

**EXHIBIT 1**

## Excerpts of Complaints/Concerns Regarding USDA Data Collection and Retention

### GAO REPORTS

1. **October 4, 1985 GAO Report: House Committee on Agriculture. Status of Farmers Home Administration Efforts to Install Office Automation**

**\*LOCATED AT: WWW.GAO.GOV REPORT # RCED-86-57BR**

This report presents the results of Phase 1 of the Committee's review covering three aspects of the FmHA's automation of its field offices as requested by the Chairman of the House Subcommittee on Department Operations, Research, and Foreign Agriculture on June 17, 1985. These were the adequacy of FmHA's prototype test of computers in field offices, the contract to acquire computers and associated software for the USDA's field offices and the extent to which the USDA's Kansas City Computer Center (KCCC) can handle the workload expected from computers operating in thousands of field offices. (Pg. 3)

- Summary of Observations (Pgs. 61-62)

(1) The Committee found that the production training program is different from that used in the prototype test. "Instead of using centralized training, as FmHA is doing in the prototype, FmHA plans to have selected state personnel provide decentralized training to field-office personnel and to use computerized tutorial packages to train field-office staff."

(2) "About two-thirds of the application software in the production system were not developed for the prototype test and therefore could not be evaluated for effectiveness, efficiency, and ease of use. Many of the production system's applications depend upon completion of the new loan accounting system in 1987 and establishment of telecommunications links with the new system at KCCC."

(3) "FmHA's ability to measure overall improvements in mission performance [is] therefore dependent upon the introduction of the production system with all of its hardware, software, and telecommunications features. FmHA officials stated that they have no detailed plans to obtain this information, although they plan to prepare periodic status reports on the production system's implementation. We believe, therefore, that FmHA could benefit from tests of that system to validate training, software, and mission performance as the various system components (such as telecommunications, office-automation applications, and the new loan accounting system) are phased in. We recognize that if FmHA follows its planned schedule for installing equipment in its field offices, **all equipment will have been installed by the end of 1987**, when the new accounting system is expected to be implemented. . . . FmHA should conduct tests to validate those components of the project not dependent on the new accounting system prior to installing field office equipment nationwide. Further, before implementing the new accounting system in

all field offices, FmHA should validate that system in selected field offices, including associated mission-performance improvements.”

(4) “The contract for the production system does not obligate USDA to procure a specified number of computers on a set timetable or restrict USDA from modifying the contract to meet its needs. The contract provides recourse for nonperformance.”

(5) “KCCC appears to have adequate capacity to handle the field-office computer systems’ workload until **KCCC replaces its computers in October 1986**. However, KCCC needs to begin monitoring key systems components – memory and channels – in addition to other components to ensure that it has the capacity to handle the field-office workload.”

## **2. January 2, 1986 GAO Briefing Report: Senate Committee on Agriculture. FmHA. Financial and General Characteristics of Farmer Loan Program Borrowers**

**\*LOCATED AT: WWW.GAO.GOV REPORT # RCED-86-62BR**

- “FmHA’s computerized data base, the Farmer Program Management Information System (FARMS), contains certain financial and general characteristics of borrowers, such as debt load and cash flow, the type and size of farm operations, and demographic data. FARMS, started in 1983, uses information obtained from FmHA loan documents on borrowers who have received loans for (1) farm ownership, (2) annual operating expenses, (3) emergency disaster losses, and (4) soil and water development and conservation. **Although FARMS does have some limitations [see \* below], it is the most complete source of financial information available on FmHA borrowers.** FmHA said this information is representative of all FmHA farmer program borrowers on a national basis but is not projectable to individual states or counties. (Pg. 1)

\* “The FARMS data base has three basic data limitations:

(1) The data base is not a statistical sample of all FmHA farm borrowers and thus is not statistically projectable to the nation. The FARMS system obtains its data input from FmHA county supervisors, but not all field offices have reported on all borrowers.

(2) FARMS was not designed to collect specific information on economic emergency loans, one of the five major FmHA farm loan programs, because the program expired in September 1984. The system does contain data on borrowers with (1) farm ownership, (2) operating, (3) emergency disaster, and (4) soil and water loans. The FARMS system does include the amount of economic emergency loan debt in data on total borrower debt without identifying specific sources of that overall debt.

(3) One of the major data sources for the FARMS system is FmHA’s Farm and Home Plan. The Farm and Home Plan is a planning document used by the farmer to develop a farm budget that projects expenses. Used as a planning document, the data tend to be optimistic. The result may be an optimistic presentation of a borrower’s financial condition. (Pgs. 46-47)

- “To assist farmers in difficult economic times, FmHA revised its servicing policy in February 1982 to allow borrowers to obtain additional farm loans without considering the borrowers’ ability to repay prior debts. This policy allowed many farmers to stay in business. However, it also resulted in FmHA’s lending money to many farmers who had limited ability to repay those loans. . . . With more of its farm loan portfolio becoming at risk, FmHA again revised its servicing policy in November 1985. This new, more restrictive policy requires a borrower to be current on loan payments before additional credit will be provided. **We did not test the validity of the FARMS data base.** We did obtain agency comments on the results of our work. FmHA officials agreed with the information contained in the report . . . .” (Pg. 2)

**3. February 1987 GAO Report: House Committee on Agriculture. Data Processing: USDA Needs to Better Manage Field-Office Computer Purchases**

**\*LOCATED AT: WWW.GAO.GOV REPORT # IMTEC-87-12**

The Department of Agriculture’s Soil Conservation Service (SCS) and FmHA awarded a contract on September 10, 1985 to automate operations in the agencies’ approximately 5400 field offices. The contract covers microcomputers, minicomputers, general-purpose software, training, and maintenance services.

Agency Comments:

- SCS and FmHA signed a joint plan on February 18, 1986 to conduct a sharing test of computer resources for collocated field offices. The test includes collocated offices and offices located in the same town or city and is scheduled to be completed in March 1987. “However, both SCS and FmHA plan to continue independently acquiring computers for collocated offices. . . . A delay in installing computers until after the sharing test is completed would not have a significant adverse affect on either agency. **Over half of FmHA’s savings from field-office automation cannot be achieved until 1989, when its new loan-accounting system is completed.**” (Pg. 2)
- “As of May 1986, FmHA had acquired about 1,200 computer systems at an estimated cost of about \$35 million for approximately 1,200 of its approximately 2,250 field offices. **It plans to acquire the remaining computers by November 1987.** These computers are for automating activities such as preparing financial schedules for loan applicants, monitoring loan delinquencies, and maintaining basic borrower files. . . . FmHA estimated that about \$141 million (about 55 percent) of the quantifiable savings will not be achieved until its new centralized loan-accounting system is implemented and the field-office computers are able to directly access the system. **Although this accounting system was originally scheduled for implementation in 1987, development has been delayed (possibly until 1989)** because the development contract was canceled when the contractor did not meet prescribed milestones.” (Pgs. 8-9)

FmHA “has not evaluated whether the computer systems it is installing in its field offices can interface with states’ centralized automated systems that contain lien data on farm assets. This capability would enable FmHA field-office employees to directly access states’ automated lien systems to determine whether a farmer applying for a loan is using the same assets (that is, farm equipment or crops) as collateral to obtain more than one loan.” The FmHA will “evaluate this issue after installing (now estimated for November 1987) all its field-office systems and verifying their effective operation.” (Pg. 16)

**4. February 23, 1989 GAO Report to the Honorable Jesse Helms, U.S. Senate: Farmers Home Administration. Sounder Loans Would Require Revised Loan-Making Criteria**

