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**Food Security Act of 1985:
FMHA Farm Program Reforms**

by

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FOOD SECURITY ACT OF 1985: FMHA FARM PROGRAM REFORMS

INTRODUCTION

The Farmers Home Administration (FmHA) is the credit arm of the United States Department of Agriculture. The FmHA, as a lender of last resort, provides financial assistance to those farmers who are unable to obtain credit from private lenders at reasonable rates or on reasonable terms. In making these loans, however, the FmHA and its borrowers must follow certain rules and regulations. These rules and regulations can be divided into two categories: procedural and substantive. The substantive rules decide, among other things, how much can be borrowed and to whom loans can be made. The procedural rules, on the other hand, determine how a loan is to be distributed, collected and serviced.

The current credit crisis in rural America has brought both the substantive and procedural aspects of the FmHA under fire. Some borrowers have taken their complaints to court,¹ with the courts responding by instructing the FmHA to amend their rules and regulations. Reasoning that the FmHA was established as a "social welfare" agency, the courts have held its rules and regulations must be tailored to accomplish "social welfare" goals and objectives.²

In addition to the courts intervention, Congress has also responded to borrower's complaints of unfairness in the Food Security Act of 1985.³ Although the farm crisis seems to indicate that major substantive help is needed. Congress responded with only minor substantive changes. The Act does, however, attempt to help farmers procedurally by making particular FmHA rules and regulations more fair and responsive to the market they are aimed at—the family-size farmer.

The issue of unfairness in the FmHA is not new. Both Congress and the courts have dealt with claims of unfairness in the past. This note begins by examining the unfairness issue in FmHA procedure by discussing two recent judicial decisions to see how the court has dealt with this issue. It then examines the FmHA's response. Finally, it discusses some of the current claims of unresponsiveness and unfairness in FmHA procedures and how the Food Security Act addresses them.

COURT INTERVENTION

The courts have recently begun to assume a more active role in examining

1. For a list of current litigation involving FmHA deferral procedures see V SMALL FARM ADVOCATE 7 (Spring 1984).

2. Curry v. Block, 541 F. Supp. 506, 514 (S.D. Ga. 1982), *aff'd*, 738 F.2d 1556 (11th Cir. 1984).

3. Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354 [hereinafter cited as Food Security Act].

FmHA procedures. Based on the need for immediate action or legislative inaction, the courts have intervened to require that the FmHA behave like the "social welfare" agency it is. In accomplishing this objective, the courts have forced the FmHA to put the interests of the borrower ahead of its own interests as a financial lending institution.

The leading case involving court intervention in FmHA procedures is *Curry v. Block*.⁴ At issue in *Curry* was the FmHA's foreclosure procedures. Although 7 U.S.C. section 1981a⁵ provided for loan repayment deferrals, the statute required defaulting debtors to apply for them. This created a problem because the FmHA was not making borrowers aware of the deferral option. The plaintiffs in *Curry* made two arguments: (1) that section 1981a created an affirmative duty on the Secretary to implement a deferral program for qualified borrowers; and (2) that the FmHA must give personal notice to all farmers of their right to apply for deferral relief under section 1981a.⁶ The defendant countered by claiming that section 1981a was permissive and therefore, the final decision of how and when to implement section 1981a rested with the Secretary of Agriculture.⁷ In addition, the defendant argued that personal notice was not required by section 1981a; and if notice were required, publication in the Code of Federal Regulations was sufficient.⁸

The district court held that Congress intended section 1981a to impose a mandatory duty upon the FmHA to implement deferral relief and, therefore, the FmHA would be enjoined from foreclosing on farm loan program mortgages in Georgia until those regulations were in full force and effect.⁹ The court also ordered the FmHA to give borrowers personal notice of the deferral option.¹⁰ In concluding that borrowers must receive personal notice, the court examined the "notice of deferral rights" being sent to borrowers by the FmHA. The court found the notice to be flawed in three ways: (1) contrary to section 1981a, the borrower was not informed that he could defer both principal and interest payments; (2) the notices did not inform the borrower that he must apply for deferral and show that, due to circumstances beyond

4. 541 F. Supp. 506 (S.D. Ga. 1982), *aff'd*, 738 F.2d 1556 (11th Cir. 1984).

