3-13-1998

Bankers Unsuccessful In Challenging FCA Regulations

Neil Harl
Iowa State University, harl@iastate.edu

Follow this and additional works at: http://lib.dr.iastate.edu/aglawdigest

Part of the Agricultural and Resource Economics Commons, Agricultural Economics Commons, Agriculture Law Commons, and the Public Economics Commons

Recommended Citation

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in Agricultural Law Digest by an authorized editor of Iowa State University Digital Repository. For more information, please contact digirep@iastate.edu.
BANKERS UNSUCCESSFUL IN CHALLENGING FCA REGULATIONS
— by Neil E. Harl* 

A decision issued on November 21, 1997, handed the American Bankers Association and the Independent Bankers Association a defeat in their challenge to the Farm Credit Administration regulations issued early in the year.1 The regulations involved various aspects of the scope of Farm Credit System lending and the limitations historically imposed on lending to corporations.2

A challenge to a federal agency’s regulations always poses an uphill battle. It is a tough fight to win and challengers are rarely successful. 

The basic authority

The bankers’ complaints really centered on the extent to which the new regulations broadened the scope of Farm Credit lending and were driven by concerns that it would take business away from commercial banks. 

But the fight was not over who should be lending to rural America so much as it involved the narrow issue of (1) what Congress had authorized and (2) whether the regulations were a reasonable exercise of the FCA’s power. 

The key section in the Farm Credit Act of 19713 laid out the basic outlines of Farm Credit System lending authority. That section reads—

“It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.”4

In 1995, FCA started the process of revising its regulations under the statute.5 Those regulations had not been substantially changed since the early 1970s. The bankers argued that the new regulations allowed the Farm Credit System to lend in far more situations than was intended by Congress.6

The court brushed aside the FCA argument that the bankers did not have standing to challenge the new regulations. The court said the bankers had “associational standing” to make the challenge on behalf of their members.7

The court noted that the bankers bore a heavy burden in questioning the regulations. As it turned out, the bankers failed to meet the heavy burden of proving that the regulations were “arbitrary and capricious.”8 That is why federal regulations are rarely overturned.

In a footnote, the court addressed the bankers’ complaint that FCA was acting in bad faith—that the agency had taken its case for broadened lending authority to Congress and struck out and now was trying to accomplish the same result with new regulations.9 The court said it was not bad faith and noted that had FCA been successful in Congress, its lending authority would have been even broader. The court pointed out that whatever FCA sought in Congress had nothing to do with the issuance of regulations under the existing statute.10

The five areas of contention

The bankers’ arguments focused on five specific areas. They lost on all five points.

• First, the bankers were upset because the new regulation permits financing of “the farm-related business activities of an eligible borrower who derives more than 50 percent of its annual income...from furnishing farm-related services that are directly related to the agricultural production of farmers and ranchers.”11 Under the old rule, an eligible borrower deriving 50 percent or less of its income from farm-related services could only borrow specifically to provide those services.12 As the court noted, under the new rule an eligible borrower deriving more than 50 percent of its income from farm-related services may now borrow from the Farm Credit System for any function of the firm, not merely for its farm-related services.13

The court rejected the bankers’ arguments and noted that the new regulation does not violate Congressional intent. The court stated that borrowers must still be “first and foremost farm-related businesses providing services directly related to farmers’ agricultural production.”14

* Charles F. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University; member of the Iowa Bar.
• Second, the bankers argued that the new regulation ignores the Congressional intent to limit Farm Credit System financing to those farm-related businesses providing on-farm, “custom-type” services. The old regulations had contained a limitation to that effect.15

The court rejected the bankers’ position and noted that the Congress never placed such restrictions on Farm Credit lending.16

• The bankers also challenged FCA on the part of the new regulations authorizing Farm Credit financing of merchants whose primary function is selling inputs or purchasing farm products.17 Under the old regulations, loans could be made to commercial enterprises selling inputs or purchasing outputs only if “substantially all of such inputs handled [were] used incident to the services provided.”18

The court pointed out that the statute broadly permits the financing of any business furnishing farm-related services directly related to on-farm operating needs. As the court noted, Farm Credit financing is still only available for “farm-related” businesses.19

• The bankers objected to the scope of lending to cooperatives. The statute states that Farm Credit has the authority to lend for “farm or aquatic business services or services to [other] eligible cooperatives.”20 The old regulations had defined “farm or aquatic business services” narrowly to mean “any goods, business, or services normally used by farmers, ranchers, or producers or harvesters of aquatic products which contribute to their business operations or are in furtherance of the welfare or security of the livelihood of such persons.”21 The new regulations allow lending for “any goods or services normally used by farmers, ranchers, or producers and harvesters of aquatic products in their business operations or to improve the welfare or livelihood of such persons.”22

The court agreed with Farm Credit’s argument that nothing of substance was changed by the amendment.23

• Finally, the new regulations eliminated the limits on lending to farm and ranch corporations. Under the old rules, a corporation or other “legal entity” had to satisfy at least one of three criteria in order to be an eligible borrower—(1) more than 50 percent of the value or number of shares of the stock or equity is owned by individuals conducting the agricultural or aquatic operation; (2) more than 50 percent of the value of the entity’s assets consist of assets related to the production of agricultural or the production or harvesting of aquatic products; or (3) more than 50 percent of the entity’s income is generated by the production of agricultural products or the production or harvesting of aquatic products.24

The court said this move was entirely consistent with the statute.25

Implications of the decision
The decision has been appealed and the Court of Appeals will have another look at it. Given the heavy burden of proof it seems unlikely that the appellate court will view it differently.

If there is to be a change, it is up to Congress. And that does not seem likely at the moment.

FOOTNOTES


6 See Bankers, supra n. 1.

7 Id.


9 See Bankers, supra n. 1, n. 3.

10 Id.


13 See Bankers, supra n. 1.

14 Id.

15 12 C.F.R. § 613.3050(a).

16 Bankers, supra n. 1.


18 12 C.F.R. § 613.3050(b)(2).

19 Bankers, supra n. 1.


21 12 C.F.R. § 613.3110(a)(3).

22 12 C.F.R. § 613.3100(a)(3).

23 Bankers, supra n. 1.

24 12 C.F.R. § 613.3020(b)(1).

25 Bankers, supra n. 1.

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

BANKRUPTCY

FEDERAL TAXATION-ALM § 13.03[7].*

DISCHARGE. The debtor failed to timely file tax returns for 1980-1982. In 1985, the IRS prepared substitute returns and assessed the debtor for the taxes determined by those returns. The debtor did not assist the IRS in preparing the returns nor did the debtor sign those returns. In 1995, the debtor filed returns for 1980-1982 mirroring the returns prepared by the IRS. The debtor sought to have the 1980-1982 taxes declared dischargeable because the debtor filed the returns more than three years before the bankruptcy