

The Agricultural Provisions of the 1999 Omnibus Appropriations Bill

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On October 19, 1998, Congress passed H.R. 4328, "Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999." President Clinton signed this bill into law on October 21, 1998.¹ Regulations implementing the changes have not yet been adopted by USDA, but the Secretary of Agriculture is directed to issue the necessary regulations "as soon as practicable."² In this article, the bill will be referred to as the "1999 Omnibus Bill."

The 1999 Omnibus Bill is almost 4000 pages in length and affects a wide range of federal agencies and programs. This article summarizes the major agricultural provisions of the bill—including (1) Agricultural Credit; (2) Disaster Relief; (3) Chapter 12 Bankruptcy; (4) Conservation Programs; (5) Livestock Pricing and Trade Provisions; (6) Dairy Pricing; (7) Discrimination at USDA; (8) Crop Insurance Provisions; (9) Miscellaneous Ag Provisions; and, (10) Tax—but readers should be aware that there are other agricultural provisions which are not discussed here. Further, many non-agricultural sections of the new law may affect farmers and ranchers.

I. Agricultural Credit

The 1999 Omnibus Bill contains a number of significant amendments to laws controlling the Farm Service Agency (FSA) farm loan programs.³

NOTE: These changes may allow borrowers who were denied credit after April 4, 1996, due to debt forgiveness to be eligible for new guaranteed loans, emergency (EM) loans, or direct operating (OL) loans from FSA. Borrowers should carefully check their eligibility status.

¹ The legislation is known as Public Law 105-277. Statute-at-Large designations have not yet been made. The text of the bill can be found in the Congressional Record for October 19, 1998.

² 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1133.

³ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, §§ 801-808. These changes are temporarily being implemented by the agency under FSA Notice FLP-10, "Statutory Changes Because of FY 1999 Appropriations Legislation" (Dec. 4, 1998) (set to expire Oct. 1, 1999).

A. Some Loosening of Eligibility Restrictions Where Borrower Had Prior "Debt Forgiveness"

The 1999 Omnibus Bill makes some changes to the restrictions on FSA loan eligibility where the borrower has had debt forgiveness. The changes affect the general eligibility rules for FSA guaranteed loans and emergency (EM) loans. The changes also affect the special exception for direct and guaranteed operating (OL) loans.

1. New Guaranteed Loans Available If No More Than Three Occasions of Debt Forgiveness Before April 4, 1996

Under provisions coming out of the 1996 FAIR Act,⁴ any borrower who had received "debt forgiveness"⁵ on a direct or guaranteed USDA Farm Program loan was ineligible for any type of new direct or guaranteed Farm Program loan.⁶ Under the 1999 Omnibus Bill, the general rule is made much less restrictive for new FSA guaranteed loans.⁷ The new general rule for guaranteed loans is summarized as follows:

A guaranteed loan cannot be made to a farmer who received debt forgiveness on a Farm Program loan after April 4, 1996, or to a farmer who received debt forgiveness on more than three occasions before April 5, 1996.

Thus, a farmer could have received debt forgiveness on as many as three occasions before April 5, 1996, and still be eligible for a new loan guaranteed by FSA.⁸

⁴ Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, 100 Stat. 888-1197 (Apr. 4, 1996) ("1996 FAIR Act").

⁵ "Debt forgiveness" is defined in the 1996 FAIR Act as follows:

"(12) Debt Forgiveness. --

"(A) In General. -- Except as provided in subparagraph (B), the term 'debt forgiveness' means reducing or terminating a farmer program loan made or guaranteed under this title, in a manner that results in a loss to the Secretary, through --

"(i) writing down or writing off a loan under section 2001 of this title;

"(ii) compromising, adjusting, reducing, or charging-off a debt or claim under section 1981 of this title;

"(iii) paying a loss on a guaranteed loan under section 2005 of this title; or

"(iv) discharging a debt as a result of bankruptcy.

"(B) Loan Restructuring.--The term 'debt forgiveness' does not include consolidation, rescheduling, reamortization, or deferral."

1996 FAIR Act, § 640(2) (codified at 7 U.S.C. § 1991(a)(12)). Note that if the debt action did not result in a loss to the Secretary it is not considered "debt forgiveness" for these purposes.

⁶ 1996 FAIR Act, § 648(b) (codified at 7 U.S.C. § 2008h(b)).

⁷ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 801 (to be codified as 7 U.S.C. § 2008h(b)(1)(B)).

⁸ See FSA Notice FLP-10, "Statutory Changes Because of FY 1999 Appropriations Legislation" par. 2.E (Dec. 4, 1998) (set to expire Oct. 1, 1999).