5. 7 U.S.C. § 1981a (1982) provides:

In addition to any other authority that the Secretary may have to defer principal and interest and forego foreclosure, the Secretary may permit, at the request of the borrower, the deferral of principal and interest on any outstanding loan made, insured, or held by the Secretary under this chapter, or under the provisions of any other law administered by the Farmers Home Administration, and may forego foreclosure of any such loan, for such period as the Secretary deems necessary upon a showing by the borrower that due to circumstances beyond the borrower's control, the borrower is temporarily unable to continue making payments of such principal and interest when due without unduly impairing the standard of living of the borrower. The Secretary may permit interest that accrues during the deferral period on any loan deferred under this section to bear no interest during or after such period: *Provided*, That if the security instrument securing such loan is foreclosed such interest as is included in the purchase price at such foreclosure shall become part of the principal and draw interest from the date of foreclosure at the rate prescribed by law.

6. *Curry*, 541 F. Supp. at 508-09.

7. *Id.* at 515.

8. *Id.* at 522.

9. *Id.*

10. *Id.* at 524.

his control, the borrower could not continue making payments without impairing his standard of living; and (3) the notification of loan servicing devices was buried behind threatening language concerning past deficiencies and borrower responsibilities.¹¹ The court reasoned that only by proper notice will borrowers not be intimidated into declining to take advantage of section 1981a's benefits.¹² On appeal, the Eleventh Circuit agreed with the district court and affirmed its decision.¹³ Through this landmark decision, the court removed one of the fairness issues being raised by FmHA borrowers. It was the court's wish that FmHA begin to behave more like the "social welfare" agency that Congress had intended, rather than a commercial lending institution.¹⁴

One year after *Curry*, another case involving FmHA foreclosure procedures was heard in *Coleman v. Block*.¹⁵ The *Coleman* case was brought by plaintiffs who sought to represent North Dakota farmers who held or would hold FmHA loans.¹⁶ The plaintiffs alleged that FmHA had refused to allow applications for deferment of loan repayment pursuant to 7 U.S.C. section 1981a, threatened termination of refunds for living and operating expenses, and subjected plaintiffs to a biased and unconstitutional appeals process.¹⁷ Once again, the issue of fairness in FmHA's administration was being examined, and the courts responded by issuing a permanent injunction¹⁸ which enjoined the FmHA from foreclosing on FmHA loans unless the defaulting borrower was given thirty days notice that: (1) informed the borrower of his right to a hearing to contest the proposed action and to establish eligibility for loan deferral under section 1981a; (2) provided the borrower with a statement of reasons for the proposed action; (3) informed the borrower of the factors which determine eligibility for loan deferral; and (4) informed the borrower of the official who will preside at the hearing.¹⁹ If the agency failed to comply with each of these requirements, the FmHA was precluded from foreclosing. Although this decision failed to order the Secretary of Agriculture to promulgate regulations, this proved to be unnecessary because FmHA proposed new regulations in 1985 to implement section 1981a.

FMHA'S RESPONSE TO *COLEMAN*

After the issuance of the permanent injunction in *Coleman*, the FmHA was faced with a real dilemma because the nationwide moratorium on farm

11. *Id.*

12. *Id.*

13. *Curry v. Block*, 738 F.2d 1556 (11th Cir. 1984).

14. *Curry*, 541 F. Supp. at 511. The legislation is to aid the "underprivileged farmer and therefore is a type of social welfare legislation." *Id.*

15. 562 F. Supp. 1353 (D.N.D. 1983) (issuing of temporary injunction) [hereinafter cited as *Coleman I*]. 580 F. Supp. 194 (D.N.D. 1984) (issuing of permanent injunction) [hereinafter referred to as *Coleman II*].