**\*LOCATED AT: WWW.GAO.GOV REPORT # RCED-89-9**

“One of the purposes of the Farm and Home Plan is to compare planned performance to actual performance. . . . However, our review of files for 160 sampled borrowers disclosed that actual data had not always been provided or included on the plans. For the 1985 plans, actual data were missing in 66, or 41 percent, of the borrowers’ files. Actual data for 1986 were missing in 60, or 38 percent, of the files. . . . FmHA reviewers reported that within the area of credit administration, failure to conduct prescribed year-end analyses of the borrowers’ farm operations was the most prevalent deficiency, and only a small proportion of borrowers had actual income, expense, and debt repayment data in their loan files.” (Pgs. 22-23)

**5. June 19, 1989 GAO Report: House Committee on Agriculture. Farmers Home Administration. Implementation Issues Concerning Four Sections of the Food Security Act**

**\*LOCATED AT: WWW.GAO.GOV REPORT # RCED-89-71**

The Food Security Act of 1985, as amended by the Agricultural Credit Act of 1987, included the homestead protection and lease/buy-back provisions. The homestead protection provision (implemented in March 1986) authorized FmHA to permit former borrowers who had already lost their farms through foreclosure or voluntary conveyance to retain possession and occupancy of their principal residence, and a reasonable amount of land, through a lease with an option to purchase. The lease/buy-back provision (implemented in April 1986) authorized FmHA to grant borrowers a lease with an option to purchase the farmland they had already lost through foreclosure or voluntary conveyance. (Pg. 3) The Agricultural Credit Act of 1987 gave the previous landowners a higher priority for leasing or purchasing the farmland than the current family-sized operator. (Pg. 17)

“According to FmHA’s Assistant Administrator for Farmer Programs, since the homestead protection provision applies only to borrowers indebted during the 5-year period beginning January 1, 1981, and ending December 31, 1985, the provision had to be implemented as quickly as possible. In March 1988, the FmHA Administrator reported . . . that during fiscal year 1987,

49 homesteads were rented to former owners of farms. **FmHA data problems precluded us from independently determining the volumes of activity.” (Pg. 15)**

”The reason cited by FmHA officials for the low number of approvals was that most applicants did not meet the eligibility requirements of the Food Security Act of 1985. The one eligibility requirement cited most often as limiting the number of applicants was that the former borrower must have had a gross annual farm income of at least \$40,000 in at least 2 of the 5 years ending December 31, 1985.” **(Pg. 16)**

“In April 1986 FmHA implemented the lease/buy-back provision of the Food Security Act of 1985. . . . Upon implementation of the Agricultural Credit Act, former owners of property of FmHA’s inventory, who had not been previously considered for lease/buy-back are to be notified of their right to such consideration. The final day for them to exercise their rights to lease or purchase the property is 180 days after FmHA acquires the property. FmHA will not renotify those former owners or operators who were previously considered and turned down for lease/buy-back . . . .” **(Pg. 18)**

“The FmHA Administrator reported in March 1988 . . . that as of the end of fiscal year 1987, FmHA had 276 leases in effect, and purchases totaled 108. **We were unable to independently determine the volume of activity because of FmHA data problems.** Furthermore, an FmHA Administrative Notice dated February 26, 1988, cancelled the requirement that field offices report on such activity in the future. **FmHA is developing an automated reporting system that will become operational with the implementation of the Agricultural Credit Act . . . .”** **(Pg. 18)**

**6. August 1989 GAO Report to the Administrator, FmHA: Information Management: Issues Important to FmHA Systems Modernization**

**\*LOCATED AT: WWW.GAO.GOV REPORT # IMTEC-89-64**

Observations:

- Agency management agrees that it “needs to increase the technical skill levels” of its Information Resource Management staff and has initiated action on this issue. The agency “established but did not make final the responsibilities of its new data administrator position. It is essential that the data administration function be operational before the modernization program begins, **to ensure that the systems that are developed can share information.” (Pg. 11)**

**7. October 26, 1989 GAO Report: Interim Report on Ways to Enhance Management**

**\*LOCATED AT: WWW.GAO.GOV REPORT # RCED-90-19**

“USDA’s heavy investments in information technology over the past few years have yielded gains in program efficiency and productivity improvements. These gains, however, have not

been coupled with corresponding improvements in approaches for using information technology for problem-solving and decision-making.” (Pg. 43)

“[I]n the conservation compliance area, we found that because ASCS’ current system design lacked a component detailing the data collected, how and where they were stored, and where the collection responsibility lay, the data accumulated at the county offices could not be aggregated for reporting to national headquarters. Therefore, ASCS could not ensure that (1) program obligations and costs are in compliance with applicable laws and (2) program funds are appropriately safeguarded against waste, loss, unauthorized use, and misappropriation.” (Pg. 45)

“In its current mode of deploying information technology, USDA is not realizing the full potential of automation to access extensive field data resources and extract meaningful information for top management to evaluate the implications of alternative program approaches and solutions.” (Pgs. 46-47)

“[M]ore and more of the issues facing USDA require coordination and cooperation across agency lines and/or with non-USDA organizations. However, USDA’s vast amount of data resources has not been developed into a resource that can be easily used and reused for these purposes. Because system designs have not included this eventuality, much of the data remain inaccessible and underutilized outside of, and even within, the collecting agency for identifying problems, analyzing trends, or assessing cross-cutting programmatic and policy issues.” (Pg. 47)

“[GAO] issued a qualified opinion on FmHA’s fiscal year 1987 statement of financial position because FmHA’s accounting system did not record current property market values at the time of acquisition for voluntarily conveyed property, as is required by generally accepted accounting principles. FmHA’s accounting system records the fair value of property acquired through foreclosure, while property received by voluntary conveyance is recorded at loan principal plus accrued interest. However, because of depressed farm property values, the borrower’s unpaid loan balance is generally much higher than the conveyed property’s fair market value.” (Pg. 51)

“Decisions made during planning and implementation significantly affect the system’s future efficiency and its effectiveness in providing the information needed to manage the agency’s operations, and serve to determine its useful life. Thus, careful and effective planning and management throughout the entire development process is imperative. For example, FmHA’s efforts to modernize its loan accounting systems date back to 1974, and after several starts and stops, completion is now scheduled for late 1989. USDA’s Chief Financial Officer told [GAO] that, in large part, the delays were caused by the failure to develop adequate functional requirements for the systems prior to contracting for their development.” (Pgs. 52-53) As GAO explained: “Functional requirements describe the accounting and financial management jobs the systems are to perform and the agency’s information requirements.” (Pg. 53 n.10)

**8. January 29, 1991 GAO Report: Farm Agencies’ Field Structure Needs Major Overhaul**

**\*LOCATED AT: WWW.GAO.GOV REPORT # RCED-91-09**

**“If USDA does not begin restructuring soon, technological, demographic, and fiscal changes may compel it to adopt hurried, ill-conceived reforms that could leave it with a structure less suited for administering farm programs.” (Pg. 3)**

“Agency and external opposition poses strong barriers to restructuring USDA’s field operations. Actions affecting local offices typically generate concern in the Congress as well. Thus, USDA needs to engage its grass roots staff, top management, farm clients, and the Congress in updating its current structure to one that is best-suited for delivering its services into the next century.”  
**(Pg. 3)**

**9. June 28, 1991 GAO Report: Disaster Assistance. Problems in Administering Payments for Nonprogram Crops**

**\*LOCATED AT: WWW.GAO.GOV REPORT # RCED-91-137**

GAO reviewed disaster payments by ASCS in Georgia, Kansas, Texas and Wisconsin because these states had large payments and represented geographical diversity. **(Pg. 2)**