2. New Emergency (EM) Loans Available Where Not More Than One Debt Forgiveness Before April 5, 1996

The 1999 Omnibus Bill provides that an FSA emergency (EM) loan can be granted to a borrower who has received “not more than one debt forgiveness” before April 5, 1996, and who has not received debt forgiveness after April 4, 1996.⁹ Thus, borrowers who received debt forgiveness only once prior to April 5, 1996—and not at all after April 4, 1996—can still be considered for emergency (EM) loans.¹⁰

3. New Operating Credit Available If Prior Debt Forgiveness Came Through Write-down Or A Confirmed Bankruptcy Plan

Under the 1996 FAIR Act provisions, there was only one exception to the ineligibility of borrowers with prior debt forgiveness. This exception provided that borrowers who had received their debt forgiveness as a result of a write-down through the administrative debt restructuring process could still be considered for direct or guaranteed operating (OL) loans to pay their annual expenses.¹¹

The 1999 Omnibus Bill expands this exception to allow new direct and guaranteed operating (OL) loans for borrowers who are current on payments under a confirmed bankruptcy reorganization plan under Chapters 11, 12, or 13 of the Bankruptcy Code.¹² Thus, farmers who have received debt forgiveness as a result of the administrative debt restructuring process or who are current on payments under a confirmed bankruptcy reorganization plan can be considered for either a direct or guaranteed operating (OL) loan for payment of their annual expenses.¹³

4. Other Debt Forgiveness Restrictions Remain Unchanged

The other general “debt forgiveness” eligibility restrictions imposed by the 1996 Farm Bill were not changed by the 1999 Omnibus Bill. For example:

- A direct FSA loan still cannot be made to a farmer who has received any past debt forgiveness unless the farmer falls within one of the exceptions discussed above.¹⁴
- Farm borrowers are still limited to one administrative “debt forgiveness” on a direct FSA loan.¹⁵

⁹ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 801 (to be codified as 7 U.S.C. § 2008h(b)(2)(B)).

¹⁰ See FSA Notice FLP-10, “Statutory Changes Because of FY 1999 Appropriations Legislation” par. 2.E (Dec. 4, 1998) (set to expire Oct. 1, 1999).

¹¹ 1996 FAIR Act, § 648(b) (codified at 7 U.S.C. § 2008h(b)(2)).

¹² 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 801 (to be codified at 7 U.S.C. § 2008h(b)(2)(A)(ii)).

¹³ See FSA Notice FLP-10, “Statutory Changes Because of FY 1999 Appropriations Legislation” par. 2.E (Dec. 4, 1998) (set to expire Oct. 1, 1999).

¹⁴ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 801 (to be codified at 7 U.S.C. § 2008h(b)(1)(A)).

¹⁵ 7 U.S.C. § 2008h(c).

- The prohibition on making or guaranteeing loans to delinquent borrowers remains the same.¹⁶

B. Changes to Emergency (EM) Loan Security Requirements

The 1999 Omnibus Bill makes some limited changes to the basic security requirements for FSA emergency (EM) loan eligibility. The Secretary of Agriculture is allowed some further flexibility in evaluating the collateral necessary to support the loan. Although the general rule that there must be adequate security for the loan remains the same, the amendment adds the following new language:¹⁷

[T]he Secretary shall not deny a loan . . . to a borrower by reason of the fact that the borrower lacks a particular amount of collateral for the loan if the Secretary is reasonably certain that the borrower will be able to repay the loan.

This language affirms authority already provided by the statute for the Secretary to take less than full security for emergency (EM) loans if there is reasonable assurance of the borrower's repayment ability.¹⁸ However, by providing for no additional limitations beyond the reasonable certainty of repayment, the new language removes statutory authority for such restrictions imposed by FSA regulations.

FSA has interpreted the amendment to require that it drop its requirement that the portion of an emergency (EM) loan secured by repayment ability be repaid within three years.¹⁹ That change is certainly warranted by the new statutory language. However, because the new language makes no mention of limits on the reason for the borrower's lack of security, the agency's continuing enforcement of a requirement that the borrower's lack of collateral be due to disaster-related depreciation appears to be similarly without statutory support.²⁰

The 1999 Omnibus Bill also allows the Secretary to deny or cancel an emergency (EM) loan if the borrower refuses to pledge available collateral when requested by the agency.²¹

C. Elimination of Multiple Benefits Restriction on CAT or NAP Benefits and Emergency (EM) Loans

Under restrictions imposed by the 1996 FAIR Act, farmers entitled to receive crop insurance benefits under "catastrophic risk protection" (CAT) coverage who are also eligible for other USDA assistance related to the crop loss have to choose which assistance to receive—they cannot receive both.²² Similarly, under the Non-Insured Disaster

¹⁶ 7 U.S.C. § 2008h(a); 31 U.S.C. § 3720B; 7 C.F.R. §§ 1941.12(a)(11), (b)(12), 1943.12(a)(11), (b)(12), 1980.175(b), 1980.180(b) (1998).

¹⁷ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 802 (adding 7 U.S.C. § 1964(d)(2)(A)).

¹⁸ See 7 U.S.C. § 1964(d).

¹⁹ FSA Notice FLP-10, "Statutory Changes Because of FY 1999 Appropriations Legislation" par. 2.I (Dec. 4, 1998) (set to expire Oct. 1, 1999).

²⁰ See 7 C.F.R. § 1945.169(g)(1) (1998) for current requirements linking lack of sufficient collateral to disaster.

²¹ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 802 (adding 7 U.S.C. § 1964(d)(2)(B)).

²² 1996 FAIR Act, § 194(f) (codified at 7 U.S.C. § 1508(n)). This restriction does not apply to additional crop insurance coverage purchased by the farmer over the CAT level.