16. *Coleman I*, 562 F. Supp. at 1353.

17. *Id.* at 1355.

18. *Coleman II*, 580 F. Supp. 194.

19. *Id.* at 210.

foreclosures was costing the agency millions of dollars. In addition, with the increase in litigation and media attention, public support for the FmHA was dwindling. Therefore, on November 1, 1985, the FmHA adopted a new set of regulations to govern its loan repayment and foreclosure policies.²⁰

The new regulations set definite standards for FmHA to follow in foreclosing on loan accounts. Under the regulations, all borrowers who are \$100 or more delinquent on their FmHA loans as of December 1, 1985, are sent a "notice of intent to take adverse action" which tells the borrower that FmHA intends to liquidate their loan.²¹ The notice also informs the borrower of the availability of servicing options.²² If the borrower fails to apply for at least one of the servicing options, appeal the adverse action, cure the default, or liquidate the loan(s) the FmHA will proceed to liquidate.²³

The servicing options available to delinquent borrowers include: rescheduling,²⁴ consolidation,²⁵ reamortization,²⁶ debt set-aside²⁷ and deferral.²⁸ The servicing action selected will be consistent with the best interests of the borrower and the government. In order to be eligible, the borrower must act in good faith and exercise due diligence in his effort to pay his indebtedness.²⁹ In addition, loan deferral will not be granted unless it is concluded that consolidation, rescheduling, debt set-aside or reamortization will not provide the necessary cash flow to service the debt.³⁰ Furthermore, the new regulations established set standards for using the various servicing actions, thereby assuring that all options will be exhausted before the loan is liquidated.

The judicial decisions and recent changes in FmHA regulations amply demonstrate the fairness issue in FmHA's administration and what has been done to remedy the situation. Although the FmHA has remedied some of its past practices, not all of the complaints have been remedied. Congress, therefore, decided to get involved through the Food Security Act of 1985.³¹

20. 50 Fed. Reg. 45,740 (1985) (to be codified at scattered sections in 7 C.F.R.).

21. 50 Fed. Reg. 45,744 (1985) (to be codified at 7 C.F.R. § 1924.71).

22. *Id.* at 45,761.

23. *Id.*

24. Rescheduling adjusts the terms and/or rates of future principal and interest payments according to the farmer's ability to pay. Rescheduling is used for loans secured by chattels. 50 Fed. Reg. 45,771 (1985) (to be codified at 7 C.F.R. § 1951.33).

25. Consolidation means to combine and reschedule the rates and terms of two or more of the same type loans. 50 Fed. Reg. 45,771 (1985) (to be codified at § 1951.33).

26. Reamortization means to rearrange the installments of a loan which may include changing the interest rate and terms of the loan. 50 Fed. Reg. 45,772 (1985) (to be codified at 7 C.F.R. § 1951.40).

27. Debt set-aside means to postpone payment of a portion of an insured farm loan, which is not to exceed 25% of the unpaid principal and interest owed or \$200,000, whichever is less, for a period of five years at zero percent interest. Debt set-aside will not be considered for debts owed before September 18, 1984. 50 Fed. Reg. 45,773 (1985) (to be codified at 7 C.F.R. § 1951.41).

28. 50 Fed. Reg. 45,774 (1985) (to be codified at 7 C.F.R. § 1951.44); *see supra* note 5.

29. 50 Fed. Reg. 45,765 (1985) (to be codified at 7 C.F.R. § 1951.2).

30. *Id.* at 45,774-75.

31. Food Security Act, *supra* note 3.

CHANGES IN FMHA

The Food and Security Act of 1985 made many changes in FmHA procedures in an effort to quiet the charges of unfairness and unresponsiveness being lodged by the family-size farmers. From the selection of county committees to the management of repossessed farmland, the Act has made revisions in the way FmHA operates. Through this reformation Congress addresses many of the problems that the new regulations and the courts failed to consider.

