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The Agricultural Credit Act of 1987

by

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Article

The Agricultural Credit Act of 1987

by Joseph A. Hambright

On January 6, 1988, President Reagan executed the Agricultural Credit Act of 1987 ("Act"),[1] more commonly referred to as H.R. 3030 or the "farm credit bailout." This article discusses important provisions of the Act, including Farm Credit System ("FCS") and Farmers Home Administration ("FmHA") borrower rights, loan restructuring, rights of leaseback and repurchase and the secondary market. Comment is also made on the interplay of the Act with the Bankruptcy Code, Colorado agricultural debtor relief legislation and case law.

The meaning of some of the provisions of the Act may be controversial. Although the author attempts to present all views, the reader should be aware that the author's orientation is that of debtor's counsel.

OVERVIEW OF THE ACT

The majority of problem credits involve the FCS or FmHA and are thus directly affected by the law. To many of these debtors, the rights created by the new Act, particularly the right to restructure or modify a loan, may be as significant as rights under Chapter 12 bankruptcy and state agricultural debtor relief legislation.[2]

Other provisions of the new Act will have an effect on agriculture over the long term. In particular, the Act establishes the Federal Agricultural Mortgage Corporation, nicknamed "Farmer Mac," which will administer a secondary market to provide long-term agricultural loans to investor groups. The Act also (1) provides up to $4 billion in bond proceeds to finance recovery of the FCS system and (2) requires a massive restructuring of the approximately 400 FCS offices [Production Credit Associations ("PCAs") and Federal Land Bank Associations ("FLBs")]. It also provides for a merger of FCS offices with the Federal Intermediate Credit Bank ("FICB") in the same district.[3]

Farmer Mac may well revolutionize agricultural credit. The flexibility and opportunities for profit brought to the system by a secondary market should generate substantial interest from nontraditional lending sources, as well as provide traditional agricultural lenders with an opportunity to lessen risk and better balance portfolios. The net effect should be more and cheaper funds available for long-term agricultural loans.

Most observors foresee, for the first time in a decade, substantial lender competition for qualifying agricultural credits. An active, competitive, financial marketplace will be a marked change from the doom and gloom, gunpoint mentality which has pervaded so many agricultural lending relationships in the recent past. One day the marketing department at FCS might be larger than the liquidation department.

Of special concern to lawyers representing agricultural lenders and borrowers are the separate but similar borrower rights provisions of the FCS and FmHA.[4] These provisions have immediate and direct impact on FCS and FmHA borrowers, particularly on loans which are or will shortly be in foreclosure or some form of adversarial proceeding.

From the borrower's standpoint, any analysis of rights under the Act must include consideration of the relief available in bankruptcy (primarily Chapter 12) and under H.B. 1284 and S.B. 123.[5] This legislation should be kept in mind in the discussion of borrower's rights.

FCS BORROWER RIGHTS

Right to Restructure

The Act provides loan restructuring requirements for certain distressed FCS loans.[6] Restructuring is defined to include "rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions" or taking any other actions that will "make it probable that the operations of the borrower will become financially viable."[7] The Act provides that FCS "shall restructure" if it:

> determines that the potential cost . . . of restructuring the loan is less than or equal to the potential cost of foreclosure. . . .[8]

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In determining "cost of restructure," FCS is directed to "consider all relevant factors," including (1) the present value of foregone principal and interest; (2) administrative expenses; (3) whether the borrower furnished "complete and current" financial statements; and (4) whether the borrower presented a "preliminary restructuring plan and cash flow analysis" showing a "reasonable probability [of] orderly debt retirement."[9] Item (4) introduces an element of subjectivity (and therefore controversy) into the restructure calculation. It is likely that litigation will ensue over the feasibility issue.[10]

"Costs of foreclosure" include (1) the difference between the loan balance and "the liquidation value of the collateral," taking into consideration the borrower's "repayment capacity"; (2) the cost of maintaining the loan as nonperforming; (3) administrative, legal and broker fees; and (4) dimunition in collateral value as a result of foreclosure.[11]

