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**New FmHA Credit Legislation:  
A Step in the Right Direction**

by

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## NEW FMHA CREDIT LEGISLATION: A STEP IN THE RIGHT DIRECTION

*The Farmers Home Administration has long been involved with financing farmers in economic difficulty. In order to bolster the effectiveness of existing financial programs and responding to increasing pressure, Congress passed the Emergency Agricultural Credit Act in April, 1984. The Act made major changes in Farmers Home Administration loan policies and procedures which should increase the availability of farm credit.*

### INTRODUCTION

Today's farmer is faced with a multitude of financial hardships. Low agriculture prices plus high operating and borrowing costs result in bankruptcies and liquidations, evincing a need for governmental involvement in agricultural credit. One answer to this need is the Farmers Home Administration (FmHA). FmHA is a credit agency of the United States Department of Agriculture and is authorized to provide credit for agriculture and rural development. The FmHA is intended, however, only as a lender of last resort. Its function is to help finance farmers who cannot obtain credit, or credit terms they can meet, from local private lenders.

The objectives of the FmHA are two-fold. First, by providing technical management assistance, FmHA seeks to improve the financial viability of family farmers.<sup>1</sup> Second, in an effort to develop agricultural communities, FmHA provides funds for needs ranging from business and community facilities to rural community water systems.<sup>2</sup> After making a loan, FmHA supervises it and works with the borrower to form farm plans and advise about credit management. FmHA's goal in providing this oversight is to develop a management plan which will allow borrowers to operate a profitable farm or ranch, which in turn will permit them to obtain credit from commercial lenders.<sup>3</sup>

An ever-increasing farm credit crisis, however, led many to believe that FmHA policies were ill-advised, or at least insufficient to meet current farm financial needs. Responding to this increasing public outcry over farm failures, Congress passed the Emergency Agricultural Credit Act of 1984.<sup>4</sup> This legislation is an important step in the right direction for FmHA and its borrowers. The Act changes vital FmHA procedures, allowing many farmers to obtain loans which Congress hopes will reduce the alarming rate of farm bankruptcies and liquidations. This article will examine the history, policies and controversies surrounding the FmHA, along with the changes implemented by the Emergency Agricultural Credit Act.

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1. Brake, *A Perspective on Federal Involvement in Agriculture Credit Programs*, 19 S.D. L. REV. 567, 584 (1974).

2. *Id.*

3. *Id.*

4. Pub. L. No. 98-258, §§ 601-08, 98 Stat. 138 (codified in scattered sections of 7 U.S.C.).

## BACKGROUND OF THE FMHA

The history of governmental involvement in agricultural credit dates back over 120 years to the Homestead Act of 1862.<sup>5</sup> That Act allowed settlers to acquire a quarter section of unappropriated public land if they would reside upon or cultivate the same for a term of five years.<sup>6</sup>

This history of the modern day FmHA began with the Resettlement Administration, which was established by executive order in 1935.<sup>7</sup> The agency was authorized to make small loans to low income farmers. The Resettlement Administration adopted a policy of supervised loans in a hope that, with financial assistance, farmers would be able to operate their farms successfully.

Convinced that supervised government credit was the answer to farmers' financial problems, Congress once again entered the agricultural credit market by passing the Bankhead-Jones Farm Tenant Act of 1937.<sup>8</sup> The act authorized the newly formed Farm Security Administration (FSA) to manage a program of supervised long-term farm ownership and improvement loans for farmers who were without alternative sources of credit.<sup>9</sup> In 1937, Congress also passed the Water Facilities Act,<sup>10</sup> which provided individual and association farmers the opportunity to establish rural water systems in seventeen drought stricken Western states.<sup>11</sup> The FSA continued their programs of supervised credit for the next nine years, providing financial assistance to farmers through the depression and World War II.<sup>12</sup>

In an attempt to improve and consolidate the federal government's agricultural credit programs, Congress passed the Farmers Home Administration Act in August, 1946.<sup>13</sup> The stated purpose of this legislation was "[t]o simplify and improve credit services to farmers and promote farm ownership . . . ."<sup>14</sup> The new FmHA could authorize loans to average-sized farmers for initial land purchases and farm enlargement and development.<sup>15</sup> These loans, however, could only be made to farmers unable to obtain credit from other sources.<sup>16</sup> The act further provided that as soon as the borrower was financially able to obtain credit from other lenders, he would be required to so do.<sup>17</sup>