The procedural changes begin at the lowest level of the FmHA—the county committee selection process. Previously, committee members were appointed for three-year terms by the State Director.³² This procedure, however, was criticized on several grounds. One complaint was that county committee members were too closely tied to the County Supervisor.³³ It was argued that the purpose of the county committee was to put lending decisions in the hands of local farmers, and appointing committee members frustrated that purpose. It was also alleged that because their position was by appointment, many committee members were only interested in doing their tour of duty and then leaving.³⁴

The Act now requires that two of the committee members be elected by farmers in the county or area where the committee is to be located.³⁵ While the third member will still be appointed, the Secretary must select the appointed member to “ensure that, to the greatest extent practicable, the committee is fairly representative of the farmers in the county or area.”³⁶ By requiring committee members to be elected by local farmers, it is hoped that greater faith will be placed in committee members which have an interest in FmHA programs and their workings.³⁷

Whether this reform will actually change anything remains to be seen. While local farmers might feel better about an elected committee, it is not likely that there will be a change in the way committees make their decisions. The committee will still have to answer to the County Supervisor, whose power can be used to nulify committee decisions. Therefore, elected committee members will not be in any better position than the committee members who were appointed. In addition, the positions on the committee will favor the large, solvent farm operators who can afford to spend the time and money necessary to run in an election. Therefore, it is unlikely that much change will be made in the composition of the committee. This reform, on the surface,

32. A. HIGBY, H. HOFF, E. SEVERENS & J. HANSEN, *FMHA FARM LOAN HANDBOOK* 16 (1983) [hereinafter cited as *HANDBOOK*].

33. *Id.* at 16-17.

34. *Id.* at 16.

35. Food Security Act, *supra* note 3, at § 1311, 99 Stat. at 1524 (to be codified at 7 U.S.C. § 1982).

36. *Id.*

37. H.R. REP. NO. 271(I), 99th Cong., 1st Sess. 100, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS 1103, 1204 [hereinafter cited as H.R. REP. NO. 271(I)].

seems to provide an answer to one of the procedural problems associated with FmHA, but in reality it is unlikely that it will change anything.

Congress also amended another basic aspect of FmHA procedure: the application process. Before the Act, potential borrowers were required to fill out a Coordinated Financial Statement (CFS) with every loan application.³⁸ The CFS, however, was so complicated that many applicants were unable to properly fill it out because they could not understand it.³⁹ Once again, the purpose of the FmHA was being violated in that the farmers whose need was greatest could not even apply.

The Food Security Act eliminates the requirement of filing a CFS with an FmHA loan application.⁴⁰ Instead, the much shorter and less complex Farm and Home Plan will be used as a judge of an applicants financial soundness. In addition, Congress directed that the Farm and Home Plan be evaluated to determine the feasibility of its continued use in FmHA's programs.⁴¹

Prohibiting the use of the CFS will increase the efficiency of FmHA, while also encouraging those who need the benefits of the program to apply.⁴² The change from the CFS to the Farm and Home Plan will be easy and the results will be visible. Before FmHA makes the application process easier, however, perhaps more emphasis should be placed on helping the borrowers understand what they are signing. Many borrowers do not understand what the FmHA application forms entail, therefore, some borrowers violate the terms of their agreements with FmHA without even realizing it. Rather than revising the forms borrowers must complete, FmHA should provide or encourage borrowers to seek consultation prior to signing any agreements. Making borrowers aware of their rights, as well as obligations, will do more for FmHA's efficiency than just making the application process easier.