The calculations and strategy involved in restructure negotiations and determinations are complex. FCS has, for instance, a fifteen-page policy with forms and computation sheets directed to this issue alone. FCS is currently notifying borrowers of their right to restructure. These notices contain appplication forms and financial information, together with a statement of "Distressed Loan Restructuring Policy" as required by the Act.[12]

When a decision to foreclose has been made, FCS must give forty-five days' notice of the borrower's right to submit a restructure plan that proposes to pay FCS as much or more than the cost of foreclosure. The notice must contain other rights of the borrower, including the right to hearing, the right to notice of the decision on restructure (with the reasons) and the rights of appeal within the system.[13]

Appeal rights are expanded by the new Act. Under the 1985 regulations, borrowers had the right to appeal from lending decisions only.[14] Under the new Act, both restructuring denials and the placing of a loan in nonaccrual status (if there are adverse consequences) can be appealed.[15] The borrower also has the right to a meeting and explanation of any changes in interest rate. Different time limits are applicable depending on the grounds of the appeal.[16] Additionally, the borrower is entitled, at his or her expense, to a new appraisal on appeal.[17] The appeal is to a "credit review committee." This now must include farmer representation, but it precludes participation by the loan officer involved in the initial decision in order to make the review more impartial.[18]

As a practical matter, the new provisions set forth rights similar to those contained in the 1985 regulations.[19] However, the need for further legislation was manifest. Congress appeared to be concerned that the FCS was not proceeding with restructuring as expeditiously as intended by the 1985 Act.[20] Moreover, the significance of the new Act is in the codification and enforceability of the provisions. Substantial questions existed concerning a borrower's ability to enforce the provisions of the 1985 regulations.[21] These questions may still exist. FCS may take the position that it is "debatable" whether a private right of action exists for violation of the terms of the new Act.[22]

> "The possibilities for restructuring eligible loans are quite broad under the new Act and leave room for creative financing plans."

In any case, the possibilities for restructuring eligible loans are quite broad under the new Act and leave room for creative financing plans. In practice, most FCS offices have voluntarily restructured a number of loans using similar options available nnder the 1985 regulations. However, the effect of the new Act on older loans that were not restructured is not entirely clear.

Effect on Existing Cases

The Act provides that FCS is not permitted to:

> foreclose or continue any foreclosure proceeding with respect to any distressed loan before [it] has completed any pending consideration of the loan for restructuring under this section.[23]

The effect of this provision raises some questions. For example, what constitutes the extent of a "foreclosure proceeding"? Clearly, a judicial or Public Trustee foreclosure proceeding prior to sale appears to be contemplated. However, what is the situation after sale and during the period of redemption or after redemption, but while lease and first refusal rights are pending? Further, what does "pending consideration" of the loan mean? Does this require a formal application or will something less suffice? At present, these questions must go unanswered.

FCS takes the position that it is not *required* by the Act to entertain restructure applications for loans which are in foreclosure or bankruptcy. While the legal basis for this position may be debatable, FCS has formulated a policy (Policy of February 19, 1988) which states that FCS, in the "spirit of the Act," will voluntarily entertain restructure of all loans, even though in foreclosure or bankruptcy, and even though not required to do so by the Act.[24]

There are exceptions. FCS will make a case-by-case determination of whether or not to restructure if: (1) a foreclosure sale has occurred; (2) judgment has been entered in a judicial foreclosure; (3) fraud, conversion or other illegal conduct exists; (4) significant damage has occurred to the collateral; (5) the borrower has asserted lender liability counterclaims; (6) the borrower has just emerged from a Chapter 7 bankruptcy proceeding; (7) the borrower has multiple bankruptcy filings; or (8) restructure has recently been denied the borrower under prior regulations. For reasons (1) and (2), restructure is unlikely.[25]

