in ACRE*

*The six producers who elected not to enroll farms into ACRE using the register were unaware that they were even placed on the register. And two of these six producers stated that they did not complete their enrollment because the LDPs had been triggered, resulting in larger LDPs from FSA.*

*Our review disclosed that one of the six producers who elected not to enroll farms into ACRE using the register was informed about the existence of an ACRE signup register before the deadline by the program technician. Additionally, in an email to the county executive director, this producer stated that he called into the county office a couple of days before the deadline to inform the program technician that he would be in on August 14 to make his decision on signing up for ACRE. During our interview, this producer claimed that the program technician informed him that she could place his name on the register because she knew that he was busy with harvest and he could come into the county office to sign up for ACRE when it rained. The producer further stated in another email to the county executive director that the program technician informed him that if he left one signature off on the ACRE paperwork that he could have until September 30 to finalize the paperwork and make his final decision on ACRE; it was his understanding that producers who signed ACRE contracts before August 7, 2009, were not informed of this option.*

*Another producer (from this group of six producers) stated that the program technician claimed that, if placed on the register, he could consider whether or not to enroll in ACRE. The program technician also informed this producer to ensure that the owners did not sign the ACRE contracts and send them into the county office, or the farm would be enrolled in ACRE.*

*A third producer (from this group of six producers) informed us that he was at a local restaurant and producers were talking about the ACRE signup register. The producers at the restaurant advised this producer to get on the register in order to have more time to decide. This producer stated that he had no intention of enrolling in ACRE but followed the producers' advice to get on the register. The producer also informed us that when he stopped by the county office, he spoke with the program technician to ensure that placing himself on the register was not equivalent to enrolling in ACRE. The program technician informed this producer that he had until September 30, 2009, to get signatures and decide whether or not to enroll in ACRE.*

VII. Interview a sample of producers with approved ACRE contracts to determine what information, and from whom, was provided as to the basis of reduction of LDP versus loan

rate. When these producers signed the contract were they aware that they also certified that they understood and agreed with the conditions and terms of the CCC-509 Appendix? (This sampling should be structured to include contracts processed by all county employees and should include at least the following: the former State committee member and extension agent, both of whom allege misinformation and are requesting relief from their ACRE contracts.)

*We interviewed a total of 21 producers with approved ACRE contracts, including the extension agent and a former State committee member. Our interviews disclosed that 16 of the 21 producers interviewed stated that they were not misinformed by the program technician assigned to ACRE prior to or at the time they signed their ACRE contracts. However, five of the ACRE producers that we interviewed claimed that they were misinformed at or sometime before signup. Two of these five producers included a former State committee member and the extension agent who, from experience, would have known who to contact to retrieve the correct information. A third producer claimed that the program technician had written out how to calculate an LDP and provided the form appeal letter as proof of the misinformation provided by the program technician. The program technician also admitted to writing an appeal letter for the fourth of the five producers. The fifth producer has withdrawn his request for relief from his ACRE contract.*

*Though in our interviews, producers claimed that they did not receive the Appendix at the time of enrollment, all contracts required the producers to sign that they had (1) received Appendix CCC-509, (2) agreed to abide by the terms therein, (3) agreed to comply with the regulations governing the applicable program and payment eligibility and limitation provisions, (4) acknowledged and agreed that DCP and ACRE and benefits under DCP and ACRE were subject to changes based upon change in applicable statute, and (5) certified to the accuracy of the information set out in this form. Because no producers contested that they had signed the contract, thus certifying their agreement to and awareness of these conditions, we did not take further steps to determine whether they were aware of the conditions.*

VIII. Interview the extension agent as to the origin of the apparent misinformation provided to the ACRE contract producers and whether he had any contacts with the county office program technician (or any other county office employee) as to the apparent misinformation. Review documents the extension agent had used, and made available to others on ACRE and the source(s) of that information.