Assistance Program (NAP) farmers who are eligible for NAP benefits as well as other USDA assistance related to the crop loss also have to choose which benefit to receive.²³ FSA has treated emergency loans as loss benefits under these provisions, so in case of crop disaster, farmers have had to choose between receiving CAT or NAP benefits and obtaining an FSA emergency (EM) loan.²⁴

The 1999 Omnibus Bill changes the law governing CAT insurance coverage and NAP to specifically allow farmers to receive both the available benefits from CAT or NAP and an FSA emergency (EM) loan for the same crop disaster.²⁵

D. New Notice Requirement for Five-Year Limit on Direct Loan Eligibility

The 1996 Farm Bill imposed a “transition rule” on eligibility for direct FSA real estate loans. The rule puts limits on how many years a borrower may obtain a direct farm ownership (FO) loan, thereby requiring farmers to “graduate” from the subsidized federal loan program to either private or guaranteed farm financing arrangements.²⁶

The 1999 Omnibus Bill does not change this restriction, but it requires the Secretary of Agriculture to notify borrowers that they will become ineligible for additional direct farm ownership (FO) loans due to this restriction at least 12 months before they become ineligible.²⁷

E. Changes in Guaranteed Loan Eligibility Requirements Regarding Training or Experience

For almost 40 years, general eligibility requirements for direct and guaranteed farm program loans have provided that the borrower must “have either training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operations.”²⁸ The Secretary is authorized by federal statute to provide needed training programs for borrowers.²⁹

²³ 1996 FAIR Act, § 196(i)(3) (codified at 7 U.S.C. § 7333(i)(3)).

²⁴ See, FSA Notice FC-207, "Multiple Benefits on Emergency (EM) Loans" (Aug. 19, 1998) (rescinded December 4, 1998).

²⁵ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 803 (amending 7 U.S.C. §§ 1508(n), 7333(i)(3)).

²⁶ 1996 FAIR Act, § 601 (codified at 7 U.S.C. § 1922(b)(3)). See FSA Notice FLP-10, "Statutory Changes Because of FY 1999 Appropriations Legislation" par. 2.D (Dec. 4, 1998) (set to expire Oct. 1, 1999) (rescinding FSA Notice FC-207, "Multiple Benefits on Emergency (EM) Loans."

²⁷ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 804 (adding 7 U.S.C. § 1922(b)(3)(D)). See FSA Notice FLP-10, "Statutory Changes Because of FY 1999 Appropriations Legislation" par. 2.C (Dec. 4, 1998) (set to expire Oct. 1, 1999).

²⁸ 7 U.S.C. § 1922(a)(2) (applicable to direct and guaranteed operating loans); 7 U.S.C. § 1941(a)(2) (applicable to direct and guaranteed real estate loans).

²⁹ 7 U.S.C. § 2006a.

The 1999 Omnibus Bill exempts all guaranteed loans—both for real estate purchases and operating expenses—from FSA’s “training or experience” requirement.³⁰ This requirement now applies only to the direct loan programs. The 1999 Omnibus Bill also eliminates the specific statutory authority for the agency to conduct and contract for training programs for guaranteed loan borrowers.³¹ FSA will continue to consider a guaranteed loan borrower’s training, education, and experience as they are reflected in the projected production levels, income, and expenses in the farm business plan.³²

F. Changes in Guaranteed Loan Limits

Before the 1999 Omnibus Bill was enacted, federal statute provided that no guaranteed farm ownership (FO) loan could be made that would cause the unpaid balance of the borrower’s total direct and guaranteed farm ownership (FO) debt to exceed \$300,000.³³ Similarly, no guaranteed operating (OL) loan could be made that would cause the unpaid balance of the borrower’s total direct and guaranteed operating debt to exceed \$400,000.³⁴

The 1999 Omnibus Bill combines these loan limit amounts, thus making the total maximum unpaid indebtedness \$700,000 for guaranteed farm ownership and/or operating debt in any combination.³⁵ The amendment provides for an indexing of this maximum amount, allowing it to increase to reflect inflation.³⁶

In addition to combining the loan limits, however, the amendment language also slightly altered how the loan limits are to be calculated.³⁷ Under the 1999 Omnibus Bill language, when calculating limits for a new guaranteed real estate loan you would start with \$700,000 and subtract all outstanding real estate loans—direct and guaranteed—and all guaranteed operating loans. The farmer could have up to an additional \$200,000 in direct operating loans which would not be included in the limit. Similarly, for new guaranteed operating loans you would start with \$700,000 and subtract all outstanding operating loans—direct and guaranteed—and all guaranteed real estate loans. The farmer could have up to an additional \$200,000 in direct real estate loans which would not be included in the limit.

³⁰ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 805 (amending 7 U.S.C. §§ 1922(a)(2), 1941(a)(2)). See FSA Notice FLP-10, "Statutory Changes Because of FY 1999 Appropriations Legislation" par. 2.G, H (Dec. 4, 1998) (set to expire Oct. 1, 1999).

³¹ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 805 (amending 7 U.S.C. § 2006a(a), (c)).