“ASCS could not collect data from producers of nonprogram crops until after the disaster assistance legislation [Disaster Assistance Acts of 1988 and 1989] was enacted in August of each year and the producers had filed their loss claims. The delayed authority resulted in ASCS’ being unable to verify the validity and accuracy of much of the producers’ crop loss data, since the evidence had generally been harvested and sold, or plowed under and destroyed. Thus, the integrity of the data that producers of nonprogram crops provided primarily depended on the honesty of the producers. As a result, ASCS lacked assurance that the \$1.3 billion in payments it made to producers of Nonprogram crops were accurate and free from fraud, waste, and abuse.”  
**(Pg. 3)**

“Also, ASCS had no assurance of the reliability of the payment rates and expected yields used to compute disaster payments for many nonprogram crops because it did not have historical data. Of the ASCS files on 378 crops in the 4 states GAO reviewed, only about one-third had documented rates and yields based on the 5 years of data deemed necessary by ASCS.” **(Pg. 3)**

“Because payment rates for nonprogram crops were to be based on producer market prices, the established rates compensated producers for harvest crops, regardless of whether such costs were incurred. For 14 major nonprogram crops GAO reviewed in Georgia and Texas, producers received financial assistance ranging from 80 percent to over 190 percent of state extension service estimates of costs incurred prior to harvest.” **(Pg. 3)**

**10. October 29, 1991 GAO Report: Testimony before the House Committee on Agriculture. FmHA: Half-Billion Dollar ADP Modernization Lacks Adequate Planning and Oversight**

**\*LOCATED AT: WWW.GAO.GOV REPORT # IMTEC-92-2**

This is a Statement of JayEtta Z. Hecker, Director Resources, Community, and Economic Development Information Systems, Information Management and Technology Division and is pretty damning of the FmHA's failure to modernize its information system. After two failed modernization attempts (terminated in 1979 and 1986), they have "serious doubts about whether FmHA can successfully implement the current modernization" and how the "lack of direction and effective oversight are hampering the modernization." (Pgs. 1-2)

"Modernization efforts should be based on an agency's business plan and information systems plan. Business plans identify the long-term critical issues facing an agency and discuss the agency's strategy, objectives, and integrated programs for accomplishing those objectives. . . . FmHA's modernization is not based on such plans." (Pg. 2)

FmHA's Executive Review Board, which was established to oversee its modernization projects, has been inactive for over 3 years and none of the Board members could explain why. (Pg. 3)

FmHA does not effectively oversee the modernization projects: "For instance, FmHA recently purchased \$32 million in computers for its field offices without first preparing the analysis needed for effective management control. Instead FmHA waited to prepare its analysis until after the purchase and after [GAO] requested it. The analysis, prepared after the fact, laces adequate support for estimated benefits and does not consider alternatives." (Pg. 3)

"FmHA is spending hundreds of millions of dollars to modernize systems that support its loan programs before it has clearly articulated a business vision and supporting information needs. Until the agency defines what information technology will be needed to support its mission and operations, FmHA lacks a sound basis for its modernization." (Pg. 3)

Hecker concludes by saying that "the picture that has emerged is not reassuring. The methods used by FmHA to manage its modernization are not sound or consistent with good management practice. These shortcomings increase the risk that the modernization will fail, leaving the agency without the information technology it needs to help cut its loan losses." (Pg. 4)

**11. October 29, 1991 GAO Report: Report to the Chairman, House Committee on Agriculture. ADP Modernization: Half-Billion FmHA Effort Lacks Adequate Planning and Oversight**

**\*LOCATED AT: WWW.GAO.GOV REPORT # IMTEC-92-9**

**See above Testimony of JayEtta Z. Hecker for subject matter.**

**Recommendations:**

"In order to minimize the risks inherent in FmHA's modernization effort, we recommend that the Secretary of Agriculture direct the Administrator of FmHA to take the following actions:

(1) Refrain from starting any new modernization projects until FmHA (1) develops a forward-looking business plan and supporting information systems plan, (2) assesses whether its current modernization efforts are consistent with these plans, (3) modifies its modernization effort, as necessary, to ensure congruence with these plans, and (4) reports to the Secretary the results of its assessment of and modifications to the modernization effort.

(2) Activate the Executive Review Board [referenced in Hecker's testimony above], or designate another body to oversee the modernization program and hold it accountable for overseeing the modernization program and hold it accountable for overseeing the modernization effort. This body should be augmented with experts from banking and credit management, as well as experts in information resources management.

Report the lack of effective oversight mechanisms as a material internal control weakness under the Federal Managers' Financial Integrity Act." (Pg. 1)

**12. October 1993 GAO Report: House Committee on Agriculture. Information Resources: USDA Lacks Data on Major Computer Systems**

**\*LOCATED AT: WWW.GAO.GOV REPORT # AIMD-94-31**

According to the USDA, they have 17 major systems under development with total estimated life-cycle costs of \$6.3 billion. One of these – a major information technology modernization program for the farm service agencies called Info Share – accounts for about 41% (\$2.6 billion) of the total. Although specific information about major systems is required by Office of Management and Budget (OMB) Circular A-11, "Preparation and Submission of Budget Estimates," the USDA has not routinely collected and reported these basic data and "therefore has not fully complied." Recently however, USDA has taken steps to comply with the Circular. (Pg. 1)

When the GAO requested information on major systems under development from the USDA, "OIRM [Office of Information Resources Management] said that they did not have the data readily available." (Pg. 3)

"Data required by OMB Circular A-11 would routinely provide USDA decisionmakers with key information needed to improve oversight of the Department's information technology investments. In an internal document developed in late 1991, OIRM stated that USDA component agencies frequently planned and implemented major acquisitions for equipment, software, and services before OIRM was involved and without any continuing departmental knowledge or input. OIRM also stated that under its budget review process, it could not determine if there were duplications of systems across agencies that could have been eliminated or if agency requests addressed the same cross-cutting issues that should have been coordinated." (Pgs. 4-5)

"OIRM officials are taking steps to comply with OMB Circular A-11. In June 1993, OIRM issued guidance to its component agencies on how to report information for the fiscal year 1995

budget submission.” They’ve also conducted half-day workshops with OMB assistance and hired additional staff to provide increased oversight of component agencies’ IRM initiatives. (Pg. 4)

October 13, 1994- Congress passed the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, authorizing the Secretary to reorganize the department to achieve greater efficiency, effectiveness, and economics in managing its programs and activities. The law called for the consolidation of headquarters offices and the combination of USDA agencies’ field offices to reduce personnel and duplicative overhead expenses. (see June 12, 2003 CR Report pg. 7)

October 20, 1994- The USDA Secretary signed Secretary’s Memorandum No. 1010-1 abolishing previous positions, agencies, and offices, and establishing new ones. Among them, the Farmers Home Administration, the Food and Nutrition Service, and the Soil Conservation Services were abolished; The Farm Service Agency, the Food and Consumer Service, and the Natural Resources Administration was established and assigned the responsibility, among others, of supervising all activities of a newly created Office of Civil Rights Enforcement (OCRE). (see June 12, 2003 CR Report pg. 7)

**13. July 1999 GAO Report: Secretary of Agriculture. USDA Information Security: Weaknesses at National Finance Center Increase Risk of Fraud, Misuse, and Improper Disclosure**

