

3-1-1985

## "You Mean I Could've Saved the Farm?"-An Examination of the Notice Requirements, or Lack Thereof, of 7 U.S.C. § 1981a

Glen B. Collyer

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>



Part of the [Agriculture Law Commons](#), and the [Banking and Finance Law Commons](#)

---

### Recommended Citation

Glen B. Collyer, *"You Mean I Could've Saved the Farm?"-An Examination of the Notice Requirements, or Lack Thereof, of 7 U.S.C. § 1981a*, 1985 BYU L. Rev. 159 (1984).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1985/iss1/2>

This Comment is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

## “You Mean I Could’ve Saved the Farm?”—An Examination of the Notice Requirements, or Lack Thereof, of 7 U.S.C. § 1981a

Congress expressed its desire to foster the development and continued operation of family farms by passing the Agriculture Credit Act of 1978.<sup>1</sup> Among other things, the act allows the secretary of agriculture to defer principal and interest payments and forego foreclosure of Farmers Home Administration (FmHA) loans under certain circumstances.<sup>2</sup>

Although administrative agencies may pass regulations to implement new statutes, the secretary of agriculture has not enacted regulations to implement section 1981a.<sup>3</sup> In addition, the secretary has not provided farmers with notice of the availability of section 1981a’s deferral provisions, claiming that existing regulations fulfill whatever notice and hearing requirements section 1981a created.<sup>4</sup>

---

1. See 7 U.S.C. § 2266(a) (1982); H.R. REP. NO. 986, 95th Cong., 2d Sess. 6, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 1106, 1111.

2. 7 U.S.C. § 1981a (1982). Section 1981a states:

In addition to any other authority that the Secretary may have to defer principal and interest and forego foreclosure, the Secretary may permit, at the request of the borrower, the deferral of principal and interest on any outstanding loan made, insured, or held by the Secretary under this chapter, or under the provisions of any other law administered by the Farmers Home Administration, and may forego foreclosure of any such loan, for such period as the Secretary deems necessary upon a showing by the borrower that due to circumstances beyond the borrower’s control, the borrower is temporarily unable to continue making payments of such principal and interest when due without unduly impairing the standard of living of the borrower. The Secretary may permit interest that accrues during the deferral period on any loan deferred under this section to bear no interest during or after such period: *Provided*, That if the security instrument securing such loan is foreclosed such interest as is included in the purchase price at such foreclosure shall become part of the principal and draw interest from the date of foreclosure at the rate prescribed by law.

3. Generally an administrative agency will pass regulations that assist it in carrying out the purpose of a statute; however, the secretary of agriculture has never enacted any such regulations in connection with § 1981a. *Allison v. Block*, 723 F.2d 631, 634 (8th Cir. 1983) (holding that section 1981a requires the secretary to develop substantive standards applicable to deferral applications).

4. *Id.* at 636.

The secretary's stance has been challenged in three recent federal court of appeals decisions.<sup>5</sup> All three courts held that the secretary must implement section 1981a,<sup>6</sup> and two of the courts ordered the secretary to promulgate procedural regulations for implementing the section.<sup>7</sup> Furthermore, the Eighth and Tenth Circuits held that the secretary must provide personal notice of section 1981a's deferral provisions to defaulting farmers.<sup>8</sup> However, the Seventh Circuit held that the secretary was not required to give personal notice of section 1981a relief prior to FmHA loan foreclosure of a FmHA loan.<sup>9</sup>

This conflict among the courts of appeals can be resolved by analyzing the purpose of section 1981a. Congress intended section 1981a to provide relief for farmers in times of financial difficulty. Relief is best provided if the secretary notifies defaulting farmers of the availability of section 1981a's deferral provisions.

### I. FACTUAL SETTINGS OF THE CASES

Before applying the principles of statutory interpretation to section 1981a, the facts of the three federal court of appeals cases are examined.