Historically, FmHA loan guarantees have accounted for a small portion of each programs lending activity.⁴³ To bolster the need for more involvement by commercial lenders in FmHA programs, the Act requires the Secretary of Agriculture to ensure that FmHA farm loan guarantee programs are designed to be more responsive to the needs of both borrowers and lenders.⁴⁴ In addition, the Act requires that the funds available for guaranteed loans be increased over the next three fiscal years, while correspondingly decreasing the amount of funds allocable to direct loans.⁴⁵ The Secretary, however, is au-

38. HANDBOOK, *supra* note 32, at 35. The CFS is a 26 page financial statement which tentatively replaced the Farm and Home Plan in 1983. *Id.*

39. *Id.*

40. Food Security Act, *supra* note 3, at § 1325, 99 Stat. at 1540 (to be codified at 7 U.S.C. § 1989).

41. Food Security Act, *supra* note 3, at § 1329, 99 Stat. at 1541 (to be codified at 7 U.S.C. § 1981).

42. H.R. REP. NO. 271(I), *supra* note 37, at 111, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1215.

43. *Id.* at 108, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1212.

44. Food Security Act, *supra* note 3, at § 1319, 99 Stat. at 1531 (to be codified at 7 U.S.C. § 1998).

45. Food Security Act, *supra* note 3, at § 1317, 99 Stat. at 1529 (to be codified at 7 U.S.C. § 1994).

thorized to transfer up to twenty-five percent of each year's guaranteed allocations into direct loan programs.⁴⁶

The net effect of these two measures will make FmHA more responsive to the small family farmer who is experiencing financial difficulties. By decreasing the funds available for direct loans, FmHA will have to use greater scrutiny in determining who will receive the direct loans. In addition, since FmHA does not service guaranteed loans, more time can be devoted to the administration of the programs they do administer. Increasing the funding for guaranteed loans, on the other hand, will encourage more participation by private lenders because additional funds will be available to guarantee proceeds for those farmers who default on their loans. FmHA will also have less at risk since they will only have to guarantee ninety percent of a guaranteed loan rather than one hundred percent for a direct loan. The commercial lenders, therefore, will be making loans with the prospect of full repayment while only having ten percent of the amount loaned subject to loss upon default. And the ten percent which the FmHA does not guarantee ensures that the lender will work with the borrower to service the loan.

Although recently promulgated FmHA regulations impose certain obligations on FmHA prior to commencing a foreclosure action, they do not answer all the problems associated with foreclosure. Congress recognized this and implemented in the Act a number of restrictions on the way FmHA handles land acquired through foreclosure. First, if the sale of repossessed land will depress local land value, FmHA is prohibited from selling.⁴⁷ Second, if there is a sale or lease of the land, priority must be given to family-size farm operators.⁴⁸ Third, if the land is leased, the former owner is given the first opportunity to lease the foreclosed land.⁴⁹ Furthermore, the Act authorizes the FmHA to use debt restructure and conservation set-aside when dealing with delinquent FmHA borrowers and foreclosed farmland.⁵⁰ Under this provision, farmers who own marginal farmland can grant the Secretary long-term conservation/recreation easements.⁵¹ The Secretary in return will be allowed to reduce the borrower's debt.⁵² Although this program is intended only for those FmHA loans which were made prior to the passage of this Act, its provisions can apply to both land already in FmHA's inventory and current borrowers who are in default on their loans.⁵³

With the likely increase in farm foreclosures, these reforms will be of

46. H.R. REP. NO. 271(I), *supra* note 37, at 105, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1209.

47. Food Security Act, *supra* note 3, at § 1314(e)(2), 99 Stat. at 1527 (to be codified at 7 U.S.C. § 1985).

48. *Id.* at § 1314(e)(1), 99 Stat. at 1527 (to be codified at 7 U.S.C. § 1985).

49. *Id.* at § 1314(e)(3)(c), 99 Stat. at 1527 (to be codified at 7 U.S.C. § 1985).