³² FSA Notice FLP-10, "Statutory Changes Because of FY 1999 Appropriations Legislation" par. 2.H (Dec. 4, 1998) (set to expire Oct. 1, 1999)

³³ 7 U.S.C. § 1925.

³⁴ 7 U.S.C. § 1943.

³⁵ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 806 (amending 7 U.S.C. §§ 1925, 1943).

³⁶ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 806 (amending 7 U.S.C. §§ 1925, 1943). The inflation factor used will be the Prices Paid by Farmers Index compiled by the National Agricultural Statistics Service of USDA. The inflation increases will begin with fiscal year 2000, which starts October 1, 1999.

³⁷ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 806 (amending 7 U.S.C. §§ 1925, 1943). See FSA Notice FLP-10, "Statutory Changes Because of FY 1999 Appropriations Legislation" par. 2.F (Dec. 4, 1998) (set to expire Oct. 1, 1999).

G. New Notice Requirement for Shared Appreciation Mortgages

The 1999 Omnibus Bill adds a new provision explicitly requiring the Secretary of Agriculture to notify borrowers at least 12 months before the end of the term of a Shared Appreciation Agreement.³⁸ However, borrowers should be aware that this notice requirement does not take effect until fiscal year 2000—which begins October 1, 1999.

H. Elimination of Cash Flow Margin in Debt Restructuring Calculation

The 1996 Farm Bill changed the cash flow margin requirements for FSA's debt restructuring and loan servicing process from 105 percent to 110 percent.³⁹ Before the 1999 Omnibus Bill was enacted, the Secretary could assume that the borrower would need up to 110 percent of the amount estimated for payment of farm operating expenses, debt service obligations, and family living expenses. This provided a 10 percent cushion for unanticipated or larger than expected expenses.⁴⁰

The 1999 Omnibus Bill changes the cash flow margin from 110 percent to 100 percent.⁴¹

II. Disaster Relief

The 1999 Omnibus Bill provides a significant amount of financial assistance for agricultural producers affected by natural disasters and low commodity prices in 1998. Much of the disaster funding is provided with the Secretary having "broad authority" to create programs for assistance. Distribution of other disaster funding must comply with program terms set out by Congress.

A. Crop Loss Assistance

In the 1999 Omnibus Bill Congress appropriated more than \$2.5 billion for crop loss assistance.

1. Disaster Assistance for 1998 Crop Year and Multiyear Losses

The 1999 Omnibus Bill provides \$1.5 billion in emergency assistance for producers who "incurred losses in the 1998 crop year due to disasters."⁴² The 1999 Omnibus Bill provides \$875 million as assistance to producers who have incurred multiyear losses in the 1998 and preceding crop years due to disasters.⁴³ Finally, the 1999 Omnibus Bill

³⁸ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 807 (adding 7 U.S.C. § 2001(e)(6)). See FSA Notice FLP-10, "Statutory Changes Because of FY 1999 Appropriations Legislation" par. 2.B (Dec. 4, 1998) (set to expire Oct. 1, 1999).

³⁹ 1996 FAIR Act, § 645(l)(A) (codified at 7 U.S.C. § 2001(c)(3)(C)).

⁴⁰ See the definition of a "feasible plan" at 7 C.F.R. § 1951.906 (1998).

⁴¹ 1999 Omnibus Bill, Div. A, Agriculture, Title VIII, § 808 (amending 7 U.S.C. § 2001(c)(3)(C)). See FSA Notice FLP-10, "Statutory Changes Because of FY 1999 Appropriations Legislation" par. 2.A (Dec. 4, 1998) (set to expire Oct. 1, 1999). On December 4, 1998, FSA directed local offices to immediately stop approving administrative write-downs based on cash flow margins exceeding 100 percent.

⁴² 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1102(b).

⁴³ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1102(c). The Secretary is given the authority to define "multiyear losses" for the purposes of distributing these benefits, however the law specifically includes "diseases such as scab" as eligible disasters.

provides \$200 million for livestock feed assistance to producers affected by disasters during calendar year 1998.⁴⁴

2. Secretary Will Determine How to Distribute Assistance

The Secretary is given “broad authority to create and implement a crop loss assistance program with the funds made available” by the 1999 Omnibus Bill.⁴⁵ The Secretary may establish loss thresholds, payment rates, and eligibility criteria.⁴⁶ Nonetheless, Congress did set some standards for the “fair and equitable” distribution of the funds.⁴⁷

a. Payment Limitations Not Triggered By Many Other USDA Payments

The Secretary is authorized to establish payment limitations for the disaster assistance provided by the 1999 Omnibus Bill. However, in calculating the limitations, the Secretary may not include payments received through other crop loss or market loss programs under the 1999 Omnibus Bill, Production Flexibility Contract Payments, USDA marketing loans, NAP benefits, crop insurance indemnities for the 1998 crop year, or emergency (EM) loans made available for the 1998 crop.⁴⁸

b. Assistance Available for 1998 Losses or Multiyear Losses—Not Both

Producers may receive assistance under the 1999 Omnibus Bill for 1998 crop losses or multiyear losses, but not both.⁴⁹

c. Qualifying Losses and Crops

Disaster assistance provided by the 1999 Omnibus Bill may be used for crop losses that are due to quantity losses, quality losses, or “severe economic losses due to damaging weather or related condition.”⁵⁰ Losses for all crops are eligible for the disaster assistance provided by the 1999 Omnibus Bill, including losses of “trees from which a crop is harvested.”⁵¹ The specific determinations as to loss qualification are left to the Secretary.