Over the next thirty years, a number of amendments to the Farmers Home Administration Act expanded the services the agency offered. The new

5. Ch. 75, § 1, 12 Stat. 392 (repealed 1976).

6. *Id.*

7. Exec. Order No. 7027, 6 C.F.R. § 301.1 (1935).

8. Ch. 517, 50 Stat. 522 (1937) (current version at 7 U.S.C. § 1010-1012 (1982)).

9. *Id.*

10. Ch. 870, § 2, 50 Stat. 869 (1937) (current version at 7 U.S.C. §§ 590r-590x (1982)).

11. *Id.*; FARMERS HOME ADMINISTRATION, U.S. DEPT OF AGRIC., PUB. NO. 84-16361, A BRIEF HISTORY OF FARMERS HOME ADMINISTRATION 2 (1984) [hereinafter cited as BRIEF HISTORY].

12. See BRIEF HISTORY, *supra* note 11, at 3.

13. Pub. L. No. 79-731, 60 Stat. 1062 (current version at 7 U.S.C. §§ 451 note 1032a; 12 U.S.C. § 371, 1702 note (1982)).

14. *Id.* at 1062.

15. *Id.* at 1067 (repealed 1961).

16. *Id.* at 1068-69 (repealed 1961).

17. *Id.*

services included nationwide rural water loans,<sup>18</sup> special emergency farm loans for losses due to natural disasters,<sup>19</sup> direct housing loans to nonfarm rural residents,<sup>20</sup> and a series of loans made for the construction of low-rent apartment complexes to supply housing for elderly rural residents.<sup>21</sup> In 1978, major changes were made by the enactment of the Emergency Agricultural Credit Adjustment Act.<sup>22</sup> One of the most important changes allowed farm cooperatives, partnerships and corporations, rather than just individuals, to apply for FmHA farm loans.<sup>23</sup> Loan limits on many FmHA farm program loans were also increased,<sup>24</sup> and a program of low interest rates designed especially to meet the ownership and operating needs of limited resource farmers was added.<sup>25</sup>

Since its creation, FmHA has made nearly ten million loans or grants in an attempt to further the development of rural America.<sup>26</sup> In fiscal 1983, FmHA made over three billion dollars in farm program loans<sup>27</sup> and held 11.02% of the total outstanding farm debt.<sup>28</sup> Despite this huge volume of loans, the FmHA continues its policy of supervising each loan in an attempt to make farmers financially self sufficient.

#### MAJOR FARM LENDING PROGRAMS OF THE FMHA

FmHA directs several farm loan programs that cater to the individual needs of farm owners and operators. The loans made under these programs are of two types. "Direct" insured loans are made and serviced by a local FmHA official. The funds for these loans are provided by Congress on the basis of estimates from the Office of Management and Budget.<sup>29</sup> The Secretary of Agriculture periodically adjusts the interest rates for these loans, basing the rate on the cost of government borrowing.<sup>30</sup> "Guaranteed" loans, on the other hand, are made and serviced by a local lender who receives an FmHA guarantee to defray up to ninety percent of the loss on the loan in case of default.<sup>31</sup> Repayment terms and interest rates on all guaranteed loans are agreed upon between the local lender and the borrower.<sup>32</sup> These rates typically run from three to five percentage points above FmHA's direct insured

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18. Act of Aug. 17, 1954, Pub. L. No. 83-597, 68 Stat. 734.

19. Act of Aug. 6, 1949, Pub. L. No. 81-38, § 2, 63 Stat. 43 (repealed 1961).

20. Act of June 30, Pub. L. No. 87-70, 75 Stat. 149, 186 (current version at 42 U.S.C. § 1471 (1982)).

21. Senior Citizens Housing Act of 1962, Pub. L. No. 87-723; 76 Stat. 670 (current version at 42 U.S.C. §§ 1471-84 (1982)).

22. 7 U.S.C. § 1961 (1982).

23. Emergency Agricultural Credit Adjustment Act of 1978, Pub. L. No. 95-334, 92 Stat. 429.

24. *Id.* at 432.

25. 7 U.S.C. § 1934 (1982).

26. BRIEF HISTORY, *supra* note 11, at 19.

27. *Id.* at 17. The actual amount of farmer program loans in fiscal year 1983 was \$3,070,726,590. *Id.*

28. *Id.* at 12.