50. Food Security Act, *supra* note 3, at § 1318, 99 Stat. at 1530 (to be codified at scattered sections in 7 U.S.C.).

51. H.R. REP. NO. 271(I), *supra* note 37, at 103, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1207.

52. *Id.*

53. *Id.*

great importance to FmHA and its borrowers. The FmHA, on one hand, will have guidelines to follow in future foreclosures. The borrowers, on the other hand, will have some assurance that foreclosure does not necessarily spell the end, but instead possibly a new beginning. The only question one might ask, however, is why has Congress waited until now to come up with these alternatives? The farm economy has been in disarray for the past ten years, and the government's inventory of foreclosed farmland has continued to rise.⁵⁴ For some, the relief offered will give hope where none existed before, but for others it has come to late.

A major change which is on the fringe of the substantive-procedural distinction limits the eligibility for emergency disaster loans.⁵⁵ Previously, any "established" farmer who had suffered a loss in a designated disaster area or county adjacent thereto could qualify for a loan.⁵⁶ The main criticism directed toward this program was that it defeated the basic purpose of FmHA by providing loans to operators of farms larger than family-size, which resulted in larger loans being made.⁵⁷ Family-size farm applicants complained that because of the larger loans, FmHA was ill-equipped to satisfy their needs.⁵⁸

Applicants and borrowers of emergency disaster loans will now have to meet three requirements in addition to being "established." First, the borrower must operate a family-size farm.⁵⁹ Second, beginning in 1987, no emergency disaster loans will be given for crop losses to those who fail to purchase crop insurance under the Federal Crop Insurance Act.⁶⁰ Third, eligibility for production losses shall be based on the applicant's actual losses, whether or not the Secretary determines the county or area to be a disaster zone.⁶¹ And most important, the individual loan ceiling is to be limited to the amount of the actual loss caused by the disaster or \$500,000, whichever is less, per disaster.⁶²

The overall impact of this reform is two-fold. First, by limiting emergency disaster loan eligibility, the program will better serve those for whom the agency was originally created—the low equity, small, family farmer. Second, it is estimated that by limiting emergency disaster loans to family-size

54. H.R. REP. NO. 271(I), *supra* note 37, at 101, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1205. Currently, the Secretary maintains in inventory over 2400 farms amounting to about 937,000 acres.

55. Food Security Act, *supra* note 3, at § 1308, 99 Stat. at 1522 (to be codified at scattered sections in 7 U.S.C.).

56. 7 U.S.C. § 1961(a) (1982).

57. H.R. REP. NO. 271(I), *supra* note 37, at 99, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1203.

58. *Id.*

59. Food Security Act, *supra* note 3, at § 1308(a)(1), 99 Stat. at 1522 (to be codified at 7 U.S.C. § 1961).

60. *Id.* at § 1308(b)(1)(b), 99 Stat. at 1522 (to be codified at 7 U.S.C. § 1961n).

61. H.R. REP. NO. 271(I), *supra* note 37, at 99, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1203.

62. Food Security Act, *supra* note 3, § 1308(c), 99 Stat. at 1523 (to be codified at 7 U.S.C. § 1964).

farms, the FmHA will save about \$44 million.⁶³ Furthermore, this reform will help balance FmHA's loan portfolio by reducing the number of emergency loans, which in 1979 accounted for 77% of FmHA's outstanding loans.⁶⁴ It is ironic, however, that Congress again has waited so long to remedy a situation which has caused so much tension between the FmHA and its borrowers. One might question whether this is actually directed at helping the destitute family farmer or whether it is just a budgetary measure designed to bail the FmHA out. In addition, the Act fails to consider the possibility that many borrowers might not be able to afford crop insurance. If they could have afforded crop insurance, the borrowers might never have had to apply for the disaster loan in the first place.