3. Crop Insurance Coverage and Crop Loss Assistance

The 1999 Omnibus Bill prohibits the Secretary from “discriminat[ing] against or penaliz[ing]” producers who have purchased crop insurance.⁵² This generally means

⁴⁴ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1103.

⁴⁵ Joint Statement of the Committee of Conference, H.R. 4328, Congressional Record for Oct. 19, 1998, (hereinafter “Conference Report”) at H11302.

⁴⁶ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1101(b).

⁴⁷ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1101(a).

⁴⁸ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1101(b)(3).

⁴⁹ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1102(d).

⁵⁰ 1999 Omnibus Bill, § 1102(e). Alfatoxin is specifically mentioned as a possible source of quality loss.

⁵¹ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1102(f).

⁵² 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1102(g)(1).

that crop insurance coverage should not be taken into consideration when determining eligibility for program benefits.

In order to receive disaster benefits under the 1999 Omnibus Bill, producers who did not purchase crop insurance for the 1998 crop year must sign a contract agreeing to purchase crop insurance for the 1999 and 2000 crop years.⁵³ The contract will provide for liquidated damages—as determined by the Secretary—should the producer fail to purchase the crop insurance required by the contract.⁵⁴

A press announcement released December 12, 1998, indicated USDA's intent to use some \$400 million of the crop loss funding to provide incentive payments for farmers to purchase higher "buy up" levels of crop insurance for their 1999 crops.⁵⁵ This use of the crop loss assistance appropriation does not appear to be authorized by the statutory language which refers only to "premium refunds and other assistance . . . for [the] 1998 insured crops, or [the] preceding (including 1998) insured crops."⁵⁶

B. Market Loss Assistance

The 1999 Omnibus Bill provides \$3.057 billion in assistance as partial compensation for loss of markets for 1998 commodity crops.⁵⁷

1. \$2.857 Billion for Production Flexibility Contract Holders

The great majority of the market loss assistance under the 1999 Omnibus Bill is available to farm owners and producers who are eligible for 1998 Production Flexibility Contract (PFC) payments. The benefits are to be proportional to PFC payments made in 1998 and are to be paid out "as soon as practicable."⁵⁸ The conference report accompanying the law makes it clear that although the funding is proportional to PFC payments, market loss assistance payments are not to be treated as PFC payments for purposes of payment limitations.⁵⁹ The Committee also directs the Secretary not to require producers to file new contracts or redesignate shares in order to receive market loss payments.⁶⁰

2. \$200 Million for Dairy Farmers

Out of the funding set aside for market loss assistance under the 1999 Omnibus Bill, \$200 million is specifically targeted to dairy producers.⁶¹ The Secretary is to determine how this funding will be made available.

⁵³ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1102(g)(3).

⁵⁴ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1102(g)(4).

⁵⁵ "President Clinton Announces Emergency Aid to Farmers," White House Press Briefing (Dec. 12, 1998).

⁵⁶ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1102(g)(2).

⁵⁷ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1111.

⁵⁸ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1111(b), (c).

⁵⁹ Conference Report at H11302.

⁶⁰ Conference Report at H11302.

⁶¹ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1111(d).

C. Other Disaster Assistance Provisions of the 1999 Omnibus Bill

The 1999 Omnibus Bill provides an additional \$3 million to the Dairy Production Disaster Assistance Program.⁶² This program provides assistance for dairy farmers who suffer production losses due to natural disasters.

Due to “disastrously low prices,” the 1999 Omnibus Bill authorizes the Secretary to make recourse loans to honey producers for the 1998 crop.⁶³

⁶² 1999 Omnibus Bill, Div. A, Agriculture, Title XIII.

⁶³ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1122.

The 1999 Omnibus Bill requires the Secretary to make NAP payments in fiscal year 1999 to raisin producers who had catastrophic (CAT) insurance coverage but who were unable to comply with the insurance policy requirements due to adverse weather conditions.⁶⁴

The 1999 Omnibus Bill authorizes the Secretary to use funds for the Tree Assistance Program to assist producers suffering losses due to disasters that occurred from May 1, 1998, to August 1, 1998, even if the harm caused did not become evident until after August 1, 1998.⁶⁵ Producers have until May 31, 1999, to demonstrate loss due to fire blight infestation caused by an eligible disaster.

D. Disaster Issues In the Conference Committee Report

The Conference Committee that worked out the bill language issued a report explaining some of the provisions of the law. This report also includes direction to the Secretary and USDA agencies about the Committee's expectations on implementing the law.