**\*LOCATED AT: WWW.GAO.GOV REPORT # AIMD-99-227**

“The National Finance Center develops and operates administrative and financial systems, including payroll/personnel, administrative payments, accounts receivable, property management, and accounting systems for both USDA and more than 60 other federal organizations, including GAO, under cross-servicing or franchising agreements.” (Pg. 3)

“Our review of NFC’s access controls found that the center was not adequately protecting financial and sensitive personnel information. Specifically, NFC had not appropriately limited access granted to authorized users, effectively controlled its operating system software, sufficiently secured access to its network, or adequately restricted physical access to its computer resources. As a result, NFC’s computer systems, programs, and data are at risk of inadvertent or deliberate misuse, fraudulent use, unauthorized alteration, or destruction possibly occurring without detection.” (Pg. 5)

**14. August 2000 GAO Report: Chairman, Subcommittee of Department Operations, Oversight, Nutrition, and Forestry, Committee on Agriculture, House of Representatives. Information Security: USDA Needs to Implement Its Departmentwide Information Security Plan**

**\*LOCATED AT: WWW.GAO.GOV REPORT # AIMD-00-217**

“During 1999, USDA’s Office of Inspector General (OIG) and we found significant information security weaknesses at the department’s two major data centers, which placed critical assets at significant risk. For example, the OIG’s general controls review at USDA’s National Information Technology Center reported network security vulnerabilities and weaknesses, such as poor network monitoring and intrusion detection and further security weaknesses at USDA’s NFC that included inadequate computer security planning and systems information that was vulnerable to unauthorized access.” (Pg. 4)

“As previously discussed, key information security requirements and guidelines require federal agencies to establish effective information security management programs. Failure to do so may threaten an agency’s ability to carry out its missions and properly safeguard its critical assets and can constitute a material internal control weakness under the Federal Managers’ Financial Integrity Act.” (Pg. 7)

“Beyond this, however, little progress has been made for implementing other recommendations in the plan designed to strengthen departmentwide information security because USDA lacks a strategy for doing so and because sufficient resources have not been made available. Until and unless USDA fully implements these important information security improvement efforts, the department’s critical assets will remain at risk for cyber attacks and other threats, and USDA will not be in a position to provide a secure environment for expanding e-government.” (Pg. 8)

## **CONGRESSIONAL REPORTS AND TESTIMONY**

### **15. Committee on Government Operations. The Minority Farmer: A Disappearing American Resource; Has the Farmers Home Administration Been the Primary Catalyst? H.R. Rep. 101-984 (1990)**

“The lack of statistical data in some cases, and definitive statistics in others seriously limits FmHA’s ability to assess the impact of FmHA programs on program participants, particularly minority participants. When statistical data is available, FmHA program personnel do not aggressively interpret, evaluate and maintain the data. For example, when the subcommittee staff contacted the FmHA National Office (Washington, DC) personnel responsible for the limited resource operating and ownership program for statistical data on minority participation, the staff was informed that FmHA does not maintain that data – the office would have to compile the data for the subcommittee (data provided by the FmHA Finance Office in New Orleans, LA).” (Pgs. 29-30)

“When the subcommittee staff asked the FmHA Equal Opportunity Office for data (number filed, basis, status, resolved, etc.) on program complaints filed within the past three fiscal years (1986-1989), the data FmHA provided was not definitive, did not total categorically with overall totals, and in some cases numbers were not explained and subsequent discussions with FmHA officials did not clarify the problems. During the course of the subcommittee’s investigation, the staff learned that FmHA is the subject of a Freedom of Information Act (FOIA) lawsuit filed on behalf of minority farmers requesting information on discrimination complaints and other data addressing minority farmers. The FOIA request focused on information regarding the processing

of race discrimination complaints filed against FmHA. Advocates filed the lawsuit because they believed FmHA did not respond timely and failed to provide all documents requested. The advocacy group testified before the subcommittee that:

The events which unfolded surrounding this FOIA request displayed a blatant affront to the requirements of the Freedom of Information Act; the events also revealed that FmHA is either unable or unwilling to locate, or is intentionally withholding, the most basic documents relating to its civil rights enforcement responsibilities.

The advocates alleged that FmHA withheld data/documents on discrimination complaints; annual publications on Equal Opportunity; USDA policy on Civil Rights; virtually all documents indicating how the complaint process operates; reports, studies and surveys addressing black land loss and all statistics reporting loan activity by race for the 1980's." (Pg. 30)

**16. May 14, 1997- Testimony Before the House Committee on Agriculture, Department Operations, Nutrition, and Foreign Agriculture Subcommittee. USDA Information Management. Extensive Improvement Needed in Managing Information Technology Procurement Investments**

**\*LOCATED AT: WWW.GAO.GOV REPORT # T-AIMD-97-90**

In October 1991, GAO reported that the FmHA faced "unacceptable risks by proceeding with a \$520 million project to modernize automated systems for making and collecting loans because project plans were not based on a strategic business plan that articulated how the agency would operate in the future, such as handling the impact of expected changes to loan management operations. USDA canceled this procurement after issuance of our report." (Pg. 5)

USDA experienced more than its share of problems with the Info Share program it began in April 1993. [USDA's consolidated program was known as Info Share]. It promised to improve operations and delivery of services to customers of farm service and rural development agencies by reengineering business processes and developing integrated information systems. Customer services would be improved through "one-stop" shopping for farm services. But the Info Share program was "basically being managed as a vehicle for acquiring new technology, rather than as a true opportunity for reengineering business processes to better serve farm service customers. The concept of one-stop shopping had not been clearly defined and USDA managers were not performing the key steps necessary to fundamentally improve the way these agencies do business." (Pg. 6)

GSA canceled USDA's procurement authority for Info Share. (Pg. 7)

"Because of the lack of strong IRM leadership, accountability, and oversight, USDA agencies have continued to plan, acquire, and develop separate systems, independently, without considering opportunities to integrate systems and share data. . . . **These are systems that are not interoperable with other agency systems, and actually inhibit the use and sharing of information.** In fact, data are often inaccessible and under utilized outside of, and even within,

USDA's agencies for identifying problems, analyzing trends, or assessing crosscutting programmatic and policy issues. **Even after the Congress passed the 1990 Farm Bill that specifically required USDA to integrate various databases that relate to agriculture program data, USDA did not do so, and its agencies continue to have separate databases that are not integrated and do not share information.**" (Pg. 12)

**17. May 14, 1997 – House Committee on Agriculture, Department Operations, Nutrition, and Foreign Agriculture Subcommittee Information Technology Procurement Practices at the U.S. Department of Agriculture**

Joel Willemssen (GAO): "Because of the lack of strong IRM [Information Resources Management] leadership, accountability, and oversight, USDA agencies have continued to plan, acquire, and develop separate systems, independently, without considering opportunities to integrate systems and share data. Consequently, over time, the department has invested hundreds of millions of dollars in hundreds of stovepipe systems – many poorly planned. These are systems that are not interoperable with other agency systems, and actually inhibit the use and sharing of information. In fact, data are often inaccessible and underutilized outside of, and even within, USDA's agencies for identifying problems, analyzing trends, or assessing crosscutting programmatic and policy issues. **Even after the Congress passed the 1990 farm bill that specifically required USDA to integrate various databases that relate to agriculture program data, USDA did not do so, and its agencies continue to have separate databases that are not integrated and do not share information.**" (Pg. 71)

**18. March 3, 1998 – House Committee on Agriculture, Department Operations, Nutrition, and Foreign Agriculture Subcommittee U.S. Department of Agriculture Year 2000 Compliance Act (H.R. 3280)**