#### A. Allison v. Block<sup>10</sup>

The Allisons obtained various FmHA loans between December 20, 1977, and April 28, 1980.<sup>11</sup> Adverse weather and economic conditions hampered farm operations and the Allisons were unable to make their loan payments following losses in

5. *United States v. Markgraf*, 736 F.2d 1179 (7th Cir. 1984); *Matzke v. Block*, 732 F.2d 799 (10th Cir. 1984); *Allison v. Block*, 723 F.2d 631 (8th Cir. 1983).

6. *United States v. Markgraf*, 736 F.2d 1179, 1184 (7th Cir. 1984); *Matzke v. Block*, 732 F.2d 799, 801 (10th Cir. 1984); *Allison v. Block*, 723 F.2d 631, 636 (8th Cir. 1983).

7. *Matzke v. Block*, 732 F.2d 799, 803 (10th Cir. 1984); *Allison v. Block*, 723 F.2d 631, 636 (8th Cir. 1983).

8. *Matzke v. Block*, 732 F.2d 799, 802 (10th Cir. 1984); *Allison v. Block*, 723 F.2d 631, 634 (8th Cir. 1983).

9. *United States v. Markgraf*, 736 F.2d 1179, 1186 (7th Cir. 1984).

10. 723 F.2d 631 (8th Cir. 1983).

11. *Id.* at 632. The first loan, for \$103,800, was obtained on December 20, 1977, and secured by a deed of trust on the Allisons' realty. After failing to turn a profit because of harsh weather conditions and low grain and livestock prices in 1977, Roger Allison applied for an emergency loan on December 22, 1978. The loan was initially denied but, after an appeal, the Allisons received a \$190,000 reorganization loan secured by a deed of trust on their farm. On April 28, 1980, the Allisons also received a \$29,750 operating loan secured by a deed of trust and liens on the Allisons' equipment, livestock, supplies and inventory. *Id.*

1979 and 1980.<sup>12</sup> On the advice of an FmHA county supervisor, they sold some breeding stock and equipment but were still in default.<sup>13</sup> Administrative appeals were unsuccessful in preventing the FmHA from accelerating payments on May 14, 1981.<sup>14</sup> Pending an appeal to the administrator of the FmHA, Roger Allison, while reading a farm magazine, first learned about possible loan deferral under the federal statute.<sup>15</sup> The Allisons requested section 1981a relief, but it was denied because the FmHA program assistant felt the Allisons “did not have the potential to generate sufficient farm income to repay family living and farm operating expenses plus debt service even if a deferral had been granted.”<sup>16</sup>

The Allisons requested declaratory and injunctive relief from acceleration of their loan payments and from property foreclosure. They alleged that the secretary’s failure to promulgate procedural and substantive regulations pursuant to section 1981a violated the statute, “amounted to a denial of equal protection and due process, and constituted an abuse of administrative discretion.”<sup>17</sup> The district court agreed, and the secretary appealed.<sup>18</sup>

#### B. *Matzke v. Block*<sup>19</sup>

In *Matzke* a group of Kansas farmers had received FmHA loans secured by their homes, crops, livestock, and equipment.<sup>20</sup> When the secretary and the FmHA accelerated delinquent loan accounts and demanded payment,<sup>21</sup> the farmers asserted that the secretary had failed to implement section 1981a remedies.<sup>22</sup> The trial court granted the plaintiffs’ motion for summary judgment, but held that the statute did not require notice.<sup>23</sup> Both parties appealed.<sup>24</sup>

---

12. *Id.* at 632-33.

13. *Id.* at 633.

14. *Id.*

15. *Id.*

16. *Id.* (quoting *Allison v. Block*, 556 F. Supp. 400, 403 (W.D. Mo. 1982)).

17. *Allison*, 723 F.2d at 633.

18. *Id.*

19. 732 F.2d 799 (10th Cir. 1984).

20. *Id.* at 800.

21. *Matzke v. Block*, 564 F. Supp. 1157, 1160 (D. Kan. 1983).

22. *Matzke*, 732 F.2d at 800.

