The Executive Speaks

Since January 1999 the ABA has testified on three important agricultural banking issues: USDA's Farm Service Agency Guaranteed Loan programs, Federal Crop Insurance and Chapter 12 bankruptcy. ABA was represented by Denny Everson, Chairman of the ABA Agricultural and Rural Bankers Committee, in the hearings on FSA and Crop Insurance, and ABA Treasurer Harley Bergmeyer on Chapter 12. This is a summary of the key points made by ABA on these important issues.

USDA, Farm Service Agency

(Denny Everson before the House Agriculture Committee, Subcommittee on General Farm Commodities, Resource Conservation and Credit, February 12, 1999)

I think it is important to tell you that since the 1980s the guaranteed loan program has been a success story. Some 48,000 farmers and ranchers have 65,000 loans from banks and other private sector lenders that are guaranteed by the Farm Service Agency (FSA). Each year FSA receives approximately 15,000 requests for new guaranteed loans. Today, the guaranteed loan portfolio has about $6.8 billion outstanding and currently only about 2.4 percent of the payments are past due. To put that in context, the banking industry's non-guaranteed loan portfolio to farmers and ranchers currently has a past due rate of 1 percent. Considering the fact that FSA guaranteed loans are made only to those farmers and ranchers who have some type of credit weakness, this portfolio of guaranteed loans is performing very well.

I am pleased to report to you that it is the banking industry that writes the overwhelming majority of the USDA guaranteed farm loans – more than 80 percent of all of the guaranteed loans are written by the banks.

The following recommendations represent some of our thoughts for further improvements that USDA should consider:

• **Recommendation**: FSA should immediately abandon the 110 percent cash flow coverage requirement –

this is especially important now, when so many farmers are suffering cash flow problems. A cash flow coverage of 100 percent should be sufficient for FSA, especially if the bank is willing to make the loan.

Further, FSA should consider lowering the percentage of guarantee if the cash flow coverage is less than 100 percent and the bank has indicated that it will approve and fund the loan. Give my bank the option of making the loan if we decide to take on the additional risk. By flatly denying the guarantee if the cash flow coverage is less than 100 percent (or when it is less than 110 percent as is presently required), FSA immediately forecloses on all options for the customer.

• **Recommendation**: Given the fact that the agriculture sector is expected to be under increased financial stress, the current term limits should be eliminated.

• **Recommendation**: The FSA National Office should conduct a "second look" review of any bank that is denied renewal of CLP or PLP status to make sure that loan losses were not the result of natural disasters.

• **Recommendation**: FSA should consolidate guaranteed loan making and loan servicing at state offices, or in specialized districts in very large states, to ensure consistency and efficiency of program delivery. Today, my loan officers must deal with nine different FSA county offices. It is impossible for all nine offices to be consistent on the hundreds of pages of procedure they must follow when administering the guaranteed loan program.

Further, it no longer makes economic sense to try to maintain a delivery network that worked best before there were faxes, e-mail or even an interstate highway system. The banking industry has the local infrastructure necessary to deliver credit. FSA's role is to provide the necessary oversight of the private sector lenders, and this can be done much more efficiently than it currently is being done.

FSA has made tremendous improvements to the program since they first introduced the concept of guaranteed loans in the early 1980s. The soon-to-be-finalized regulations represent another important and evolutionary step in the process. The banking industry has strongly supported FSA's guaranteed loan program, and we want to work with Congress and FSA to continue to make the guaranteed loan programs work better for farmers and ranchers.

Federal Crop Insurance

(Denny Everson before the House Agriculture Committee, Subcommittee on Risk Management, Research and Specialty Crops, March 10, 1999)

ABA supports a stable and reliable Federal Crop Insurance program with private sector delivery. America's bankers and their customers know that dependable crop insurance can, and frequently does, mean that bankers are able to approve operating loans and other types of credit for farmers struggling to stay ahead in high-risk situations, volatile weather and challenging agricultural markets. Crop insurance can also ensure that producers will be able to recover their input costs when damaged by unexpected circumstances, and thus be protected from financial disaster.

While crop insurance has worked

for farmers who buy it, we believe more needs to be done to make this program more effective for all of America's farmers and ranchers. The ABA Task Force on 21st Century Agriculture spent a great deal of time discussing the current crop insurance programs and discussed ways the program can be made stronger for the future. We made the following observations:

• Multiple crop failures over a period of years must be addressed.

• The concept of actuarial soundness does not work for this program

• The needs of livestock producers must be addressed.