Actually, the "exceptions" are quite broad and will permit FCS categorically to deny applications in many cases. By taking the position that it has no obligation to restructure such problem credits, FCS appears to anticipate lawsuits by borrowers who are denied restructure consideration. FCS views the matter as a question of where to draw the line so as to balance properly the rights of problem borrowers against the rights of FCS stockholders who will bear the losses occasioned by restructure.[26] The FCS position appears to this author to be contrary to the plain meaning of the Act. However, this is an issue to be faced, and its resolution will probably require a detailed analysis of the legislative history of the Act.[27]

In cases where the FCS position is unclear or it has refused to consider restructure, debtor's counsel must be concerned with asserting and preserving the client's rights under the Act. Counsel should obtain the proper forms for application,[28] accompanied by a "preliminary restructuring plan," "sufficient financial information" and "repayment projections," as required by the Act.[29] In the case of a judicial foreclosure, the attorney may wish to consider a Motion to Dismiss or Stay Proceedings based on the Act.[30] In the case of a Public Trus-

tee foreclosure, a possible remedy is to move for a temporary/preliminary injunction in state court on the grounds that the Act forecloses further proceedings by FCS.

If these efforts prove unsuccessful, some borrowers will choose bankruptcy, particularly Chapter 12.[31] The automatic stay will stop further creditor actions, including any sale. There are many considerations that dictate such a strategic choice.[32]

Generally, the first choice of a borrower should be to apply for restructure under the Act prior to seeking relief in bankruptcy or asserting rights under H.B. 1284 or S.B. 123. If the principal creditor is FCS or FmHA, the relief under Chapter 12 may be quite similar to the relief available under the Act.

In Chapter 12, the court will determine the value of the collateral and, if the value is less than the debt, the debtor may pay the secured creditor the value of the collateral (which is the value of the secured claim) in periodic payments over a term of years and at an interest rate appropriate for comparable assets in the marketplace (generally from twenty-five to thirty years for real estate and from five to ten years for personal property).[33]

Although a different method is employed, the calculations under the Act arrive at much the same value. In many of the larger and more complex cases, the existence of substantial assets other than those pledged to FCS or FmHA and the existence of other large private sector creditors may well dictate a strategy which involves a Chapter 12 or Chapter 11 bankruptcy in the first instance. However, even in such cases, the provisions of the Act may be employed in a plan of reorganization and negotiation.

FCS First Right of Refusal

The new Act gives the "borrowers" who are "previous owners" of acquired property (by foreclosure or otherwise) the right both to lease back and repurchase the property under certain terms and conditions.[34]

Within fifteen days after FCS has elected to sell the property, it must notify the previous owner of its right to purchase the property at the "appraised fair market value" or to make an offer to purchase the property for a lesser amount. If the owner elects to purchase, closing shall be within thirty days. If a lesser offer is made, FCS must give notice of its acceptance or rejection within fifteen days. If FCS rejects the offer, it may not sell the property thereafter for a price less than the offer or "on different terms and conditions than those that were extended to the previous owner," without first offering the owner an opportunity to meet the terms and conditions of the new proposal.[35]

As with restructure rights, a substantial question may exist as to the applicability of the first right of refusal provisions to property acquired by FCS prior to passage of the Act. FCS takes the position that the Act does not apply to such property. However, it has voluntarily elected to grant such rights to the former owners, again in the "spirit of the Act." Presumably, it reserves the right to refuse re-lease and re-purchase on a case-by-case basis if it finds that there are negative factors similar to those listed in relation to restructure.[36]

FCS has recently notified some former owners of its election to sell and their right of first refusal. The notice appears to be generally in conformance with the provisions of the Act. If the former owner desires to purchase the property at appraised value, or desires to make a counteroffer for a lesser amount, the notices require the posting of a 10 percent cash earnest deposit as a condition of making the offer. The notices further provide that failure to follow the instructions will cause all rights of first refusal to expire. Debtor's counsel should be aware that the Act contains no requirement for a 10 percent cash deposit or any other deposit. Accordingly, FCS authority for such a requirement is questionable.