*The county extension agent stated that misinformation was provided to ACRE contract producers at the three public meetings that were conducted on February 26 and 27, and also on March 2, 2009. The extension agent claimed that he asked FSA staff if the 30-percent reduction included the LDP at all three meetings and the FSA staff responded affirmatively.*

*However, while the county executive director claimed in our interview that she was asked in the first meeting if LDP payments would be reduced like direct payments and loan rates, she claimed to have answered that she did not believe so but would check with the State office for clarification. After emailing the State office, she received the response: "The loan rate for*

*the farm is reduced by 30% so that would affect the LDP rate." This message was then forwarded to all county office staff, including the program technician. Therefore the program technician and all county office staff who presented at the informational meetings had access to the correct information. We have confirmed this through email review. For subsequent meetings, the county executive director, district director, county committee members, and Montana State University (MSU) professors present do not remember a question or response explaining how LDPs would be affected for ACRE enrolled producers (see result X).*

*The county extension agent also claimed to have been misinformed by the Sheridan County program technician assigned to ACRE, explaining that he met with her sometime in April and also in late July 2009. The county extension agent further claimed that during his meetings with the program technician, she confirmed that the producers would only lose 30 percent of the LDP rate if he enrolled in ACRE. However, in the program technician's letter to the county committee she explains that she met with the county extension agent in late July 2009 in order to gain a better understanding of ACRE and that at that time, he reiterated his understanding of a 20-percent reduction in direct payments and 30-percent reduction in loan rates and 30-percent reduction in the LDP rate. During these meetings, the county extension agent claimed they went over payment scenarios using the ACRE calculator and discussed the basic triggers for ACRE. The county extension agent shared ACRE worksheets that provided examples of how ACRE would work with various commodities. He further claimed to have gone over the documents discussed and provided at the March meeting put on by the MSU extension professors, which included the PowerPoint used by the professors. The two also shared other basic ACRE information, including informational packets on ACRE from FSA fact sheets and a news article that promoted ACRE. There are no existing FSA documents which contain inaccurate information. Further, these documents do not directly address LDP calculation, but rather ACRE triggers.*

IX. Interview the county office employees (including the program technician and the county executive director) as to the origin of the apparent misinformation provided to the ACRE contract producers. Determine if they went over the CCC-509 Appendix explicitly with each producer before the producer signed the contract. Did the producers raise any concerns prior to signing the ACRE contracts? Determine the information the county office employees may have shared with the extension agent on ACRE.

*The program technician claimed that she neither discussed nor provided the amended CCC-509 Appendix, dated April 29, 2009, to ACRE enrollees at the time of enrollment.*[13] *We determined that in early February 2009, Sheridan County producers were mass-mailed an earlier version of the CCC-509 Appendix, dated November 14, 2009, with a cover letter indicating their responsibilities and a DCP contract. The program technician claimed that she did not believe that the CCC-509 Appendix, dated April 29, 2009, needed to be provided to ACRE producers at the time of enrollment because they had already received an earlier*

[13] However, our review of the ACRE files disclosed that two producers initialed and dated the CCC-509 Appendix, dated April 29, 2009, on the same day that they enrolled in ACRE. When presented with this evidence, the program technician modified her statement, claiming that she did not provide all producers with the Appendix on the day of enrollment.

*version of the appendix earlier in the year. However, the CCC-509 Appendix, dated April 29, 2009, was amended to include information on ACRE and thus contained information specific to ACRE that the earlier CCC-509 Appendix, dated November 14, 2008, did not. The Appendix explained that producers would receive a 20-percent reduction in their DCP payments, a 30-percent reduction in their marketing assistance loan rate, and no counter-cyclical payments. Further, the Appendix included other ACRE-related provisions, including an explanation of ACRE-specific terminologies. She told the county committee that most of the ACRE enrollees wanted the information mailed to them later, when the office had time to provide copies of their ACRE contracts, which she intended to do once things slowed down in the office. Based on our interviews with producers and statement made by the program technician, it appears that producers received a copy of the Appendix either at the time of enrollment or afterwards in the mail.*