• Efforts to link crop insurance protection with price protection have been marginally successful.

• Crop price elections need to be more flexible.

• Basic coverage and non-insured crop coverage are not adequate

• Producers find crop insurance to be too expensive.

Due to the urgency of the situation, we have some recommendations that should be implemented immediately.

• **Recommendation 1**: Extend the spring 1999 sign-up date by 30 days. To make sure that the widest range of producers take advantage of the 30 percent premium reduction being offered this year, extend the sign-up for spring-planted crops by 30 days. In my area that would take sign-up to April 15.

• **Recommendation 2**: Make adjustments for multiple-year disasters. We must address the problems faced by farmers who have suffered multiple year disasters.

• **Recommendation 3**: Redirect the federal subsidy. The cost of crop insurance to the producer is subsidized, but the subsidy is misdirected. The highest subsidy should be on the highest level of coverage.

• **Recommendation 4:** Provide adequate coverage for forages.

• **Recommendation 5**: Allow price elections to move with the markets.

Chapter 12

(Harley Bergmeyer before the House Judiciary Committee, Subcommittee on Commercial and Administrative Law, March 18, 1999)

We have two major concerns about Chapter 12:

• The primary justification for creating Chapter 12 was that the existing bankruptcy chapters were too expensive and too time consuming for a family farmer to be able to effectively use them to reorganize. Chapter 12 was supposed to make sure that any family farmer who could quickly reorganize would be able to do so. Under current law, a farmer who files for Chapter 12 protection is supposed to file a reorganization plan within 90 days after the order for relief has been filed. The debtor is to be allowed extensions by the court only in cases where the debtor should not be "justly" held accountable. In practice, however, the courts have been very willing to grant extensions to the debtor at the expense of the lender's claim.

There is a very fundamental fairness issue here. I recognize the fact that reorganization plans can be difficult to structure, but I also strongly believe that if a farmer cannot put together a plan that works for him within 150 days, then liquidation should be required. In my town, many busi-

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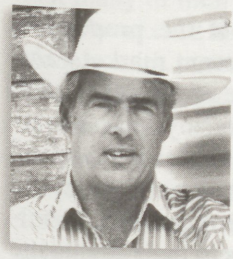

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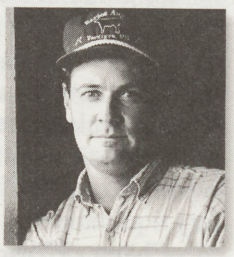

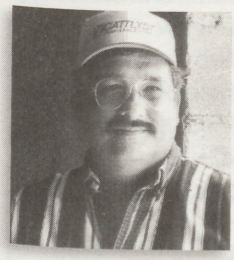

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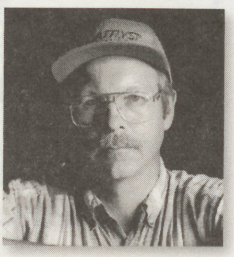

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nesses get hurt when farmers who have taken Chapter 12 abuse the system by failing to produce a plan that requires them to begin repayment of their obligations in a timely manner.

• Excessive cram downs of secured claims are often granted on the basis of unduly low appraisals provided by the debtor. In Chapter 12, lenders who have their claims crammed down to the value of the collateral lose any opportunity to attempt to recover the value of their claim in the future if the debtor defaults on the plan, or if the debtor chooses to go out of business. In Chapter 11 (business bankruptcy), lenders may make an election that will allow them the opportunity to try to recover their unsecured claim if the debtor defaults on their plan or sells their business. A similar allowance in Chapter 12 would create a powerful incentive for the debtor to successfully complete the plan, and would provide for equitable treatment of creditors in case of a default or voluntary liquidation by the debtor.

Chapter 12 was supposed to have been a way that the "true" market value of the farm property was recognized and the farmer's debt was then adjusted by the cram down to that "true" value. Unfortunately, the reality is that under the current law, the debtor and the primary lender both hire appraisers who try to establish to present market value of the property in question. The current law leaves it up to the Bankruptcy Court judge to decide which appraisal most accurately reflects the market value of the real estate.

I know that if the property is appraised at a present market value below the balance of the debt, I will lose that portion of my bank's loan. Because of this, I am forced to spend a great deal of time and money on appraisers. The farmer and his attorney also know it is to their advantage to have an appraisal that indicates the lowest possible present market value. Today, we have a situation where all parties are arguing about the validity of their respective appraisal. The current statute creates this unnecessarily adversarial situation. **jal**