23. *Id.*

24. *Id.*

C. United States v. Markgraf<sup>25</sup>

Between 1976 and 1979, the Markgrafs obtained a series of FmHA loans. In May 1978 they began to default on their loans.<sup>26</sup> No payments were made after March 31, 1980, and the FmHA notified the Markgrafs in August that it was accelerating the unpaid loan balances.<sup>27</sup> The Markgrafs never received notice of the availability of section 1981a's deferral provisions.<sup>28</sup> In November 1981 the United States brought a foreclosure proceeding against the Markgrafs.<sup>29</sup> The district court granted the government's motion for summary judgment and the Markgrafs appealed.<sup>30</sup>

## II. REQUIRING NOTICE OF LOAN DEFERRAL PROVISIONS

In *Allison*, *Matzke*, and *Markgraf*, the farmers contended that the secretary of agriculture must notify farmers of the availability of section 1981a's deferral provisions.<sup>31</sup> The government contended that section 1981a was permissive and therefore the secretary was not required to promulgate rules or notify farmers of available relief.<sup>32</sup>

In any case involving statutory interpretation, the court's task is to construe the language so as to give effect to congressional intent.<sup>33</sup> Customarily the courts have examined the language of the statute, its legislative history, and the interpretation given by the administrative agency charged with enforcement.<sup>34</sup> Analysis of these three factors indicates that Congress intended the secretary to notify farmers of section 1981a's deferral provisions.

25. 736 F.2d 1179 (7th Cir. 1984).

26. *Id.* at 1181.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Markgraf*, 736 F.2d at 1182; *Matzke*, 732 F.2d at 800; *Allison*, 723 F.2d at 633. Note that even though the farmers raised the notice issue, the *Matzke* court did not specifically deal with it.

32. *Markgraf*, 736 F.2d at 1182; *Matzke*, 732 F.2d at 800; *Allison*, 723 F.2d at 633-34.

33. *United States v. American Trucking Ass'ns*, 310 U.S. 534, 542 (1940); *Markgraf*, 736 F.2d at 1182.

34. *Markgraf*, 736 F.2d at 1182 (citation omitted); see also *Howe v. Smith*, 452 U.S. 473, 480-85 (1981) (Court in interpreting the statute looks to the language of the statute, the intent of Congress, and the interpretation of the administrative agency).

### A. *Language of the Statute*

In interpreting any statute, analysis must begin with the statute's language.<sup>35</sup> Section 1981a does not explicitly require that the secretary of agriculture notify farmers of the deferral provision.<sup>36</sup>

#### 1. *The courts' analysis*

The *Markgraf* court stated that everyone is assumed to know the contents of federal statutes<sup>37</sup> and noted that if Congress wants to require notice it must do so in explicit terms.<sup>38</sup> Because Congress had not expressly required notice of section 1981a's provisions, the court held that the secretary was not required to give notice.<sup>39</sup> However, the court admitted that notice could be required pursuant to any promulgated regulations. Providing such notice would be "consistent with the congressional purpose."<sup>40</sup>

Such reasoning differs from that in *Matzke* and *Allison*, where both courts found an implied notice requirement within the statute's language. The *Matzke* court stated that "for there to be a 'request' the defaulting borrower must have some sort of notice that he may so request."<sup>41</sup> The *Matzke* court also found an "obvious need for some notice to defaulting borrowers."<sup>42</sup> This was in line with the court's holding that the secretary must promulgate regulations for implementation of section 1981a.<sup>43</sup>

The *Allison* court was even more explicit. It agreed with several district courts and determined that "reading the statute as a whole and giving meaning to each word therein, Congress intended the Secretary to give notice of the availability of section 1981a relief to all CFRDA borrowers subject to loan acceler-

---

35. *Howe v. Smith*, 452 U.S. 473, 480 (1981); *Rubin v. United States*, 449 U.S. 424, 429 (1981); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 337 (1979).

36. *Markgraf*, 736 F.2d at 1186; see also 7 U.S.C. § 1981a (1982).