Hon. Tom Latham (Iowa): "The history of information technology at USDA has been a disaster. . . . The real problem at the Department is one of structure and culture. The Department as currently structured has some 29 different independent agencies with broad missions. Each agency is responsible for its own I.T. budget and procurement. As a result of this stovepipe structure, coordination and communication and proper planning in telecommunications and information technology has been nonexistent. These conditions have contributed to the I.T. disasters at USDA. Instead of thinking strategically about telecommunications and I.T. across agencies, the culture at USDA has encouraged fiefdoms and turf-mindedness." (Pg. 7)

Hon. Bob Goodlatte (Va.): "[T]he lack of coordination between the agencies of the USDA that is the root of many management problems will continue and any idea of a customer friendly, one-stop shopping center for our farmers will be killed. . . . Over the last year we've had several meetings with the CIO [Chief Information Officer] to determine what additional authority she may need to avoid a year 2000 calamity. It became clear that the [CIO] struggled to be the strategic coordinator that her position demands. She was too busy untangling what the agencies were doing, had done, or about to do, to keep her focus on the Department. H.R. 3280 turns that management style on its ear. (Pg. 11)

The [USDA] Year 2000 Compliance Enhancement Act recognizes the [CIO] is just that, the chief. We will never get the USDA in an efficient and effective working order if we continue to allow the agencies to dictate the actions of the Department. Instead, we need to eliminate the stovepipe mentality that permeates the Department by enhancing the powers of the [CIO], so there is one person accountable to Congress and the taxpayers for information resources at USDA.” (Pg. 11)

Joel Willemsen (Director, Civil Agencies Information Systems, Accounting and Informational Management Division, GAO): “While many factors have contributed to [various problems], a major cause has been a lack of strong leadership, accountability, and oversight. Over the years, USDA’s component agencies were allowed to independently acquire and manage I.T. investments solely on the basis of their own needs or interests. Because of this, USDA agencies have continued to independently plan, acquire, and develop separate systems without considering opportunities to integrate systems and share data. . . . Further the CIO is to promote improvements in work processes, implement and agencywide information technology architecture, and evaluate the performance of I.T. programs.” (Pg. 30)

Hon. Bob Goodlatte (Va.) to Mr. Willemsen: “Your office has spent the last decade criticizing the Department for its waste, fraud and abuse, and mismanagement in its information technology activities. The Comptroller has chastised the Department for acting like 29 independent Departments of Agriculture. In your own words you have stated that the Department possesses a stove pipe mentality.” (Pg. 33)

**19. October 14, 1999 - House Committee on Agriculture, Department Operations, Nutrition, and Foreign Agriculture Subcommittee USDA’s Civil Rights Programs and Responsibilities**

“Rosalind Gray: In the past, FSA employees had an investigative unit, and their responsibilities was to develop information for FSA and that had been the practice. Because of so many complaints that we received about FSA employees coercing complaints, we eliminated that in our new procedures. Now they no longer serve that role.” (Pg. 10)

**20. March 21, 2000—Testimony Before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform, House of Representatives. Financial Management: USDA Faces Major Financial Management Challenges**

**\*LOCATED AT: WWW.GAO.GOV REPORT # T-AIMD-00-115**

“For 10 agencies—including USDA—audited financial statements were required as part of a pilot program to test this concept for an agency’s entire operations. Since USDA’s participation in the pilot program in 1991, USDA and several of its component agencies have received a series of unfavorable financial audit reports due to deficiencies in financial management systems.” (Pg. 2)

“As USDA’s financial statements have continued to be subjected to annual audits, the agency’s history of deficiencies in financial reporting has continued. Many of these weaknesses persist because of (1) an outdated accounting system and (2) problems with supporting computerized systems—referred to by USDA as feeder systems. THE USDA IG has reported that the old accounting system does not comply with the requirements of FFMIA because, among other things, it does not conform with the SGL. In addition, the IG reported that the feeder systems—which include information such as billing, purchases, and real and personal property activities—are poorly documented, operationally complex, deficient in appropriate control processes, and costly to maintain.” **(Pg. 3)**

“Prior to the implementation of the Federal Credit Reform Act (FCRA) of 1990, credit programs—like most other federal programs—were reported in the budget on a cash basis. Thus, loan guarantees appeared to be free in the budget year, while direct loans appeared to be as expensive as grants. As a result, costs were distorted and credit programs could not be compared meaningfully with other programs and with each other.” **(Pg. 3)**

“Since 1994, the IG has reported material weaknesses in the processes and procedures used by USDA’s lending agencies to estimate and reestimate loan subsidy costs. In January 1999, we [the GAO] reported that the agency was unable to make reasonable estimates of the cost of its loan programs because it did not maintain key historical data needed as a basis to estimate future cash flows and that USDA’s computer systems were not configured to capture the data needed to make the estimates.” ... “Additionally, for most of USDA’s credit programs, cost estimates based on unreliable data can affect the availability of credit programs to potential borrowers because changes in these estimates can affect the number and amount of loans and guarantees which can be made.” **(Pg. 4)**

The USDA’s lack of historical information has caused them to base a lot of their predictions on the opinions of program management. The opinion of program management should only be used as an interim resource when developing/starting up a new program. This is due to the fact that program management does not supply reliable data in the long run that the historical data would provide. “The lack of historical data is largely the result of system inadequacies.” ... “For example, the USDA’s system for reporting some of its non-housing direct loans contains inaccurate data on the number of payments borrowers make each year. As a result, the agency cannot reasonably estimate the amount of cash that should be received annually from borrowers using this data.” **(Pg. 5)**

“The lack of good internal controls puts an agency at risk of mismanagement, waste, fraud, and abuse. Further, without strong internal controls, an agency is unable to generate consistent, reliable financial information needed to maintain accountability over its assets on an ongoing basis. At USDA, several persistent internal control weaknesses contributed to the IG’s inability to form an opinion on the agency’s fiscal year 1999 consolidated financial statements.” **(Pg. 13)**

“The IG reported that tests of USDA’s computer network disclosed significant security vulnerabilities that require immediate action. The IG stated that USDA is vulnerable to abuse and losses because few of its component agencies comply with the departmental regulation that

requires that sensitive and Privacy Act data not be transmitted in clear text over the Internet. In addition, USDA did not have a proactive network monitoring and intrusion detection program. Such a program would require component agencies to promptly identify and investigate unusual or suspicious network activity, such as repeated failed attempts to log onto the network; attempts to identify systems and services on the network; connections to the network from unauthorized locations; and efforts to disrupt operations by overloading the network. Without these controls, USDA has little assurance that unauthorized access to systems on its network would be detected in time to prevent or minimize damage.” **(Pg. 15)**

**EXHIBIT 2**



1           A     This is Exhibit Number 11.

2           Q     If you could, would you turn to the  
3 provision that governs the document retention. I'll  
4 give you a little hint. You can take a look at the  
5 yellow clip.

6           A     Okay. Save me a little time here.

7           Q     What is the time indicated there?

8           A     "Destroy individual loan only applications  
9 two fiscal years and one month after the end of the  
10 fiscal year in which the application was rejected,  
11 withdrawn, canceled, or expired or one fiscal year  
12 after the end of the fiscal year involving final  
13 action was taken on an application involving an  
14 appeal, investigation or litigation, whichever is  
15 later."

16          Q     That says to me -- and I'm asking you  
17 whether this is the way the system operated -- that  
18 during the pendency of litigation or any of those  
19 other factors, an application was not to be  
20 destroyed. Is that right?