The Conference Report made several recommendations concerning disaster assistance. For example, the Secretary is expected to make guaranteed loans available for installing irrigation systems in areas declared an agricultural disaster due to drought.⁶⁶ The Committee directed the Secretary to provide certain types of assistance to fruit producers and onion growers in New York State.⁶⁷ The Committee also directed the Secretary to make Emergency Conservation Program assistance available for fruit drops in orchards as well as replacement of trellises in vineyards and orchards damaged by storms.⁶⁸

III. Chapter 12 Bankruptcy Extension

Chapter 12 of the Bankruptcy Code, which allows for bankruptcy reorganization of family farms, was enacted in 1986 as a temporary law that was due to expire or "sunset" on October 1, 1998. Although Congress failed to re-authorize Chapter 12 prior to October 1, the 1999 Omnibus Bill included a provision that extended Chapter 12 for six months.⁶⁹ The extension is retroactive, meaning that it applies back to October 1, 1998. Chapter 12 will continue to be available to farmers through April 1, 1999. Any cases that are filed on or before April 1, 1999, will be allowed to proceed under the existing Chapter 12 provisions.⁷⁰

⁶⁴ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1123.

⁶⁵ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 757.

⁶⁶ Conference Report at H11302.

⁶⁷ Conference Report at H11302.

⁶⁸ Conference Report at H11303.

⁶⁹ 1999 Omnibus Bill, Div. C, Other Matters, Title I, § 149.

⁷⁰ The bill language refers to "the period beginning on October 1, 1998, and ending on April 1, 1999." 1999 Omnibus Bill, Div. C, Other Matters, Title I, § 149. We are interpreting this language to keep Chapter 12 alive through April 1, 1999, rather than ending on March 31, 1999, but there is some ambiguity. Farmers seeking to file as the end of March 1999 approaches should confirm the end date for the Chapter 12 extension.

IV. Conservation Programs

The 1999 Omnibus Bill and the accompanying Conference Report include a number of provisions affecting USDA conservation programs. These provisions are briefly described here.

Funding for the Environmental Quality Incentives Program is limited to \$174 million.⁷¹

Enrollment in the Wetlands Reserve Program is limited to 120,000 acres.⁷² Thirty-year easements are now exempt from payment limitations for the Wetlands Reserve Program.⁷³ Acceptance of bids for the Wetlands Reserve Program may now be “in proportion to landowner interest expressed in program options.”⁷⁴

The 1999 Omnibus Bill did not adopt a pilot program for haying and grazing on Conservation Reserve Program (CRP) land.⁷⁵ This program was included the Senate version of the bill.

The Conference Report expresses the expectation that the Secretary will provide a two-year extension for CRP participants to complete pruning, thinning, and stand improvement of trees on lands subject to a CRP contract.⁷⁶ The improvements would otherwise have to be completed in 1998 or 1999.

V. Livestock Pricing and Trade Provisions

A. Livestock Price Reporting Pilot Program

The 1999 Omnibus Bill requires the Secretary to conduct a 12-month pilot program for mandatory reporting of procurement prices in the beef and lamb industries.⁷⁷ This limited pilot program is a compromise coming out of stronger livestock price reporting provisions passed by the Senate. Only those involved in trading a “significant share” of the national market are covered by the program. The covered trades include domestic or imported cattle for immediate slaughter, fresh muscle cuts of beef, domestic or imported sheep, and fresh or frozen muscle cuts of lamb. Feeder cattle price information is specifically excluded by the Conference Report language.⁷⁸

The Secretary is required to report the findings from the pilot program no more than six months after the program conclusion.⁷⁹ No information collected through the program may be disclosed until the report is submitted. In addition to the pilot program for

⁷¹ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 726.

⁷² 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 730.

⁷³ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 751 (amending 16 U.S.C. § 3837d(c)(1)).

⁷⁴ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 752 (adding 16 U.S.C. § 3837(b)(2)(C)).

⁷⁵ Conference Report at H11300.

⁷⁶ Conference Report at H11302.

⁷⁷ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1127(a).

⁷⁸ Conference Report at H11303.

⁷⁹ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1127(a).

mandatory price reporting, the Secretary is directed by the Conference Report to “take steps” to increase voluntary price and volume reporting of beef and lamb sales.⁸⁰

The Secretary is also to conduct a 12-month pilot investigation of streamlined electronic system for collecting export data for fresh or frozen muscle cuts of meat food products.⁸¹

B. Report on Interstate Distribution of State-Inspected Meat

The Conference Report directs the Secretary to make a report by March 1, 1999, to the House and Senate Appropriations Committees with recommendations on lifting the statutory ban on interstate distribution of state-inspected meat.⁸²

VI. Dairy Pricing

The 1996 FAIR Act required the Secretary to undertake consolidation and reform of the federal milk marketing orders.⁸³ The 1999 Omnibus Bill requires the Secretary to submit to Congress between February 1, 1999, and April 4, 1999, a final rule implementing that consolidation.⁸⁴ The 1999 Omnibus Bill requires that the actual changes not take effect until October 1, 1999.