OTHER REVISIONS

Certain other provisions of the Food Security Act worthy of mention do not fit neatly into either the substantive or procedural categories. For instance, to provide banks with more time and flexibility in working out alternatives to foreclosure, the Act encourages Federal regulatory agencies to exercise greater caution and restraint when evaluating agricultural loans.⁶⁵ As of September 1985, 402 agricultural banks were included in FDIC's list of problem banks.⁶⁶ Bankers argue that because examiners are quick to classify agricultural loans as "problem loans," they are either forced into foreclosing or writing the loan off as a loss.⁶⁷ The bankers claim that by allowing a certain degree of forbearance, alternative arrangements can be made to help both the borrower and the bank.⁶⁸ Considering the current economic condition of the farm economy and its effect on agricultural lenders, Congress concluded that "adversity should not be compounded by unnecessarily rigid and mechanistic examination practices in loan classifications."⁶⁹

Another practice which the Food Security Act addressed is the FmHA's use of mineral rights as collateral to secure a borrower's loan.⁷⁰ While past FmHA procedures required that mineral rights be included as part of the collateral securing FmHA loans, the FmHA did not use the value of the mineral rights in computing the collateral's value.⁷¹ This practice gave the borrower "the worse of both worlds." On one hand, the borrower was required to pledge his mineral rights as security for the loan. Therefore, if the borrower

63. CENTER FOR RURAL AFFAIRS, FmHA FARM PROGRAM REFORMS III-2 (Feb. 14, 1985) (copy available in S.D.L. REV. office).

64. *Id.* at Int.-2.

65. See Food Security Act, *supra* note 3, at § 1326, 99 Stat. at 1540 (to be codified at 12 U.S.C. § 2254).

66. H.R. REP. NO. 271(I), *supra* note 37, at 111, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1215.

67. *Id.*

68. *Id.*

69. *Id.* at 112, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1216.

70. See Food Security Act, *supra* note 3, at § 1305, 99 Stat. at 1521 (to be codified at 7 U.S.C. § 1927).

71. H.R. REP. NO. 271(I), *supra* note 37, at 97, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1201.

defaulted on his loan, he lost both the land and mineral rights. On the other hand, the value of the collateral did not include the mineral rights. As a result, the FmHA had less capital at risk because it had more collateral with which to secure the loan. New provisions eliminate this practice by forcing FmHA to include the value of the mineral rights in computing the value of the collateral. Such reform will prevent the FmHA from using its position as a lender to gain an unfair advantage over their borrowers.

In addition to prohibiting FmHA's past practice of using mineral rights as collateral, Congress concluded that income derived from the sale or lease of minerals located under a borrower's property can be used to make payments on their loans.⁷² This section will not apply, however, if the FmHA has included the value of the minerals as part of the value of the collateral.⁷³ Proceeds from the sale or lease of those rights will be applied to the balance of the principal of the loan.⁷⁴ Through this reform, Congress will provide ranchers and farmers with greater flexibility in meeting their loan obligations.⁷⁵

Along with the revisions made in the emergency loan program,⁷⁶ Congress made changes in two other FmHA loan programs. The business and industrial loan program, for example, was amended by establishing an individual loan ceiling of \$20 million.⁷⁷ Furthermore, Congress authorized the Secretary of Agriculture to make rural development grants to enable nonprofit groups to establish centers of rural technology development.⁷⁸ The purpose of the business and industrial loan program is to improve the economic climate in rural areas by providing loans to establish industries and agribusinesses in those areas where such businesses are needed.⁷⁹ By developing rural industries and businesses, Congress will be helping those rural communities which are feeling the effects of the current credit crisis.

The final loan program with which Congress was concerned is the waste and waste disposal loan program.⁸⁰ Under this program, FmHA makes loans to public bodies or nonprofit associations for the construction of community water, sewage disposal and solid waste disposal systems or facilities serving rural areas.⁸¹ The reforms implemented by this section of the Act change many of FmHA's substantive procedures in the administration of the water

72. See Food Security Act, *supra* note 3, at § 1310, 99 Stat. at 1523 (to be codified at 7 U.S.C. § 1981c).

73. H.R. REP. NO. 271(I), *supra* note 37, at 101, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1205.

74. *Id.*

75. *Id.*

76. See *supra* note 55.

77. Food Security Act, *supra* note 3, at § 1323(a)(4), 99 Stat. at 1534 (to be codified at 7 U.S.C. § 1932 n.).

78. *Id.* at § 1323(a)(1), 99 Stat. at 1534 (to be codified at 7 U.S.C. § 1932n.).