21          A     Yes.

22          Q     Is that principle that during the pendency

**EXHIBIT 3**



United States  
Department of  
Agriculture

Farmers  
Home  
Administration

Washington  
D.C.  
20250

FmHA AN No. 1053 (1910)

August 1, 1984

SUBJECT: The Use of the Term "Character" in County Committee  
Rejection Letters

TO: All State Directors, Farmer Program Chiefs, District Directors,  
and County Supervisors

The County Office Advisory Team has brought to our attention that the term "character" is frequently used in County Committee rejection letters. Referring to an applicant's character in a rejection letter is often considered an insult and generates hostility. Therefore, you should discontinue the use of the term "character" in rejection letters.

The phrases in paragraph 4 on page 2 of FmHA Guide Letter No. 410-3 (Revision 3) (FmHA Instruction 1910-A), or similar wording, will be used when referring to an applicant's credit history or other traits that involve character.

for CHARLES W. SHUMAN  
Administrator

EXPIRATION DATE: August 31, 1985

FILING INSTRUCTIONS: Preceding  
FmHA Instruction 1910-A



Farmers Home Administration is an Equal Opportunity Lender.  
Complaints of discrimination should be sent to:  
Secretary of Agriculture, Washington, D.C. 20250

**EXHIBIT 4**

# The Decline of Black Farming in America

A Report of  
the United States Commission  
on Civil Rights

February 1982

young farm families, [who] have had an opportunity to buy [their] first piece of land, small minority farmers, especially in the South and Southwest and many Indian farmers.<sup>30</sup>

FmHA acknowledges that these small family farmers and minorities have been unable to obtain sufficient credit in the past.<sup>31</sup> Under limited resource loan conditions, low-income farmers are eligible for farm ownership and operating loans under special terms and at reduced interest rates.<sup>32</sup>

As a lender of last resort, the goals of the Farmers Home Administration appear to be clear. However, regulations intended to implement these goals leave room for a wide range of subjective interpretation.

For example, to ensure that FmHA serves only those who are unable to obtain loans from other sources, "credit elsewhere" tests

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30. H.R. Rep. No. 95-986, p. 11.

31. Gordon Cavanaugh, Administrator, Farmers Home Administration, USDA, statement before the U.S. House Committee on Appropriations, Subcommittee on Agriculture, Rural Development and Related Agencies, 96th Cong., 2d sess., Agriculture, Rural Development and Related Agencies Appropriation for 1981, pt. 3, p. 97 (hereafter cited as Cavanaugh Testimony).

32. Farm ownership and operating loans are made at interest rates not more than the cost of money to the government. Limited resource loans are made at interest rates below cost to the government.

are applied to loan applicants.<sup>33</sup> However, the lack of alternative credit may be self-certified by the applicant or based on the judgment of the county supervisor.<sup>34</sup> The decision to require documentation is discretionary and prone to influence by subjective factors, such as personal relationships and status in the community. In a study of one farm loan program, the General Accounting Office (GAO) found that in a significant number of instances, "credit elsewhere" tests were never applied and many FmHA borrowers could have found sources of credit other than FmHA.<sup>35</sup>

The problem of subjectivity permeates much of the FmHA loan decision process. Evaluating another loan program, GAO found that "FmHA lacks specific criteria for approving loans; consequently decisions made by local FmHA county supervisors [in this case

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33. Structure of Agriculture, pp. 119, 121; U.S., General Accounting Office, Farmers Home Administration and Small Business Administration Natural Disaster Loan Programs: Budget Implications and Beneficiaries (Aug. 6, 1979), p. v. (hereafter cited as Natural Disaster Loan Programs).

34. 7 C.F.R. §§1941.6, 1943.6, 1943.56 (1981).

35. Natural Disaster Loan Programs, pp. 26-37. Regulations recently published governing FmHA's disaster and economic emergency loans have been revised to require stricter "credit elsewhere" tests. 7 C.F.R. §1945.56(b), 1945.105 (1981).

concerning housing loans] are somewhat subjective and result in applicants not being treated fairly and consistently...."<sup>36</sup> Upon reviewing 200 rejected and approved housing loan files in 15 county offices, GAO found "various disparities in the criteria adopted." Variations were found in job tenure requirements and verification of credit-worthiness. It is likely that determinations of eligibility for farm loans are equally subjective, for example, with respect to required farm experience, credit-worthiness, property appraisals, and viability of farm plans. Lack of specific criteria for loan determinations potentially enhances FmHA's flexibility and ability to serve clients. It also creates loopholes which allow for discriminatory treatment.

FmHA regulations governing eligibility for low-interest limited resource loans also leave much room for interpretation. They describe in general terms the profile characteristics of a limited resource farmer.

[A] farmer or rancher [who] is an operator of a small or family farm (a small farm is a marginal family farm) including a new operator, with a low income who demonstrates a need to maximize farm or ranch income....must meet the eligibility requirements for a farm ownership or operating

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36. U.S., Comptroller General, "Stronger Federal Enforcement Needed to Uphold Fair Housing Laws" (CED-78-21, Feb. 2, 1978), p. 30.

loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.<sup>37</sup>

Despite this lengthy description of a limited resource farmer, these regulations do not provide specific eligibility criteria concerning farm size, income, or assets; ultimately the eligibility determination is subjective.

To the detriment of black farmers, FmHA regulations do not require outreach.<sup>38</sup> However, the significance of outreach is recognized in USDA's Administrative Regulations, which state:

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37. 7 C.F.R. §1941.4(g) (1981).

38. Id. §1910.9 (1981). The State office may provide materials and information for outreach, but this is not required.

**EXHIBIT 5**

**DECLARATION OF WILLIAM HODGSON ARENS**

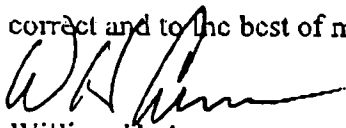
1. I am over 18 years of age and a United States Citizen. My birth date is May 14, 1942. My mailing address is 791 Country Road 1326, Maple, Texas 79346.
  
2. I assist farmers in dealing with the administrative requirements of the United States Department of Agriculture ("USDA") farm loan programs and I have since 1986. I help farmers apply for direct and guaranteed farm ownership and farm operating loans. I also help farmer borrowers restructure delinquent debt. Although most of the farmers I assist are white American farmers from the state of Texas, I have represented many Hispanic family farmers.
  
3. I have dealt with family farmers and the USDA's Farm Service Agency (formerly the Farmers Home Administration) ("FSA") for almost 20 years. In those years I have seen Hispanic farmers treated markedly differently from Anglo farmers. Based on my personal experience with the FSA, I believe the agency has consistently discriminated against Hispanic farmers.
  
4. Many Hispanic farmer loan applications are denied on the basis of not having a feasible Farm and Home Plan. In order to qualify for an FSA loan, a farmer must submit a Farm and Home Plan. 7 C.F.R. 1924.56 states that the Farm and Home Plan is the primary tool used by FSA to evaluate loan feasibility and prospects for achieving financial viability. This plan is used to determine the feasibility of a farming operation and determine if the farmer "cash flows". Great importance is placed on the accuracy of the Farm and Home Plan, as it is the primary tool used to determine the eligibility of a farmer for USDA funding.

5. A major problem with utilization of Farm and Home Plans is that FSA employees can manipulate these plans to make a farmer ineligible for FSA loans and loan restructuring. Data used in the plans is easily manipulated by an FSA loan officer to make a farmer appear to not have a feasible plan. This can be done in a number of ways. For example, an FSA loan officer can incorrectly make it appear that a farmer's income is inadequate to pay expenses, or that loan officer can increase debt figures. Often FSA loan officers will not inform an Hispanic farmer that county average yields can be substituted for actual yields in order to project income. The Hispanic farmer often has little education to recognize the manipulation of his financial data.