If FCS refuses to recognize a borrower's first right of refusal under the Act, debtor's counsel could argue that the Act applies to *all* acquired property, regardless of acquisition date. Briefing and analysis of this issue will require careful study of the legislative history of the Act.[37] In such situations, it is important for borrower's counsel to monitor new FCS activities in regard to the property. It may be necessary to take action to stop resale by filing a complaint, request for injunction or even filing bankruptcy so as to preserve and enforce the borrower's rights.

Interplay with State Legislation

Colorado agricultural debtor relief legislation in the form of H.B. 1284 and S.B. 123 creates a right of first refusal and leaseback, coupled with homestead protection rights for certain former owners of FCS acquired property.[38] While these rights have certain similarities to the rights under the new Act,[39] there are important differences which may become very significant in individual cases. Counsel confronted with these issues should make a detailed analysis of the impact of the applicable Colorado legislation and compare it to the provisions of the new Act.

The new Act also contains other less controversial but still important borrower rights provisions, including: (1) protection against foreclosure or demands for additional collateral from borrowers who are current (even though the lender may be undersecured); (2) a guarantee of par value for borrower "B" stock for a certain period of time; (3) enhanced disclosure, access to documents and right to notices and information including, specifically, the right to receive all appraisals "made or used" by FCS; (4) a right of interest rate review; and (5) a requirement that FCS participate "in good faith" in state mediation programs.[40]

FmHA BORROWER RIGHTS

Debt Restructuring

FmHA is also required to restructure or modify loans when most beneficial to the agency after making a cost analysis similar to the "least cost" methodology employed by the FCS portion of the Act. The pertinent statute provides:

> [I]f the value of the restructured loan is greater than or equal to the recovery value, the Secretary shall . . . offer to restructure the loan obligations of the borrower . . . through primary loan service programs that would enable the borrower to meet the obligations (as modified) under the loan and to continue the farming operations of the borrower.[41]

Other sections of the Act define "value of the restructured loan" and "recovery value."[42]

Priority is to be given to rewriting loan principal and interest and to debt set-aside, which may include shared appreciation arrangements allowing FmHA to participate in appreciation in the value of the property for terms of up to ten years.[43]

In contrast to FCS restructuring provisions, the FmHA rights to restructure contain subjective eligibility requirements. These provide that the delin-

quency must be "due to circumstances beyond the control of the borrower" and that the borrower "must have acted in good faith."[44]

As with FCS provisions, the borrower must present a "preliminary plan" that demonstrates the ability to pay living and operating expenses and to service the debt as restructured. FmHA will then conduct a cost analysis and determine eligibility.[45]

An adverse restructure decision gives the borrower (but not FmHA) a right of administrative appeal and no foreclosure or liquidation may be accomplished until the appeals process is exhausted.[46] After an appeal through the county and state level, the decision may be reviewed by the state director, whose decision may in turn be reviewed by the National Appeals Division. This is a separate division composed of FmHA employees whose sole duty is to determine appeals. Since hearing officers used to be district supervisors from other districts, the new division should make the system more impartial.

Effect on Delinquent Loans And Litigation

The question may arise as to the effect of the new Act on existing delinquent loans and on cases pending in foreclosure and bankruptcy. The only borrower eligible for restructuring is one

> who has outstanding obligations to the Secretary under any farmer program loan, without regard to whether the loan has been accelerated, but does not include any farm borrower, all of whose loans and accounts have been foreclosed on or liquidated, voluntarily or otherwise.[47]

The act further provides that:

> The secretary . . . shall not initiate any acceleration, foreclosure or liquidation in connection with any delinquent farmer program loan before the date the secretary has issued final regulations to carry out the amendments made by this section.[48]