29. Brake, *supra* note 1, at 583.

30. BRIEF HISTORY, *supra* note 11, at 12.

31. Brake, *supra* note 1, at 583-84.

32. BRIEF HISTORY, *supra* note 11, at 12.

loans,<sup>33</sup> but may not exceed a maximum rate set by the Secretary of Agriculture.<sup>34</sup>

FmHA directs several farm loan programs that cater to the individual needs of farm owners and operators. Farm ownership loans are available for family size producers wishing to buy, enlarge or improve farm real estate.<sup>35</sup> Although individuals, partnerships, cooperatives or corporations primarily involved in farming may apply for a loan,<sup>36</sup> only *family size* farms (farms capable of management by a family with a limited amount of hired help) are eligible.<sup>37</sup> A security interest is usually taken in the real estate to ensure repayment. Repayment terms vary according to the purpose of the loan and the ability of the borrower to repay, with the maximum schedules set at forty years. If a direct insured borrower should become financially able to obtain credit from a conventional lender, the borrower will be asked to apply for and accept such credit.<sup>38</sup>

FmHA also makes or guarantees farm operating loans which enable family sized farmers to pay for items necessary in a successful operation.<sup>39</sup> The money may be used to purchase livestock, poultry, farm and home equipment, feed, seed, fuel, fertilizer, hired labor and other current operating needs.<sup>40</sup> Most farm operating loans are secured by a lien on growing crops, livestock or machinery purchased or refinanced with the operating loan funds.<sup>41</sup> In furtherance of the original purpose of the FmHA, only family farmers who cannot obtain conventional financing are eligible.<sup>42</sup> Repayment schedules on direct insured loans may vary from one to seven years, depending on the loan purpose and the borrower's ability to repay.<sup>43</sup>

FmHA has a special program of low interest limited resource loans for family farmers who cannot obtain conventional financing because of insufficient experience, equipment, land or capital. These recipients need the lower rate of interest because they are just entering the "field" of farming and haven't had the time needed to build adequate capital. Limited resource loans are available for both farm ownership and farm operating purpose, and once made are reviewed periodically.<sup>44</sup> When reviewed, if the borrowers position has improved sufficiently, the interest rate will be raised to the FmHA's usual rate of lending.<sup>45</sup>

FmHA also has the authority to administer two types of emergency

33. 130 CONG. REC. S3084 (daily ed. March 22, 1984) (statement of Sen. Boren).

34. FARMERS HOME ADMINISTRATION, U.S. DEPT OF AGRIC., PROGRAM AID NO. 1002, FARM OWNERSHIP LOANS (1979).

35. 7 U.S.C. § 1923(a) (1982).

36. *Id.* at § 1922.

37. *Id.*

38. See BRIEF HISTORY, *supra* note 11, at 12.

39. 7 U.S.C. § 1942 (1982).

40. *Id.*

41. BRIEF HISTORY, *supra* note 11, at 12.

42. *Id.*

43. 7 U.S.C. § 1946 (1982).

44. See BRIEF HISTORY, *supra* note 11, at 12.

45. *Id.*

loans. Disaster emergency loans may be made to applicants who "have been substantially affected by a natural disaster . . . ." <sup>46</sup> Eligible disasters include droughts, floods, earthquakes or hailstorms. <sup>47</sup> Loans may be made to compensate for actual losses or to meet annual production expenses. <sup>48</sup> Even farmers able to obtain credit elsewhere may qualify for an emergency disaster loan. <sup>49</sup> In those instances, however, the interest rates will be higher than those charged to borrowers unable to obtain outside financing. <sup>50</sup>

Economic emergency loans, insured or guaranteed, may be made by the FmHA to farmers in severe financial trouble. Farmers who are hampered by the lack of available credit from conventional lenders because of economic stress may obtain up to \$400,000 in economic emergency loans. <sup>51</sup> The overall purpose of these loans is to assist farmers and ranchers in continuing existing operations. Like other FmHA loans, only qualified farmers unable to obtain credit elsewhere may be considered for eligibility. <sup>52</sup>