6. More than half of the farmers I represent in front of the USDA National Appeals Division ("NAD") have been denied FSA loan servicing because of improper calculations made by FSA employees on the farmer's Farm and Home plan. Projections of income and expenses are easy to manipulate. Farmers often do not know where the data the FSA employees use on their plan come from. By adjusting income and expenses it is easy to manipulate the plan, thus denying an eligible farmer loans and loan servicing. Farmers often do not know of their right to appeal these decisions or they lack the finances to hire an Advocate.

7. Based upon my many years of experience, I believe the opportunity to discriminate based on race or any other factor remains widespread within the FSA credit system. The Farm Loan Manager continues to discourage applications, alter Farm and Home Plans, and deny applications with little or no effective oversight. A manager need not fear that clearly erroneous and discriminatory decisions will be effectively corrected through the USDA appeal process. All too often, the Hispanic farmer ends up humbled, damaged or totally destroyed by this terribly flawed system.

I have reviewed the foregoing Declaration, and declare, under penalty of perjury that it is true and correct and to the best of my personal knowledge



William H. Arcens

19 November 2003

**EXHIBIT 6**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

U.S. DISTRICT COURT  
DISTRICT OF COLORADO

87 JUL 8 P4:23

Civil Action No. 85-K-2103

FRANK VELARDE and LYDIA VELARDE,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,  
ACTING THROUGH THE FARMERS HOME ADMINISTRATION,  
WILLIAM H. CHANDLER and RUTH M. FOUNTAIN,

Defendants.

CAROL M. HANISPEAKER,  
CLERK  
BY \_\_\_\_\_ DEP. CLK.

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MOTION AND BRIEF OF THE UNITED STATES  
FOR SUMMARY JUDGMENT AFFIRMING AGENCY ACTION

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The United States moves the Court for summary judgment under Rule 56 affirming the action of the Farmers Home Administration, Department of Agriculture, denying the loan application of the plaintiffs. The Administrative Record is filed herewith. This motion is directed at the Amended Complaint's First Claim for Relief based upon the Administrative Procedure Act, 5 U.S.C. §701, et seq.

The scope of judicial review of informal agency action is limited to the agency record except in exceptional circumstances. Wilson v. Hodel, 758 F.2d 1369 (10th Cir. 1985); CF&I Steel Corp. v. EDA, 624 F.2d 136 (10th Cir. 1980); King v. Berglund, 517 F.Supp. 1363 (D.Colo. 1981); Camp v. Pitts, 441 U.S. 138 (1973); Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971). A reviewing court will not review issues not raised before the administrative agency, and there is a presumption of regularity of the administrative proceedings. The standard for review is whether the agency decision was arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with the law. Wilson v. Hodel, supra.

## Factual Background

The plaintiffs are a ranch family living at Kim, Colorado. The United States, acting through the Farmers Home Administration, Department of Agriculture, made a "Farm Ownership" (FO) loan to the Velardes on or about September 25, 1980, in the amount of \$160,700, secured by a deed of trust on the Velarde ranch. The purpose of this loan, in part, was to bring current a loan by the Federal Land Bank. On November 11, 1980, the Velardes received a \$50,000 operating loan (OL), secured by a lien on crops, equipment, and livestock

In 1983, the Federal Land Bank of Wichita commenced foreclosure proceedings against the Velardes due to default on the first deed of trust. The Velardes failed to redeem from the foreclosure sale and on July 2, 1984, the FmHA redeemed by paying the Sheriff of Las Animas County the sum of \$62,673.51. The United States received a Sheriff's Deed to the Velarde ranch. The \$62,673.51 was added to the loan balance on the \$160,700 farm ownership loan, which was in default also for delinquent payment.

On or about January 15, 1984, the Velardes submitted to FmHA an application for a loan to purchase the ranch back from FmHA. The purpose of the loan was "To pay for my ranch and for operating expenses (\$290,000 plus at least \$10,000)." The FmHA declined the loan to the Velardes because of past credit history, infeasibility of the proposed farm plan, and a loan amount which would exceed the FmHA ceiling. The Velardes were advised of the reasons for denial of the loan request in a letter by defendant Chandler, the County Supervisor.

The Velardes, through counsel, elected to appeal the loan denial and received a hearing. The denial was upheld by the State Director, defendant Fountain, and by the Deputy Administrator of FmHA in Washington.

## Statutes and Regulations

The law governing the loan at issue in this case is the Consolidated Farm and Rural Development Act, 7 U.S.C. §§ 1921 et seq. and 7 C.F.R. Part 1910 and Part 1943 (1985). In 7 U.S.C. §1925, the maximum FmHA loan is \$200,000; 7 C.F.R. §1943.17 also restricts the ceiling to \$200,000.

7 U.S.C. §1982 creates County Committees and §1983(b) sets forth the role of the committee as well as special conditions for loans. Section 1983(b) requires for loan approval that the County Committee certify that the applicant "meets the eligibility requirements for the loan, and has the

character, industry, and ability to carry out the proposed operations ...."

Section 1983(d) requires FmHA to supervise the borrower's operations as it deems necessary to achieve the objectives of the loan and protect the interests of the United States.

Section 1989 gives the Secretary of Agriculture power to make rules and prescribe terms for making loans.

#### Review of the Administrative Record

On September 4, 1984, the Sheriff's Office of Las Animas County served on plaintiffs a demand by FmHA for possession. Mr. Velarde or his counsel at the time, promptly requested a meeting with the State Director of FmHA, which meeting was held on September 11, 1984. Administrative Record (A.R. 1). In Mr. McDivitt's October 11, 1984, letter to the State Director, he made a proposal aimed at avoiding the Velardes' eviction; the thrust of the proposal was refinancing of the Velardes' indebtedness to FmHA.

On October 25, 1984, the State Director responded in detail to Velarde's proposal. Her letter, A.R. 3, pointed out that the real estate indebtedness was \$290,940, that FmHA had a \$200,000 ceiling on FO loans, and that \$90,000 participation by another lender would be necessary. The Director's letter also raised many questions about specifics of the Velardes' proposal. In conclusion, the Director wrote:

In summary, we see two problems that may be insurmountable to the Velardes' proposal. The loan restriction of \$200,000 on real estate loans is one problem. The second, and perhaps more important, is that it is very doubtful that sufficient cash flow projections can be developed from the proposal presented to service the indebtedness that would occur, pay expenses of the proposed operation, and provide the family a reasonable standard of living from the operation and other sources of income.

On December 10, 1984, the Director wrote Mr. McDivitt to point out that Velarde had not acted upon his proposals by contacting defendant Chandler, the County Supervisor. A.R. 6.

On December 13, 1984, Mr. McDivitt wrote the plaintiffs on this subject with a copy to FmHA. A.R. 7. McDivitt told the Velardes that FmHA had given them until December 28 to visit with Chandler to try to work out the loan situation.

Velarde met with Chandler and Richard Gomez, an FmHA official in the Alamosa District Office (with jurisdiction over the Trinidad County Office), and received loan application forms. McDivitt returned these forms, completed, to several FmHA officials in mid-January. A.R. 8-19. Paragraph 22 of the Application reads as follows:

22. For what purpose do you need Farmers Home Administration service?  
To pay for my ranch and for operating expenses (\$290,000 plus at least \$10,000).

