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Neil Harl
Iowa State University, harl@iastate.edu

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THREAT TO COMMODITY LOANS AND LDPS
— by Neil E. Harl

A little-noticed statute, passed at the peak of optimism in 1996 and included in the bulky Omnibus Consolidated Rescissions and Appropriations Act of 1996, now threatens federal farm program benefits including commodity loans and loan deficiency payments. If a non-tax debt to the federal government is delinquent, the individual or firm is ineligible for federal assistance including direct loans, loan insurance, loan guarantees, commodity loans and loan deficiency payments.

The 1996 statutory rule

The Debt Collection Improvement Act of 1996 amended existing legislation in an apparent attempt to crack down on those who become delinquent with respect to non-tax debts owed to the federal government. The statute specifies as follows:

“Unless this subsection is waived by the head of a Federal agency, a person may not obtain any Federal financial assistance in the form of a loan (other than a disaster loan) or loan insurance or guarantee administered by the agency if the person has an outstanding debt (other than a debt under the Internal Revenue Code of 1986) with any Federal agency which is in a delinquent status, as determined under standards prescribed by the Secretary of the Treasury. Such a person may obtain additional loans or loan guarantees only after such delinquency is resolved in accordance with these standards. The Secretary of the Treasury may exempt, at the request of an agency, any class of claims.”

Note that the statute only refers to denial of right to obtain “a loan…or loan insurance or guarantee…” However, the Farm Service Agency, in a Notice issued March 24, 2000, has stated that “…producers with any Federal delinquent non-tax debt may not obtain commodity loans and LDP’s” and has advised state and county Farm Service Agency offices that “…LDP’s are ‘in lieu’ of loans.”

Moreover, the FSA notice states that the effective date “for the new requirement is the date this notice is received in the County Office” and directs that “all pending loans and LDP’s must be found to be ineligible.” The FSA county offices are ordered to “not make loans or LDP’s to producers who they are aware have Federal delinquent non-tax debt.”

Thus, the administrative interpretation by FSA makes it clear that the ineligibility goes well beyond “a loan…or loan insurance or guarantee” administered by FSA. As noted in the statute, the provision can be waived “by the head of a Federal agency.” The head of the Federal agency may delegate the waiver authority to the Chief Financial Officer of the agency.

In addition, the Secretary of the Treasury has been given authority to exempt, “at the request of an agency, any class of claims.”

Charles F. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University; member of the Iowa Bar.
Apparently, the Farm Service Agency has not exercised its waiver authority nor has FSA requested waiver of any “class of claims” from the Secretary of the Treasury.\(^1\)

**Other provisions**

The Debt Collection Improvement Act of 1996\(^2\) contained other provisions of interest.

- The head of a federal agency that administers a program which gives rise to a delinquent non-tax debt may “garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.”\(^3\) The amount garnished may not exceed 15 percent of disposable pay unless a greater percentage is agreed to in writing by the individual.\(^4\)

- An agency head may, “for the purpose of collecting any delinquent non-tax debt owed by any person, publish or otherwise publicly disseminate information regarding the identity of the person and the existence of the non-tax debt.”\(^5\)

**In conclusion**

The 1996 legislation poses a serious economic threat to farmers who are burdened by low commodity prices. Ironically, responsibility for the low commodity prices lies with the Federal Agriculture Improvement and Reform Act of 1996\(^6\) which was signed into law 22 days before the Debt Collection Improvement Act of 1996.\(^7\)

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**FOOTNOTES**


2. Id.

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**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr.

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**ANIMALS**

**CRUELTY TO ANIMALS.** The defendant was convicted by jury trial of cruelty to animals. The defendant owned general and limited partnership interests in a family partnership which operated a cattle ranch. The taxpayer did not live on the ranch and the ranch was managed by an employee. The area experienced drought conditions and the charge arose from the defendant’s failure to provide adequate supplemental feed. The cattle were inspected several times by sheriff’s officers and officers from the local SPCA before the animals were finally seized. The defendant challenged the warrantless entries to inspect and seize the cattle. The court held that the defendant had standing to object to the warrantless searches; however, the court held that the searches and seizure were constitutional because the defendant had no expectation of privacy for open fields. *Westfall v. State, 10 S.W.3d 85 (Tex. Ct. App. 1999).*

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**BANKRUPTCY**

**GENERAL-ALM § 13.03[8].**

**DISCHARGE.** The debtors operated a cattle ranch and had granted a security interest in all livestock and after-acquired livestock to a creditor as collateral for a loan. The debtors made an annual interest payment on the loan but had sold most of the cattle without making any principal payments. The creditor obtained a judgment for the loan principal to the extent the creditor did not recover collateral. The court found that the creditor had expected some cattle sales and that the proceeds would be used to make interest payments, but that the creditor had not consented to the sale of collateral without application of the proceeds against the principal. The court held that the debtors had willfully and maliciously sold the collateral, causing loss to the creditor of the difference between the proceeds of the cattle sales and the amount paid for interest on the loan; therefore, the