### CRITICISM OF THE FMHA

As with most government programs, FmHA has its share of critics. The subjects of their criticism range from loan deferral policies to the favoring of large corporate farms. In a recent report done by the USDA, it was concluded that credit policies adopted by the FmHA have "expanded farmers' perceptions of their capacity to borrow and have encouraged riskier production and marketing and more aggressive financial plans." <sup>53</sup> Other critics argue that in some cases FmHA loans have allowed borrowers to continue farming when they could have been more successful had they been forced to leave the farm and find other employment. <sup>54</sup>

On the other hand, most small farmers are convinced that FmHA's policies favor wealthy corporations while forcing financially troubled farmers into bankruptcy. While many applicants in need of FmHA assistance are refused aid, recent investigations discovered various cases such as one borrower with a \$300,000 annual income and a net worth of \$5.7 million who had obtained a low interest loan of \$1.3 million. <sup>55</sup> The borrower was later described as "a wealthy individual . . . apparently speculating in farmland and using government-subsidized funds to do so." <sup>56</sup>

The agency's refusal to use all of the funds provided by Congress, particu-

46. 7 U.S.C. 1961(a) (1982).

47. BRIEF HISTORY, *supra* note 11, at 13.

48. *Id.*

49. 7 U.S.C. § 1961(b) (1982).

50. *Id.* at § 1964(b).

51. See BRIEF HISTORY, *supra* note 11, at 8.

52. *Id.* at 13.

53. Looney, *The Future of Government Regulation of Agriculture: Finance and Credit*, 3 N. ILL. U.L. REV. 263, 270 (1983) (citing U.S.D.A., A TIME TO CHOOSE: SUMMARY REPORT ON THE STRUCTURE OF AGRICULTURE 5 (Jan. 1981)).

54. Brake, *supra* note 1, at 596.

55. *Is Farmers "Bank" Really a Bailout for the Rich?*, 94 U.S. NEWS AND WORLD REPORT 33 (Feb. 14, 1983).

56. *Id.*

larly \$121 million set aside for limited resource borrowers and \$600 million appropriated for economic emergency loans have resulted in conflicts in Congress and the courts.<sup>57</sup> The \$600 million in economic emergency loans was not distributed because of Secretary of Agriculture John Block's determination that no economic emergency conditions existed which warranted the issuance of the loans.<sup>58</sup> On August 29, 1983, Federal District Judge Thomas A. Flannery ordered the FmHA to begin lending the \$600 million in economic emergency loans, holding that Block's refusal to implement the loan programs was "arbitrary, capricious, and an abuse of discretion."<sup>59</sup>

In response to this court order, the Office of Management and Budget directed that \$550 million be made available as FmHA guaranteed loans and only \$50 million as direct loans.<sup>60</sup> Farmers and Congress criticized this move, saying it would result in bigger loans doled out to a few larger borrowers. In the words of one populist publication, "[t]he administration has probably prevented all but some token amount of [economic emergency] loan funds from ever reaching FmHA's traditional small farm borrowers."<sup>61</sup>

Other conflicts have arisen over evidence that in 1982 the FmHA decided to implement a policy of forcing producers to repay their farm loans, even if it meant foreclosure or liquidation.<sup>62</sup> This policy was in response to rising delinquencies, which hit the alarming rate of twenty-six percent in farm operating loans in 1982 and twenty-eight percent in 1983.<sup>63</sup> Economic emergency loan delinquencies rose from thirty-one percent in 1982 to over forty percent in 1983.<sup>64</sup> In 1982 and 1983 over 15,000 farmers financed by FmHA went out of business because of economic hardships.<sup>65</sup> Before 1981, FmHA had never possessed over 260 farms.<sup>66</sup> Since then, FmHA has added over 1680 farms to their inventory, resulting in FmHA control of nearly 1900 farms.<sup>67</sup>

FmHA's reluctance to implement deferral programs strengthens the argument that FmHA is not using its authority to ease the credit situation. A number of court cases have been argued over FmHA's deferral policies under 7 U.S.C. § 1981(a). This statute gives FmHA the authority to defer principal and interest, and forego foreclosure upon a showing by the borrower that due to circumstances beyond his control, the borrower is temporarily unable to continue making payments without unduly impairing the borrower's standard of living.<sup>68</sup> The first case challenging the FmHA's deferral procedures was

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57. Looney, *supra* note 53, at 271.

58. *Kjeldahl v. Block*, 579 F. Supp. 1130, 1131 (D.D.C. 1983).

59. *Id.* at 1136.