The 1999 Omnibus Bill includes a provision requiring that whenever the Secretary announces a basic formula price (BFP) for milk, he must include an estimate of per hundredweight costs of production, including transportation and marketing costs, in different regions of the United States.⁸⁵

VII. Discrimination at USDA

The 1999 Omnibus Bill includes a waiver of the statute of limitations for many discrimination complaints related to USDA credit, commodity, or disaster programs.⁸⁶

A. Two-Year Extension for Filing Civil Actions Based On Eligible Complaints of Discrimination

No civil action filed within two years of the enactment of the 1999 Omnibus Bill will be barred by the statutory limitations period if the action seeks relief related to discrimination alleged in an eligible complaint.⁸⁷ “Eligible” complaints are any complaints not related to employment that were filed with USDA before July 1, 1997, and that allege that discrimination in USDA farm loan programs, housing programs, commodity programs, and/or disaster assistance programs occurred between January 1, 1981, and December 31, 1996.⁸⁸ The word “filed” is not defined in the statute for this purpose. We are hoping that

⁸⁰ Conference Report at H11301.

⁸¹ 1999 Omnibus Bill, Div. A, Agriculture, Title XI, § 1127(b).

⁸² Conference Report at H11295, H11301.

⁸³ 1996 FAIR Act, § 143.

⁸⁴ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 738.

⁸⁵ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 739.

⁸⁶ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 741.

⁸⁷ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 741(a).

⁸⁸ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 741(e).

the Department will interpret this broadly to include any form of communication that can be documented, either in official USDA documents or by affidavit.

B. Option to Seek Agency Review of Discrimination Complaint

Instead of filing a civil action, farmers may choose to file an administrative action. The statute gives farmers up to two years from the enactment of the 1999 Omnibus Bill to request a hearing on the record regarding their “eligible” complaint.⁸⁹ (The wording in this section of the law is unclear—it is possible that this section also allows new complaints to be filed for a period of up to two years after enactment—but the language is too confusing to be sure.⁹⁰) Following the hearing on the record, the agency is required to provide the complainant with “such relief as would be afforded under the applicable statute . . . notwithstanding any statute of limitations.”⁹¹ The 1999 Omnibus Bill lists some of the substantive statutes which may govern the disposition of complaints, including the Equal Credit Opportunity Act.⁹² The agency is required “to the maximum extent practicable” to conduct an investigation, issue a written determination, and propose a resolution within 180 days of a request for a hearing.⁹³

The 1999 Omnibus Bill makes it clear that complainants who opt for the on-the-record hearing discussed above and are denied the requested relief will have 180 days after the denial to seek judicial review of the agency decision.⁹⁴

C. Compensatory Damages for Discrimination Based on Disability

The 1999 Omnibus Bill provides for compensatory damages to be paid to farmers who filed a disability discrimination complaint after January 1994 related to USDA farm loan programs or activities.⁹⁵ The complaint must have resulted in a finding that the farmer was subjected to discrimination and the farmer must have sought compensatory damages while the case was pending. Unlike the other discrimination provision of the 1999 Omnibus Bill, this section does not waive the statute of limitations.

⁸⁹ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 741(b).

⁹⁰ The language provides: “The complainant may, in lieu of filing a civil action, seek a determination on the merits of the eligible complaint by the Department of Agriculture if such complaint was filed not later than 2 years after the date of enactment of this Act.” 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 741(b). The confusion is generated by the fact that “eligible complaint” is defined as: “a nonemployment related complaint that was filed with the Department of Agriculture before July 1, 1997, and alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996. . . .” 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 741(e).

⁹¹ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 741(b)(1), (2).

⁹² 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 741(d). The Equal Credit Opportunity Act is found at 15 U.S.C. §§ 1691 et seq.

⁹³ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 741(b)(3).

⁹⁴ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 741(c).

⁹⁵ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 742.

D. USDA Required to Make Report on Indian Agriculture

The Conference Committee directed USDA to report to Congress by February 1, 1999, “on the progress made within Indian agriculture, Federal inter-agency coordination, and the level of Indian usage of Federal programs and initiatives outlined to benefit Indian agriculture.”⁹⁶

VIII. Crop Insurance Provisions

The 1999 Omnibus Bill changes the law for setting fees for catastrophic (CAT) crop insurance protection.⁹⁷ Beginning with the 1999 reinsurance year, producers cannot be required to pay more than \$50 per crop as an administrative fee for CAT coverage. Earlier in 1998 Congress had passed a law allowing CAT fees to be the greater of \$50 per crop or 10 percent of the coverage received.⁹⁸ This is no longer effective for the 1999 reinsurance years and thereafter.

The Conference Committee specifically noted that “risk management tools are limited for livestock producers.”⁹⁹ USDA’s Risk Management Agency is directed by the Committee to report to Congress on feasibility of a crop insurance program for livestock producers’ forages and native pastures.

IX. Miscellaneous Ag Provisions

The 1999 Omnibus Bill did not adopt provisions included in the Senate bill which would have provided statutory relief for producers who inadvertently planted ineligible bean crops in violation of Production Flexibility Contract (PFC) eligibility requirements. (Many producers had planted garbanzo beans and similar bean crops not realizing that those crops are classified as vegetables and are therefore ineligible for PFC acreage calculations). Rather than provide statutory relief, the Conference Report “urges” the Secretary to “exercise reasonable treatment of producers in order to avoid harmful consequences.”¹⁰⁰

The 1999 Omnibus Bill did not adopt provisions included in the Senate bill which would have required country-of-origin labeling for fresh produce and meat. Instead, the Conference Report directs the General Accounting Office (GAO) to conduct a comprehensive study on the effects of mandatory country-of-origin labeling on fresh produce importers, producers, consumers, and retailers.¹⁰¹ The Conference Report similarly directs the Secretary to conduct a comprehensive study on the effects of mandatory country-of-origin labeling on meat importers, exporters, livestock producers, consumers, packers, processors, distributors, and grocers.¹⁰² The reports on the studies must be submitted to Congress within six months after enactment of the 1999 Omnibus Bill.