On February 11, 1985, Gomez transmitted a copy of the loan application to Chandler and directed him to take the FO application to the County Committee to consider Velarde's eligibility. A.R. 20. However, the County Committee had already met to consider the application on February 7. The County Committee, composed of Johanna Micek, Eldo Foster, and Robert H. Weston, ruled that Velarde was ineligible because:

Past credit history. Also not feasible and \$200,000 limit. Would need \$290,000 + for land.

This ruling was signed by each committee member. A.R. 21. A similar entry was made in the Record of County Committee Meeting by Chandler. A.R. 22-23.

On February 26, 1985, Chandler wrote Velarde a detailed explanation of FmHA's denial of the proposed loan. The letter gave several reasons, including loan payment delinquencies, doubts about the feasibility of Velarde's loan repayment plan, and FmHA's ceiling of \$200,000 and Velarde's need to find \$90,000 from another source. Velarde was informed of his right to appeal. A.R. 24.

On March 13, Velarde appealed. A.R. 28. The State Director assigned Jack Richardson, the District Director in LaJunta, to preside over an informal hearing at which the plaintiffs could provide information or present witnesses. A.R. 29. The subject of the hearing was restricted to the grounds stated in the County Supervisor's decision letter (A.R. 24):

1. Past credit history,
2. Lack of account for collateral,
3. Financial feasibility.

The burden was placed on the plaintiffs to establish that the "decision was wrong." A.R. 30. The Velardes desired to subpoena the County Committee members, but FmHA determined that no subpoena power existed. A.R. 32-35.

On May 23, 1985, Mr. Richardson conducted a hearing at the law offices of Mr. McDivitt. Testimony was taken from seven witnesses, including Mr. Chandler and Mr. and Mrs. Velarde, before a Court Reporter. See, Transcript, Hearing on Appeal of Frank Velarde.

Mr. Richardson stated that the purpose of the hearing was to be sure that plaintiffs would receive the benefit of any program for which they were eligible, and if the loan was denied it was for proper reasons. Transcript, p.2. Richardson also said that he was hearing the case for the State Director. Transcript, p.4. He reiterated the scope of the hearing. Transcript, p.5. There was also a colloquy between Richardson and McDivitt about the subpoenas for the County Committee. Transcript, pp. 5-7. At the conclusion of the Hearing, Richardson commented that loan limits could thwart FmHA's ability to provide any help. Transcript, p. 100-103.

On June 20, 1985, the State Director announced her decision on Velarde's appeal. She rejected all of Velarde's contentions in a four-page letter. A.R. 41.

On July 18, 1985, Velarde appealed to the Deputy Administrator, FmHA, A.R. 47.

On August 19, 1985, the Deputy Administrator denied the appeal in a letter which stated that FmHA did not consider satisfactory Velarde's past credit and farm management history, as stated in the State Director's June 20, 1985, letter, and further that loan limitations preclude FmHA's acceptance of the proposed credit sale to Velarde. A.R. 66.

### Argument

A.

This action for judicial review is frivolous.

The Farmers Home Administration has reiterated to plaintiffs at every stage of the administrative proceedings that FmHA has a \$200,000 limitation on FO loans, and that there is no way FmHA can finance fully the Velardes' repurchase of their ranch or farm. 7 U.S.C. §1925; 7 C.F.R. §1943.17. An operating loan (OL) cannot be used in a real estate purchase and thus could not be piggy-backed on a \$200,000 FO loan to provide the \$290,000 needed to refinance the real estate. 7 C.F.R. §1941.17. It is impossible for FmHA to approve the Velardes' loan application.

Thus, regardless of the allegations about procedural defects, this Court cannot grant any meaningful relief; the impossibility moots the claims.

B.

The Government does not agree that the Velardes can demonstrate any basis under the APA for judicial intervention.

There are only two procedural errors presented by the Administrative Record and they are of no importance. See A.R. 67. The first is the failure to send the Velardes FmHA Guide Letter 1924-B-1. 7 C.F.R. §1910.4(b). This letter is at A.R. 71. A reading of this letter shows it has no significance in this case whatsoever, a sham issue. The other "error" is not really an error. The County Committee, on its Certification, A.R. 21, commented on eligibility, which is within its authority, 7 U.S.C. §1983(b) and 7 C.F.R. §1943.12, 7 C.F.R. §1910.4(c). It also commented on feasibility and loan limits, which are matters for the County Supervisor. 7 C.F.R. §§ 1910.4, 1910.5, 1910.6(b), 1943.11(a). The matter is moot because the County Supervisor's letter to the Velardes denying the loan included eligibility, feasibility, and loan limits.

We note that Velardes' counsel, McDivitt, included in the record a letter purportedly containing statements by Mr. Gomez, a deputy District Director. A.R. 59. FmHA responded at A.R. 45, 62. We have several points to make. The first point is that the visit by Gomez and Chandler to the Velarde farm on or about January 3, 1985, is irrelevant because a) Gomez was not a deciding official in this case, b) Chandler was a deciding official and was already well-acquainted with the Velardes' farm via previous loans, and c) the value of the farm as collateral is not an issue in this case. The farm visit, therefore, was a courtesy only. (1)

Next, McDivitt reports that Gomez said that the State Office ordered the loan not be approved. Although we dispute this allegation, it would nevertheless be immaterial because the loan was beyond FmHA lending authority and thus this allegation would not change the outcome of this case. Further, this allegation was presented on appeal to the Deputy Administrator, who was unpersuaded and found adequate grounds to deny the loan.

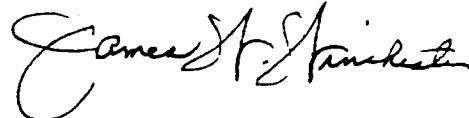
Finally, McDivitt reports that Gomez was not informed of the Hearing on Appeal. McDivitt knew of Gomez and made no record of any request for Gomez's attendance at the hearing, thus waiving any claim for review under the APA. Hodel v. Wilson, supra.

We submit that the decisions on eligibility, feasibility, creditworthiness, etc. are unreviewable because they are subjective criteria, there is no law to apply, and they are wholly within FmHA discretion. This Court should not endeavor to evaluate the viability of a farm plan involving sheep, alfalfa, and firewood, or attempt to choose the correctness of conflicting views on the subject. Deference to agency expertise is certainly appropriate. Woodsmall v. Lyng, 816 F.2d 1241 (8th Cir. 1987). Tuepker v. Farmers Home Administration, 708 F.2d 1329 (8th Cir. 1983); Williamson v. U.S. Dept of Agriculture, 815 F.2d 368, 375 (5th Cir. 1987); Poolman v. Nelson, 802 F.2d 304 (8th Cir. 1986).

Under the record in this case, the decision of FmHA must be affirmed.

Respectfully submitted,

ROBERT N. MILLER  
United States Attorney

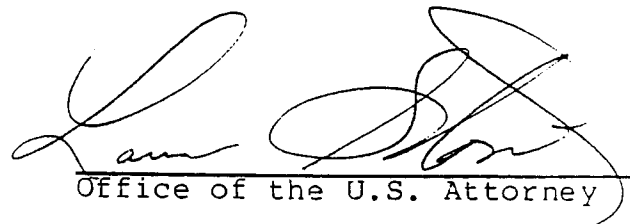


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CERTIFICATE OF MAILING

I hereby certify that on this 8th day of July, 1987, a true and correct copy of the foregoing MOTION AND BRIEF OF THE UNITED STATES FOR SUMMARY JUDGMENT AFFIRMING AGENCY ACTION was placed in the U.S. mail, postage prepaid, to:

A. Thomas Elliott, Jr., Esq.  
1816 Race Street  
Denver, CO 80205



Office of the U.S. Attorney