*The district director discussed the CCC-509 Appendix, dated April 29, 2009, with the Sheridan County FSA Office staff to determine if producers enrolled in ACRE received a copy of the appendix. Interviews with the district director disclosed that the program technician claimed that no producer enrolled in ACRE received a copy of the amended CCC-509 Appendix, dated April 29, 2009, at the time of enrollment. We determined that another program technician made copies of the amended CCC-509 Appendix, dated April 29, 2009, and provided them to the program technician in charge of ACRE for her use. When the district director met with the program technician in charge of ACRE, she did not have the provided copies of the CCC-509 Appendix, dated April 29, 2009. When asked what had been done with them, she replied that the copies must have been discarded.*

*Only two producers expressed concern about how to calculate the LDP rates before time of enrollment. Through interviewing the program technician, we were able to support one producer's claim that he asked the program technician repeatedly about how ACRE would impact LDPs. However, the program technician stated in our interview that she referred this producer to the Montana State FSA Office for answers to his specific questions. This producer no longer seeks to withdraw from ACRE. Another producer asked her if the LDPs would be reduced by 30 percent. As a producer in both Montana and North Dakota, he had spoken with county offices in both States to determine which State would be used for his triggers. The program technician stated in her interview that she asked the producer if he had spoken to a North Dakota county office regarding LDP calculation. The producer stated that he forgot to inquire but enrolled in ACRE regardless. This producer seeks to withdraw from ACRE.*

*Regarding information that the county office may have provided the county extension agent on ACRE, please see results VIII and X.*

X. Interview MSU extension agents and clarify their role in providing information on ACRE. Also, since MSU extension agents were at the meeting where misinformation was allegedly provided, ascertain what information was provided and by whom.

*The MSU Extension Service is involved in producer education and outreach regarding farm programs. Our interviews disclosed that the MSU Extension Service discussed the idea of*

*developing an educational program with FSA to inform producers about ACRE. However, the MSU Extension Service does not have a formal agreement or memorandum of understanding with FSA. The MSU Extension Service had complete control over developing an ACRE calculator that was provided to the general public in order for producers to use in making their decision on enrolling in ACRE. Our review of the ACRE calculator disclosed that the decision tool correctly calculated the LDP for a producer enrolled in ACRE by reducing the loan rate by 30 percent before subtracting the posted county price.*

*The MSU Extension Service conducted an ACRE informational meeting on March 2, 2009 in Sheridan County. Approximately 50 to 60 producers were in attendance. The Sheridan County county executive director and other FSA staff were also in attendance. The MSU professors informed us that they did not provide an example of how an LDP would be affected by ACRE nor did they remember any discussions concerning the LDP at the informational meeting. We determined that during the presentation, the professors discussed basic information on ACRE, the Supplemental Revenue Assistance Payments Program, and other new items detailed in the new Farm Bill. They also presented a demonstration of the ACRE software calculator. We also determined that the professors provided the producers with the ACRE fact sheets which state that there would be a 30-percent reduction in the loan rate. The MSU Extension Service professors informed us that they did not answer any policy questions and further stated that if a question had been asked about how an LDP would be affected by ACRE, the professors would have forwarded the question to the FSA employees in attendance.*

XI. Interview the county committee members since the program technician stated that she made presentations to the CED and COC with the incorrect information, but neither the county committee members nor the county executive director corrected her.

*Our interviews with all four county committee members disclosed that they remember the program technician making a presentation to the county executive director and county committee concerning ACRE sometime in August 2009. The county committee members informed us that the program technician went over ACRE worksheets and handouts explaining the triggers and yields but they could not remember the program technician ever stating that an ACRE producer would receive a 30-percent reduction in the LDP rate. One of the county committee members stated that the program technician read the ACRE provisions from handouts and worksheets and remembered it being stated that a producer enrolled in ACRE would receive a 30-percent reduction in the loan rate and a 20-percent reduction in the direct payment but there were no discussion on how to calculate an LDP for an ACRE producer.*