60. V SMALL FARM ADVOCATE 4 (Spring 1984).

61. V SMALL FARM ADVOCATE 2 (Winter 1983-1984).

62. Looney, *supra* note 53, at 271.

63. BRIEF HISTORY, *supra* note 11, at 31.

64. *Id.*

65. 130 CONG. REC. S3083 (daily ed. March 22, 1984) (statement of Sen. Boren).

66. *Id.*

67. *Id.*

68. 7 U.S.C. § 1981(a) (1982). This section 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

*Curry v. Block*.<sup>69</sup> In *Curry*, a class action was brought on behalf of FmHA borrowers seeking declaratory and injunctive relief to procedures used by the FmHA in loan moratoriums and foreclosures.<sup>70</sup> The plaintiffs argued that they were entitled to receive personal notice of deferral relief opportunities.<sup>71</sup> The court held that personal notice was required.<sup>72</sup> FmHA's refusal to extend the court ordered procedures to other states, however, has resulted in a number of similar cases across the nation.<sup>73</sup>

### CONGRESSIONAL RESPONSE

In response to the mounting criticism over FmHA's policies and procedures, Congress passed the Agricultural Programs Adjustment Act of 1984.<sup>74</sup> The original bill sought only to reduce target prices and provide for acreage reduction and paid land diversion programs for the 1984 and 1985 crops of wheat.<sup>75</sup> Numerous amendments, however, were added to the bill while in the Senate. Among the amendments added were provisions to reduce target prices for the 1985 crops of feed grains, cotton and rice;<sup>76</sup> provisions assisting in the development and expansion of agricultural exports;<sup>77</sup> and providing price supports to farmers cutting corn for silage.<sup>78</sup> A fourth amendment constitutes the focus of this article—the Emergency Agricultural Credit Act of

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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.

*Id.*

69. *Curry v. Block*, 541 F. Supp. 506 (S.D. Ga. 1982).

70. *Id.*; see generally Note, *The Right to Personal Notice of Farm Loan Deferral Relief After Curry v. Block*, 28 S.D.L. REV. 476 (1983).

71. 541 F. Supp. at 508-09.

72. *Id.* at 522.

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

74. Pub. L. No. 98-258, 98 Stat. 130 (codified in scattered sections of 7 U.S.C.).

75. The original bill began as H.R. 4072, 98th Cong., 2nd Sess. (1983), and was reported to the House from the Committee on Agriculture without a report on Nov. 1, 1983, 129 CONG. REC. D1436. The measure was called up before the House under suspension of the rules and passed as amended on Nov. 16, 1983, 129 CONG. REC. H10095-98, and was referred to the Senate Committee on Agriculture on the same day. It was reported to the Senate without a report on March 12, 1984, 130 CONG. REC. S2496. It passed the Senate with Amendments on March 22, 1984, 130 CONG. REC. S3087. A conference report was filed in the House on April 2, 1984, H.R. REP. NO. 646, 98th Cong., 2d Sess. The Senate agreed to the conference report on April 2, 1984, 130 CONG. REC. S3609. The House agreed to the conference report on April 3, 1984, 130 CONG. REC. H2190. President Reagan signed the bill into law on April 10, 1984.

76. Pub. L. No. 98-258, §§ 201, 301, 401, 98 Stat. 130 (to be codified at 7 U.S.C. §§ 1445b-1, 1444, 1441).

77. *Id.* at § 502, 98 Stat. 137 (to be codified at 7 U.S.C. § 1431).

78. *Id.* at § 203, 98 Stat. 133 (to be codified at 7 U.S.C. § 1444d).



1984.<sup>79</sup>

The Emergency Agricultural Credit Act became law in an unusually short time. Congress realized that because of the troubled agricultural economy, farmers were experiencing cash-flow problems. Spring planting was near and immediate credit was needed. FmHA also realized the urgency of the situation and on April 23, 1984, announced as an interim rule the procedural changes implemented by the Act.<sup>80</sup>