79. H.R. REP. NO. 271(I), *supra* note 37, at 97, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1201.

80. See Food Security Act, *supra* note 3, at § 1304, 99 Stat. at 1519 (to be codified at 7 U.S.C. § 1926).

81. H.R. REP. NO. 271(I), *supra* note 37, at 91, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1195.

and waste disposal loan program. For instance, the grant⁸² and interest formulas,⁸³ which determine the level and rate of FmHA assistance, are amended to provide a more fair process of deciding which communities should receive a grant. The Secretary must consider such factors as community income, population and health hazards resulting from inadequate water and waste disposal systems.⁸⁴ By establishing a rational, objective, publicly accountable process in deciding water and waste disposal loan eligibility, the purpose of this loan program will better serve those for whom the program was created.⁸⁵

Finally, although the credit section of the Food Security Act is primarily concerned with FmHA's procedural policies, the Act also implemented a provision to protect the buyers of farm products. Ordinarily, under Section 9-307 of the Uniform Commercial Code, the general rule was that a buyer of goods "in the ordinary course of business" took free and clear of any security interest in the goods even if the buyer knew of the existence of the security interest.⁸⁶ The purchaser of farm products, however, was an exception to the general rule. Purchasers of farm products did not take free of a creditor's security interest and, therefore, creditors were allowed to seek payment from the purchaser for any unpaid security interest in those goods.⁸⁷ This exception had the potential of forcing purchasers of farm products to pay twice for the same good(s).

Congress realized the burden this exception placed on our nation's agricultural markets, and adopted a provision in the Act which eliminated the farm products exception.⁸⁸ Essentially, it provides that a buyer of farm products takes free of all security interests in those goods unless the buyer (1) has received written notice of the security interest from the creditor or the seller together with instructions of how payments of the proceeds from the sale are to be applied to release the security interest and (2) fails to follow the instructions.⁸⁹ By placing the burden of maintaining the validity of security interests in farm products on the seller and lender, this reform will increase the free-flow of farm products in our agricultural markets.

CONCLUSION

The Food Security Act of 1985 will have a major impact on the way FmHA operates. Although the Act's reforms are not designed to eliminate the current farm crisis, the changes will help FmHA respond to the credit

82. See *supra* note 80.

83. Food Security Act, *supra* note 3, at § 1304A, 99 Stat. at 1521 (to be codified at 7 U.S.C. § 1927).

84. H.R. REP. NO. 271(I), *supra* note 37, at 93, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1197.

85. *Id.*

86. See U.C.C. § 9-307(1) (1978).

87. *Id.*

88. See Food Security Act, *supra* note 3, at § 1324, 99 Stat. at 1535 (to be codified at 7 U.S.C. § 1631).

89. H.R. REP. NO. 271(I), *supra* note 37, at 109, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1213.

aspect of the crisis in a number of ways. First, by concentrating FmHA's resources on the credit problems of family-size farms, the reforms will aid these borrowers as they try to survive the difficult times. Second, the revisions in the way FmHA must handle foreclosed farmland will give family-size operations priority in the disposition of that inventory. Third, increasing the agency's guaranteed loan program authority will encourage more participation by commercial lenders. In addition, FmHA will have to use greater scrutiny in granting direct loans because less funds will be available. Last but not least, loan servicing reforms will help family-size farms better deal with the current credit crisis.

The Food Security Act of 1985 is a major step towards reestablishing the FmHA as the "social welfare" agency that Congress intended. Until the winds of fate and the economy change, Congress' objective is to assist those farmers who are unable to meet their financial obligations. Coupled with the recent court decisions and changes in FmHA's regulations, this Act will help accomplish that objective by making FmHA's programs and procedures more responsive to those for whom the agency was created, the family-size farmer.

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