The FmHA provisions on restructuring seem to be partially aimed at overruling the regulations promulgated pursuant to the 1985 Farm Credit Act,[49] which were seen by many observers not to be debtor-oriented. One regulation particularly repugnant to borrowers prohibited FmHA from writing off debt unless there had been a complete liquidation of the borrower's assets. The new Act specifically prohibits FmHA from making liquidation of property a prerequisite to restructuring.[50]

The potential issue of the effect of the new Act on FmHA loans in litigation or adverse proceedings is largely moot. Due to the *Coleman v. Block* case,[51] FmHA has been under an injunction against foreclosure involving any farmer loan program. Thus, FmHA's present involvement in litigation is largely incidental to (1) foreclosures initiated by other lenders where FmHA is in a junior lien position and (2) bankruptcies in which FmHA is a creditor. Additionally, there are exceptions to the *Coleman v. Block* injunction. FmHA may take action in appropriate cases where: the debtor has been discharged in a Chapter 7; fraud or conversion of assets has existed; there has been a graduation to new credit; or there is clearly abandoned property.[52]

If debtor's counsel is involved in a case where FmHA is proceeding with foreclosure or liquidation, the issue of the applicability of the provisions against further proceedings may arise. Analysis may depend on a careful reading of the *Coleman v. Block* case, together with the legislative history surrounding the applicable provisions and an analysis of the regulations to be promulgated.[53] It is expected that the Secretary of Agriculture will seek to dismiss *Coleman v. Block* on the grounds of mootness caused by the new Act.[54]

The dismissal of this action will lift the injunction and enable FmHA to proceed with foreclosures and liquidations as soon as its regulations are promulgated (unless a restructure proposal is pending or on appeal). Under the Act, FmHA has 150 days to pass regulations.[55] Informed sources say that draft regulations will be made available for comment on or about May 1, 1988. An official period will follow during which any interested person may comment. The regulations will be issued after any revisions are made that have been dictated by such comments.[56]

Disposition and Leasing Of Farmland

The Act provides that all farmland in inventory will be reclassified and the land suitable for farming sold in family-farm-sized units. The land is sold at appraised value, with priority to be given to applicants who are either eligible for farmer loans or who have the "greatest need for farm income."[57]

After FmHA acquires property, by foreclosure or otherwise, the borrower shall have the right to purchase or lease the property for a period of 180 days on terms and conditions to be established by regulations. Preferences are established to give the borrower and his or her immediate family the first such right and then, in order, the previous owner foreclosed by other operators of family-sized farms. Any such lease will include an option to purchase the property. The rights of sale and leaseback are in addition to any such rights granted under state law.[58] Significantly, adverse repurchase and re-lease decisions are also appealable under the new appeals process.[59]

Income Release

The Act also provides for release of "essential household and farm operating expenses" for borrowers while restructure is under consideration. If the loan has been accelerated, then such expenses are not to exceed $18,000 over twelve months (or longer if no determination of the restructuring request has been made). If the loan has not been accelerated, there is no specific limitation on the amount which may be paid. In any event, the funding for the income release is to be made by selling certain "normal income security" which includes crops, livestock and ASCS payments.[60]

Homestead Retention

The new Act significantly improves the borrower's ability to retain the homestead in relation to rights which existed under the prior regulations.[61] The amount of acreage eligible for homestead is increased from five to ten acres; the narrow restrictions on the definition of eligible property are eliminated; the borrower is given ninety days within which to apply for homestead protection, and the gross income test is relaxed. Generally, the farmer can occupy the homestead for up to five years on a lease arrangement, during which time the farmer has a first right of refusal to purchase the property.