### CHANGES IN THE FMHA

The Emergency Agricultural Credit Act of 1984 required substantial changes in FmHA procedures. One major revision requires that emergency disaster loans be made available to eligible farmers in counties adjacent to counties which the Secretary of Agriculture has found farming substantially affected by a natural disaster or counties officially declared disaster areas by the President.<sup>81</sup> Previously, only counties officially declared disaster counties were eligible for the emergency disaster loans.<sup>82</sup> In many natural disaster situations, however, aggregate losses in a county do not justify a disaster declaration, even though some farmers in those counties have suffered momentous losses.<sup>83</sup> When a contiguous county is granted a disaster declaration, the 1984 Act extends the same rights to farmers in bordering counties as if their county had received a disaster declaration.<sup>84</sup> As in other disaster situations, applicants must meet the standard eligibility requirements.<sup>85</sup>

Congress also changed the application deadline for emergency disaster loans. Applications for these loans can now be accepted at any time during the eight month period following a disaster declaration.<sup>86</sup> Previously, farmers wishing to obtain loan assistance were required to submit applications to the FmHA within six months of the designation of the disaster area.<sup>87</sup> The two month extension granted by this legislation will allow farmers an opportunity to fully evaluate their crop losses before being required to apply for emergency relief funds.<sup>88</sup>

In the past, assets used as collateral for emergency disaster loans were valued at their worth after the disaster was declared.<sup>89</sup> This Act requires that for disasters occurring after May 30, 1983, all assets must be valued at either the value on the day before a state's governor requests disaster relief, or the

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79. Pub. L. No. 98-258, §§ 601-08, 98 Stat. 138 (codified in scattered sections of 7 U.S.C.).

80. 49 Fed. Reg. 16983 (April 23, 1984).

81. Pub. L. No. 98-258, § 602, 98 Stat. 138 (to be codified at 7 U.S.C. § 1961).

82. 130 CONG. REC. S2964 (daily ed. March 21, 1984) (statement of Sen. Jepsen).

83. *Id.*

84. *Id.*

85. *Id.*; 130 CONG. REC. S3605 (daily ed. April 2, 1984) (statement of Sen. Helms).

86. Pub. L. No. 98-258, § 602, 98 Stat. 138 (to be codified at 7 U.S.C. § 1961).

87. 130 CONG. REC. S2964 (daily ed. March 21, 1984) (statement of Sen. Jepsen); 130 CONG. REC. S3080 (daily ed. March 22, 1984) (statement of Sen. Grassley); 130 CONG. REC. S3605 (daily ed. April 2, 1984) (statement of Sen. Helms).

88. 130 CONG. REC. S2964 (daily ed. March 21, 1984) (statement of Sen. Jepsen); 130 CONG. REC. S3605 (daily ed. April 2, 1984) (statement of Sen. Helms).

89. 130 CONG. REC. S3080 (daily ed. March 22, 1984) (statement of Sen. Grassley).

value of these assets one year before the designation, whichever is higher.<sup>90</sup> The rash of bankruptcies precipitated by widespread crop failures ultimately flood the market with farm assets and deflate the value of collateral in a farming community, which in turn reduces a farmer's ability to obtain credit needed for a successful operation.<sup>91</sup> This requirement will protect the value of land, equipment and livestock from the price fluctuations caused by a natural disaster.<sup>92</sup> Also, by stipulating that the FmHA must value farm collateral at higher levels, Congress hoped commercial lenders would follow suit and grant farm customers greater flexibility in their credit needs.<sup>93</sup>

The Act also requires that economic emergency loans made between December 22, 1983 and September 30, 1982 total at least \$310 million in direct loans and not exceed \$290 million in guaranteed loans.<sup>94</sup> This requirement is in response to the conflict over the FmHA's prior announcement that of the \$600 million ordered to be made available for economic emergency loans, \$550 million would be offered only in the form of guaranteed loans.<sup>95</sup> That decision negated any value the program may have had for most FmHA applicants. Prior to the Act, local lenders willing to make FmHA guaranteed loans charged an interest rate three to five percent higher than on funds distributed directly by the FmHA.<sup>96</sup> Obviously, this large increase in the interest rate results in loan delinquencies in many cases. By increasing the amount of direct loans to no less than \$310 million, with the discretionary authority to make an additional \$290 million in direct loans, a greater number of farmers will benefit.<sup>97</sup>

Any farmer who has been required to pay \$12.95 for the same bolt or spring that cost \$1.35 to replace ten years ago will vouch that many of today's producers need more money to maintain viable operations. Congress responded to this need by raising the direct operating loan ceiling from \$100,000 to \$200,000 and increasing the guaranteed operating loan ceiling from \$200,000 to \$400,000.<sup>98</sup> By doubling the loan ceilings, Congress hoped farmers would be able to meet the increase in annual production expenses.<sup>99</sup>

In 1983, twenty-eight percent of FmHA borrowers fell delinquent on their farm operating loans.<sup>100</sup> Congress recognized this problem and imple-

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90. Pub. L. No. 98-258, § 602, 98 Stat. 138 (to be codified at 7 U.S.C. § 1964).