⁹⁶ Conference Report at H11291.

⁹⁷ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 748.

⁹⁸ Act of June 23, 1998, Pub. L. No. 105-185, Title V, Subtitle C, § 532, 112 Stat. 581.

⁹⁹ Conference Report at H11295-96.

¹⁰⁰ Conference Report at H11301.

¹⁰¹ Conference Report at H11301.

¹⁰² Conference Report at H11302.

The 1999 Omnibus Bill did not adopt provisions included in the Senate bill which would have established a new Office of the Small Farms Advocate within USDA. Instead, the Secretary is directed to better manage existing programs “to encourage policy considerations within existing programs . . . that promote the needs of small farm operators and that may help reverse the unwarranted decline in small farm operations.”¹⁰³

The 1999 Omnibus Bill did not adopt a change in the definition of “family farm” which was included in the Senate bill.¹⁰⁴

The 1999 Omnibus Bill eliminated funding for both the Fund for Rural America and the Conservation Farm Option program established by the 1996 FAIR Act.¹⁰⁵

X. Tax Provisions

The 1999 Omnibus Bill includes tax provisions which are known together as the “Tax and Trade Relief Extension Act of 1998.” You should be aware that a number of changes made by this Act will affect tax liabilities for farmers and ranchers. These changes are discussed only briefly here. Farmers and ranchers should consult tax professionals for assistance in understanding how the changes will affect their individual tax obligations.

A. Self-Employed May Deduct 100 Percent of Health Insurance Costs Starting in 2003

The Tax and Trade Relief Extension Act of 1998 increases the percentage of health insurance expenses that may be deducted by self-employed individuals. The allowable deduction is increased to 60 percent in 1999 through 2001, 70 percent in 2002, and 100 percent in 2003 and later years.¹⁰⁶

B. Three-Year Farm Income Averaging Made Permanent

Federal tax law allows a farmer to choose to compute his or her current year tax liability by averaging, over the previous three-years, all or a portion of the taxable income attributable to the farm business.¹⁰⁷ Prior to the enactment of the 1999 Omnibus Bill, this provision was only authorized for years 1998-2000.¹⁰⁸ The Tax and Trade Relief Extension Act of 1998 permanently extends authority for this farm income averaging provision.¹⁰⁹

C. Production Flexibility Contract Payments Taxed In Year Received

The 1996 FAIR Act allows producers to choose whether to receive half of their annual Production Flexibility Contract (PFC) payment on December 15 or January 15 of the fiscal year that the payment is due.¹¹⁰ The option to receive an advance payment in December can have tax results for producers, even if they choose to receive the advance payment in

¹⁰³ Conference Report at H11301.

¹⁰⁴ Conference Report at H11301.

¹⁰⁵ 1999 Omnibus Bill, Div. A, Agriculture, Title VII, § 740.

¹⁰⁶ 1999 Omnibus Bill, Div. J, Tax and Trade Relief Extension Act of 1998, Title II, § 2002.

¹⁰⁷ 26 U.S.C. § 1301.

¹⁰⁸ Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 933(c).

¹⁰⁹ 1999 Omnibus Bill, Div. J, Tax and Trade Relief Extension Act of 1998, Title II, § 2011.

¹¹⁰ 1996 FAIR Act, § 112(d)(2) (codified at 7 U.S.C. § 7212(d)(2)).

January. The Emergency Farm Financial Relief Act of 1998 allows producers to receive their entire 1999 PFC payment at any time after October 1, 1998.¹¹¹ This statutory option, could have had tax implications for producers even if they did not choose to take early payment on the contract.

The Tax and Trade Relief Extension Act of 1998 provides that a producer's legal option to take early payments must be disregarded in determining the taxable year for PFC payments.¹¹² PFC payments are to be included in gross income for the taxable year in which they are actually received.

D. Five-Year Carryback Available for Farm Net Operating Losses

Federal tax law generally allows businesses to carry a net operating loss back two years and forward 20 years to offset taxable income in those years. Farmers are able to carry the net operating loss back three years if the loss is due to a Presidentially declared disaster.

The Tax and Trade Relief Extension Act of 1998 provides a special five-year carryback period for farm net operating losses, regardless of whether the loss was incurred in a Presidentially declared disaster area.¹¹³

¹¹¹ The Emergency Farm Financial Relief Act of 1998, Pub. L. No. 105-228 , § 2 (codified at 7 U.S.C. § 7212(d)(3)).

¹¹² 1999 Omnibus Bill, Div. J, Tax and Trade Relief Extension Act of 1998, Title II, § 2012.

¹¹³ 999 Omnibus Bill, Div. J, Tax and Trade Relief Extension Act of 1998, Title II, § 2013.