Interplay with State Legislation

The Act provides that states' rights relating to both homestead and purchase and leaseback "shall prevail" if in conflict with the Act.[62] Significant and complex issues may arise in connection with the interplay of the various acts. The comments made above regarding the effect of comparable FCS provisions of the new Act on state legislation are applicable here as well.[63]

Other Provisions

As with FCS, the Act provides that FmHA must "participate in good faith" in state mediation programs.[64] FmHA had previously taken the position that it was not bound by state law and had refused to participate in mediation. The Act also provides that FmHA cannot require, even though undersecured, additional colllateral nor can it foreclose as long as the borrower is current.[65] The Act also provides an enhanced right to information (including appraisals) on the part of borrowers[66] and for an interest rate reduction program.[67] Finally, the Act encourages FmHA to use the loan guarantee program to the maximum extent possible.[68]

CONCLUSION

The Act is the latest in a series of judicial and legislative responses to the financial crisis which has plagued agriculture since the early 1980s. The Farm Credit Act amendments of 1985, Chapter 12 bankruptcy legislation and various state agricultural debtor-oriented acts (such as H.B. 1284 and S.B. 123 in Colorado) all have created or resulted in substantial new rights and options for farmers and ranchers in financial distress. The principal benefit of the new Act may be the ability of many borrowers to obtain the substantive relief provided them by the various acts without the need to resort to litigation. Obviously, the tough cases will still have to be litigated.

The Act may well have precipitated a significant attitude shift on the part of FCS and FmHA. Comments (and actions) to date from officials of both agencies are indicative of a softer, more compromising approach to workouts.

While most of the attention of lawyers will be directed to the many unanswered questions concerning the borrower rights, leaseback and first right of refusal portions of the legislation, the most significant provision in the long run may well be the least controversial—Farmer Mac.

The current economic conditions in agriculture are flat (in some areas) to slightly escalating land values, low inflation, improved prices for livestock and relatively stable crop markets. Therefore, it may be that the largest percentage of problem loans have been identified and are being dealt with in the system. Even though there will continue to be large numbers of foreclosures, the worst may be over. Wider availability of cheaper credit can only brighten this picture.

Although the new Act has its flaws and uncertainties, it is, for the most part, a well-conceived, healthy piece of legislation. If this relief, coupled with Chapter 12 and agricultural debtor relief legislation, had been available five years ago, many farmers and ranchers may have been able to stay in business.

NOTES

1. The Senate substantially amended what started out as H.R. 3030. Thus, the Act in its final form is the result of compromise between the House and Senate. *See*, Conf. Rep. 100-490, House of Rep., Dec. 18, 1987. The Act amends the Farm Credit Act of 1971 at 12 U.S.C. § 2001 *et seq.* Hereafter, the 1971 Act sections which are amended by the 1987 Act are noted.

2. Chapter 12 is found at 11 U.S.C. § 1201 *et seq.* The Colorado legislation is H.B. 1284 (1986) and S.B. 123 (1987), both amending CRS §§ 38-37-101 *et seq.*, 38-38-101 *et seq.*, 38-39-101 *et seq.*, 4-9-501 *et seq.*, and 13-40-101 *et seq.* For a discussion of Chapter 12, *see*, Martin, "The Bankruptcy Judges, U.S. Trustees and Family Farmer Bankruptcy Act of 1986," 16 *The Colorado Lawyer* 221 (Feb. 1987). For a discussion of the Colorado legislation, *see*, Guyerson and Watkins, "A Review of Agricultural Law: Hard Times and Hard Choices," 15 *The Colorado Lawyer* 629 (April 1986) and Guyerson and Block, "Agricultural Lending in a Troubled Economy," 16 *The Colorado Lawyer* 1773 (Oct. 1987).

3. Titles VIII, II and IV, respectively, of the new Act.

4. FCS borrower rights are contained in Title I, §§ 101 to 110 of the Act, amending 12 U.S.C. §§ 2162, 2199, 2202 and 2219. FmHA borrower rights are contained in Title VI, §§ 601 to 626 of the Act, amending 7 U.S.C. § 1921 *et seq.* As of this writing, copies of the Act were only available from the Government Printing Office or local congressional representatives.

5. Although in-depth treatment of these subjects is beyond the scope of this article, some familiarity with the legislation is presumed. *See*, note 2, *supra*.