91. 130 CONG. REC. S2964 (daily ed. March 21, 1984) (statement of Sen. Jepsen).

92. *Id.*; 130 CONG. REC. S3080 (daily ed. March 22, 1984) (statement of Sen. Grassley); 130 CONG. REC. S3605 (daily ed. April 2, 1984) (statement of Sen. Helms).

93. 130 CONG. REC. S3080 (daily ed. March 22, 1984) (statement of Sen. Grassley).

94. Pub. L. No. 98-258, § 603, 98 Stat. 139 (to be codified at 7 U.S.C. § 1961 note).

95. See note 58, *supra*, and accompanying text.

96. 130 CONG. REC. S3084 (daily ed. March 22, 1984) (statement of Sen. Boren).

97. 130 CONG. REC. S2964 (daily ed. March 21, 1984) (statement of Sen. Jepsen); 130 CONG. REC. S3081 (daily ed. March 22, 1984) (statement of Sen. Thurmond); 130 CONG. REC. S3082 (daily ed. March 22, 1984) (statement of Sen. Sasser); 130 CONG. REC. S3084 (daily ed. March 22, 1984) (statement of Sen. Boren); 130 CONG. REC. S3605 (daily ed. April 2, 1984) (statement of Sen. Helms).

98. Pub. L. No. 98-258, § 604, 98 Stat. 139 (to be codified at 7 U.S.C. § 1943).

99. 130 CONG. REC. S2964 (daily ed. March 21, 1984) (statement of Sen. Jepsen); 130 CONG. REC. S3081 (daily ed. March 22, 1984) (statement of Sen. Thurmond); 130 CONG. REC. S3605 (daily ed. April 2, 1984) (statement of Sen. Helms).

100. BRIEF HISTORY, *supra* note 11, at 31.

mented in the Act authority for FmHA to reschedule operating loans over a fifteen year period.<sup>101</sup> Previously, the repayment period for consolidated or rescheduled FmHA operating loans could not exceed seven years.<sup>102</sup> Also, any farm ownership, operating, or disaster loan that is deferred, consolidated, rescheduled or reamortized must be refinanced at the current FmHA interest rate or the interest rate on the original loan, whichever is lower.<sup>103</sup> In prior years, many borrowers rescheduled their loans at an interest rate higher than on their original loan agreement.<sup>104</sup> These two provisions will offer genuinely hard pressed farmers greater flexibility in their repayment terms.<sup>105</sup>

To bolster the limited resource loan program, the Act requires that at least twenty percent of all farm operating and farm ownership loans authorized during fiscal 1984 must be made at the limited resource rate of interest.<sup>106</sup> Prior to implementation of this provision, state offices could arbitrarily decide the number of loans made to limited resource borrowers.<sup>107</sup> This resulted in a wide discrepancy in the amount of limited resource loans made by the states. Limited resource loans ranged from none of Delaware's total operating loan lending<sup>108</sup> to 69.6 percent of Hawaii's total operating loans.<sup>109</sup> South Dakota had a twenty-two percent ratio.<sup>110</sup> By requiring that a minimum of twenty percent of all funds earmarked for farm ownership or operating loans be made to limited resource farmers, Congress has insured that these much needed funds will be reserved for borrowers the FmHA was originally created to assist.<sup>111</sup>

Full implementation of the twenty percent minimum limited resource quota will be aided by another of the Act's provisions. The Emergency Agriculture Credit Act requires that the Secretary of Agriculture notify farm borrowers about the possibility of, and the procedure for, obtaining limited resource interest rates on FmHA farm loan programs.<sup>112</sup> Notice must be given as soon as practicable during the normal course of loan making and loan servicing.<sup>113</sup> Previously, state and county officials could arbitrarily determine

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101. Pub. L. No. 98-258, § 604, 98 Stat. 139 (to be codified at 7 U.S.C. § 1946).

102. 130 CONG. REC. S2964 (daily ed. March 21, 1984) (statement of Sen. Jepsen).

