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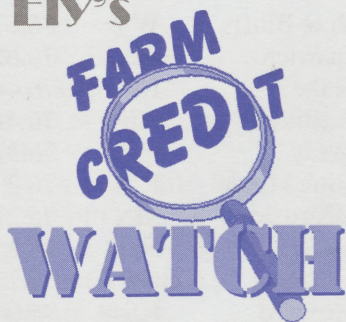
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Bert Ely's



Shedding Light on the Farm Credit System, America's Least Known GSE

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National Charters — The FCA Tries Again

(January
2001)

Editor's Note: Bert Ely's Farm Credit Watch is a monthly report that is available in the "Members Only" section on the ABA Web site (www.aba.com). The following articles are the most recent installments.

To keep Journal of Agricultural Lending readers up to date on Mr. Ely's comments, we will publish all his columns that appear between publication dates. Mr. Ely welcomes information about the Farm Credit System in your area and can be reached at (703) 836-4101 or by e-mail at bert@ely-co.com.

The Farm Credit Administration (FCA) remains committed to transforming the Farm Credit System (FCS) into a lender focused on serving America's most successful farmers, ranchers and agribusinesses, the very people who do not need, and certainly do not deserve, the taxpayer-subsidized credit FCS lenders dish out. Give the FCA credit — it persists in trying to undermine the FCS's public purpose, which is to serve farmers and ranchers who cannot easily get credit from other sources.

In keeping with this objective, the FCA is attempting again to launch its national charters initiative. As faithful readers of *FCW* will remember, the FCA tried to sidestep well-established federal regulatory review procedures last year by issuing a booklet that would make national charters available to every FCS lender as of the first of this year. Under this type of charter, an FCS institution could lend anywhere it wanted to within the United States.

However, after strong negative reactions from bankers, as well as key members of Congress, the FCA backed off and is now seeking to relaunch national charters through the formal rule-making process. National

charters, of course, is the successor to the FCA's failed attempt in 1999 to authorize "lender's choice" for the FCA's empire builders.

On January 12, the FCA sent to Congress a proposed regulation that would authorize national charters for FCS direct lenders. After a 30-day congressional review period, the FCA planned to publish the proposed regulation for an all-too-short 30-day comment period, during which time bankers and others could challenge the proposed regulation. After that period closes, FCA may, or may not (depending on how much flak it catches), finalize the regulation, thereby launching its national charters missile at commercial banks and American agriculture. As the public comment period commenced, *FCW* urged bankers to download the proposed regulation from the "What's Hot" portion of the FCA home page, www.fca.gov.

The proposed regulation has a strong in-your-face tone, probably reflecting FCA Chairman Mike Reyna's irritation at having to make a second attempt to launch national charters.

The following are some observations about the proposal:

- Unlike last year's proposal, where the FCA planned to hand out national charters willy-nilly to any association that filed a one-page resolution with the FCA, this time around the FCA will require an association to file a business plan with its application. The plan will have the usual elements, including a description of the association's existing markets, the markets it plans to serve, the types and amounts of

credit it plans to supply, the new risks it will face, loan portfolio concentrations, lending policies, underwriting standards, etc.

- Although the FCA states that it "will exercise its examination and supervisory powers to evaluate whether each [FCS] association is operating in a safe-and-sound manner as it executes its [business] plan," the FCA does not explicitly state that it will make a qualitative judgment about the soundness of an association's business plan *before* it approves or rejects the association's national charter application. This suggests that the FCA will merely rubber-stamp these applications, which should greatly concern Congress.

- Associations seeking to break out of their chartered territories will have to assemble lots of paperwork for their national charter applications. The expense of doing so will deter smaller associations from applying, which means that larger associations which go through the applications exercise will be empowered to trample on smaller associations. This process will accelerate the already rapid consolidation pace within the FCS.

- The FCA gives lots of lip-service to serving young, beginning and small (YBS) farmers and ranchers. Specifically, the FCA would require each association applying for a national charter to develop a plan that attaches "priority" to serving YBS borrowers in its existing chartered territory, now called a Local Service Area (LSA). However, the FCA does not discuss how it will assess the quality of the

LSA plans or how it will enforce them.

- Particularly alarming is the FCA's discussion of chartering *new* associations that will have national charters. Because every portion of the United States presently falls in the chartered territory of an existing association, new associations presumably would be assigned an LSA, and YBS obligations, that would overlap with another association. How the associations would coordinate in meeting their YBS obligations raises some interesting antitrust questions. Also unanswered is how the new associations would capitalize themselves.

Dunn Moves Into the FCA Bureaucracy

Mike Dunn, a recently appointed and now former FCA board member, may have set a world's record for shortest service on a regulatory board.

Dunn, who had been an Undersecretary at USDA, was given a recess or temporary appointment to the FCA board by President Clinton on December 21. Just 22 days later, Dunn quit the FCA board. Reyna then appointed Dunn as Director of the FCA's Office of Policy and Analysis. It will be interesting to see how FCS empire builders react to Dunn's move.