6. Title I, Act § 102(a), amending § 2202, 4.14A(a)(3). Loans which are excluded are rural home loans and loans made by the Bank for Cooperatives. Included loans are those between FCS and its "borrowers," who are stockholders within the FCS.

7. Title I, Act § 102(a), amending § 2202, 4.14A(a)(7).

8. *Id.* at 4.14A(e)(1). This section restates the controversial "least cost alternative" which has been the mainstay of FCS treatment of distressed loans and the subject of much criticism due to its overall depressant effect on land values.

9. *Id.* at 4.14A(e)(2).

10. Another section of the Act directs FCS to "take into consideration" *inter alia* the "financial capacity" and "management skills" of the borower and whether the borrower can reestablish a "viable operation." *Id.* at 4.14A (d)(1).

11. *Id.* at 4.14A(a)(2).

12. *Id.* at 4.14A(g). Copies of the policy, together with restructure application forms should be available from any FCS office.

13. Title I, Act § 102(a), amending § 2202, 4.14A(a),(b) and (c).

14. 12 C.F.R. § 614.4440 (1987).

15. Title I, Act § 106, amending § 2202, 4.14.

16. *Id.*

17. *Id.* at 4.14(d).

18. *Id.* at 4.14.

19. Farm Credit Act Amendments of 1985, Dec. 23, 1985, P.L. 99-205, §§ 301-307. The regulations are found at 12 C.F.R., Part 614 *et seq.*

20. The House Report observes:

First, System lenders have been exceedingly reluctant to restructure individual loans on a case-by-case basis; and second, the tensions and pressures on both borrowers and lenders, brought on by financial distress, have caused collapse of the traditional sense of comity and good will between the System and its borrower/owners.

H.R. 3030 addresses both these problems forthrightly by simply requiring that

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System lenders restructure nonaccrual loans if such restructuring is less expensive for the institution than foreclosure. H.R. 100-225 at 62.

21. *See, e.g.*, *Aberdeen Production Credit Ass'n v. Jarrett Ranches, Inc.*, 638 F.Supp. 534 (D.S.D. 1986) and *Farmers Production Credit Ass'n of Richland v. Johnson*, 24 Ohio St.3rd 69, 493 N.E.2d 946 (1986).

22. Comments on this article by local FCS agent (March 1988).

23. Act § 102, amending § 2202, 4.14A (b)(3).

24. The Act does permit foreclosures if: "the loan collateral will be destroyed, dissipated, consumed, concealed, or permanently removed from the State in which the collateral is located." *Id.* at 4.14A(j).

25. Comments regarding current FCS policy are based on a conversation with Terry Gutchenritter, V.P. in Charge of Special Credity Operations, Farm Credit Services, Wichita, Kansas (Feb. 1988).

26. *Id.*

27. *See, e.g.*, H.R. 100-295, 100th Cong. 1st Sess.; S.R. 100-230, 100th Cong. 1st Sess.; and Conf. Rep. 100-490, 100th Cong. 1st Sess. (Dec. 18, 1987).

28. Forms should be available at all FCS offices.

29. Title I, Act § 102(a), amending § 2202, 4.14A(a)(1).

30. Edward M. Kimmell, Senior Staff Attorney, has prepared a sample motion which may be obtained from the Family Farm Defense Fund, 1334 G. Street, N.W. Wash. D.C. 20005, or from the author.

31. 11 U.S.C. § 1201 *et seq.*

32. Some of the many important considerations are (1) the likelihood of preventing a sale by state court remedies; (2) the existence of other creditors in addition to FCS or FmHA; (3) the potential for feasible reorganization under Chapter 12 (detailed financial analysis of the operation); (4) the existence of "cram-down" potential; (5) the existence of sufficient cash flow to fund living and operating expenses, as well as service expected debt loads; and (6) whether additional time will be beneficial to the debtor's rehabilitation efforts. *See, e.g.*, Anderson & Morris, *Chapter 12 Farm, Reorganizations*, § 2.01 *et seq.* (1987).