103. Pub. L. No. 98-258, § 605, 98 Stat. 139 (to be codified at 7 U.S.C. § 1981b).

104. 130 CONG. REC. S2964 (daily ed. March 21, 1984) (statement of Sen. Jepsen).

105. *Id.*; 130 CONG. REC. S3081 (daily ed. March 22, 1984) (statement of Sen. Grassley); 130 CONG. REC. S3081 (daily ed. March 22, 1984) (statement of Sen. Thurmond); 130 CONG. REC. S3084 (daily ed. March 22, 1984) (statement of Sen. Boren); 130 CONG. REC. S3605 (daily ed. April 2, 1984) (statement of Sen. Helms).

106. Pub. L. No. 98-258, § 607, 98 Stat. 140 (to be codified at 7 U.S.C. § 1994).

107. V SMALL FARM ADVOCATE 3 (Spring 1984).

108. *Id.*

109. *Id.*

110. *Id.*

111. 130 CONG. REC. S2964 (daily ed. March 21, 1984) (statement of Sen. Jepsen); 130 CONG. REC. S2967 (daily ed. March 21, 1984) (statement of Sen. Huddleston); 130 CONG. REC. S3605 (daily ed. April 2, 1984) (statement of Sen. Helms).

112. Pub. L. No. 98-258, § 607, 98 Stat. 140 (to be codified at 7 U.S.C. § 1994).

113. *Id.* Notification is made by FmHA Guide Letter No. 1924-B-1. This letter notifies the recipient of the limited resource loans and procedures the recipient should take for applying for the loan. *Id.*

when and to whom limited resource notification would be given.<sup>114</sup> This provision should eliminate many conflicts such as those litigated in *Curry v. Block*.<sup>115</sup>

The Act also requires that FmHA employees cannot directly or indirectly acquire any interest in land in the three year period following any review or action on a loan application relating to the purchase of the land.<sup>116</sup> Finally, future revenues which may be generated from timber crops planted on land previously used to produce farm commodities may be considered by the FmHA when reamortizing delinquent loans.<sup>117</sup>

### CONCLUSION

The credit provisions added by the Emergency Agricultural Credit Act should assist many FmHA borrowers experiencing difficulty because of drought or other economic pressures that developed in the agricultural community during the past several years. Perhaps the most important improvement is the twenty percent limited resource requirement. This is a significant improvement over the previous discretionary use of limited resource loans. It seems ironic, however, that an agency created to help the average-sized farmer has to implement a quota in order to insure that limited resource farmers are able to obtain FmHA loans. When combined with the requirement that FmHA notify applicants of the possibility for obtaining limited resource funds, however, this program should provide a number of farmers some much needed relief from their financial problems.

Despite the assistance this act will bring to the struggling farmer, there is still the criticism that the FmHA is tailoring to the needs of the corporate farmer. Corporate farmers will benefit the most from the doubling of the direct and guaranteed loan ceiling, because they are usually the ones with sufficient needs and collateral to warrant a \$400,000 loan. Also, because the amount of funds available for operating loans is restricted by Congress, every \$400,000 loan eliminates money that could be used to fund several smaller producers. To offset the doubling of the operating loan limits, Congress must accordingly increase operating loan appropriations or fewer borrowers will be able to obtain FmHA assistance.<sup>118</sup>

The Emergency Agricultural Credit Act of 1984 is an optimistic step in the right direction for the FmHA. The improvements it will bring should buy a number of farmers the time they need until economic conditions improve. However, as South Dakota Representative Tom Daschle said immediately before the House voted on the bill; "It is better than nothing, but it is next to nothing when placed beside the desperate situation of family agriculture . . . . If this legislation does nothing else I hope it will spotlight for us the crying

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114. V SMALL FARM ADVOCATE 5 (Spring 1984).

115. See *supra* note 69 and accompanying text.

116. Pub. L. No. 98-258, § 606, 98 Stat. 140 (to be codified at 7 U.S.C. § 1986).

117. *Id.*, § 608, 98 Stat. 140 (to be codified at 7 U.S.C. § 1981 note).

118. V SMALL FARM ADVOCATE 5 (Spring 1984).

need for a fundamental revision of our basic farm legislation in 1985.”<sup>119</sup>

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119. 130 CONG. REC. H2186 (daily ed. April 3, 1984) (statement of Rep. Daschle).