33. *Id.* at § 9.22.

34. Title I, Act § 108, amending § 2219(a).

35. *Id.*

36. See text accompanying note 25, *supra*.

37. *See*, note 27, *supra*.

38. *See*, note 2, *supra*.

39. Title I, Act § 108, amending § 2219(a), 4.36(h).

40. *See*, Title I, Act § 103 (amending § 2219 by adding 4.13), 104 (amending § 2200, 4.13A) 105 (amending § 2201, 41.3(B)), 107 (amending § 2202, Part C, Title IV by adding 4.14D), 109 (amending § 2201, 4.13), and Title V, Act § 503(b).

41. Title VI, Act § 615, 7 U.S.C. § 353(c)(5) (1981).

42. *Id.* at § 353(2) and (3).

43. *Id.* at § 353(1) and (e).

44. *Id.* at § 353(b).

45. *Id.*

46. *Id.* at § 353(g).

47. Title VI, Act § 602, 7 U.S.C. § 1991(b)(1).

48. Title VI, Act § 615, 7 U.S.C. § 1981(d).

49. *Id.*

50. Title VI, Act § 615(c), 7 U.S.C. § 1981(d)(2).

51. 663 F.Supp. 1315 (D.N.D. 1987).

52. *Id.*

53. *See*, note 27, *supra*.

54. Based on a conversation with Duane Ross, General Counsel for FmHA, Denver, CO (Feb. 1988).

55. Title VI, Act § 624.

56. *Id.*

57. Title VI, Act § 610, amending 7 U.S.C. § 1985(c), 335(c).

58. *Id.* at 335(e)(1)(E).

59. *Id.* at 335(e)(1)(B).

60. Title VI, Act § 611, amending 7 U.S.C. § 1985(f), 335(f).

61. Title VI, Act § 614, amending 7 U.S.C. § 2000, 352. *See also*, 7 C.F.R. § 1955 (1987).

62. Title VI, Act § 610, amending 7 U.S.C. § 1985(c), 335(e)(1)(E); Title VI, Act § 614, amending 7 U.S.C. § 2000.

63. See text accompanying notes 38 and 39, *supra*.

64. Title V, Act § 503(a), 7 U.S.C. § 5103.

65. Title VI, Act § 604, amending 7 U.S.C. § 1927, 307.

66. Title VI, Act § 609, amending 7 U.S.C. § 1981B.

67. Title VI, Act § 613, amending 7 U.S.C. § 1999, 351.

68. Title VI. Act § 625.

CBA Agricultural Law Section Seeks Authors and Advisors

The CBA Agricultural Law Section Council is soliciting articles of general interest and of any length written by lawyers for laypersons for submission to agricultural periodicals and newspapers. Contact Edith Clark, 19039 E. Plaza Dr., Parker, CO 80134, (303) 841-5900.

The CBA Agricultural Law Section is also preparing a resource list of experienced agriculture lawyers willing to provide advice and assistance to other lawyers whose cases involve agriculturally related issues. Volunteers please submit names and specialty area to chair Stow L. Witwer, Greeley National Plaza, #550, Greeley, CO 80631, (303) 623-4128.

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will be included, as well as data compiled on sentencing practices and docket management. Each evaluation will include an interview with the judge who is being evaluated, and each judge will be given the opportunity to respond to the results of the surveys and studies.

Voter Information:

Before retention elections, the results of the evaluations will be made available to the press and general public. Evaluation results will be presented as narrative profiles of the judges with specific recommendations for or against retention.

Funding:

First-year costs are estimated at $96,000 and second-year costs at $78,300. The bill would allow private and federal funds to be used to establish the program, and the program's implementation would be dependent on the availability of funds. The bill has passed the House and the Senate. At the time of this writing, it is on the Governor's desk awaiting signature.