37. *Markgraf*, 736 F.2d at 1185-86 (citing *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384-85 (1947)). An exception to this general rule is made when the statute or regulations promulgated pursuant to the statute expressly require notice. *Markgraf*, 736 F.2d at 1186; *Payne v. Block*, 714 F.2d 1510, 1520 n.35 (11th Cir. 1983).

38. *Markgraf*, 736 F.2d at 1186 (citing *Denton v. United States*, 638 F.2d 1218, 1220 n.3 (9th Cir. 1981)).

39. *Markgraf*, 736 F.2d at 1186.

40. *Id.*

41. *Matzke*, 732 F.2d at 802.

42. *Id.*

43. *Id.* at 803.

ation or foreclosure."<sup>44</sup> The court reasoned that a borrower must first know of the availability of 1981a relief before he can request deferral and concluded that "[n]otice to the borrower is therefore indispensable."<sup>45</sup>

## 2. *Analysis of statutory language*

The *Markgraf* court correctly examined the express language of the statute.<sup>46</sup> However, it also should have determined whether the statutory language implied a right to notice.<sup>47</sup> The language states that "the Secretary may permit, *at the request of the borrower*, the deferral of principal and interest."<sup>48</sup> The italicized language clearly contemplates that the borrower knows about the possibility of obtaining deferral relief.<sup>49</sup> The question is whether the borrower is responsible for finding out about the deferral or whether the secretary is responsible for telling him.<sup>50</sup>

The *Markgraf* court used the legal fiction of "assumption of knowledge" to place the burden on the farmer.<sup>51</sup> This legal fiction, however, "breeds popular disrespect for the law."<sup>52</sup> Indeed, "for more than 200 years we have been told that the proper office of legal fictions is to prevent, rather than to create injustices."<sup>53</sup> In the case of section 1981a, the legal fiction creates injustice. The lucky farmer whose county agent tells him about the possibility of loan deferral can request relief, but the unlucky farmer will never know of the provisions.<sup>54</sup> Furthermore, the or-

44. *Allison*, 723 F.2d at 634. *Allison* cited the following district court decisions: *Jacoby v. Schuman*, 568 F. Supp. 643 (E.D. Mo. 1983); *Matzke v. Block*, 564 F. Supp. 1157 (D. Kan. 1983), *modified*, 732 F.2d 799 (10th Cir. 1984); *Coleman v. Block*, 562 F. Supp. 1353 (D.N.D. 1983); *Allison v. Block*, 556 F. Supp. 400 (W.D. Mo. 1982), *aff'd*, 723 F.2d 631 (8th Cir. 1983); *Curry v. Block*, 541 F. Supp. 506 (S.D. Ga. 1982), *modified*, 738 F.2d 1556 (11th Cir. 1984).

45. *Allison*, 723 F.2d at 634.

46. *Howe v. Smith*, 452 U.S. 473, 480 (1981); *Rubin v. United States*, 449 U.S. 424, 429 (1981); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 337 (1979).

47. *Coleman v. Block*, 562 F. Supp. 1353, 1361 (D.N.D. 1983).

48. 7 U.S.C. § 1981a (1982) (emphasis added).

49. *Coleman v. Block*, 562 F. Supp. 1353, 1361 (D.N.D. 1983); *see also Allison*, 723 F.2d at 634.

50. *Coleman v. Block*, 562 F. Supp. 1353, 1361 (D.N.D. 1983).

51. *Markgraf*, 736 F.2d at 1185 ("[E]veryone is charged with notice of the contents of our federal statutes.").

52. *Id.* at 1187 (Posner, J., dissenting from denial of rehearing en banc).

53. *Id.* (citation omitted).

54. *Coleman v. Block*, 562 F. Supp. 1353, 1361 (D.N.D. 1983).

dinary farmer cannot be expected to spend extra hours in a federal depository reading federal statutes.<sup>55</sup>

The secretary of agriculture should be responsible for notifying farmers of the deferral provisions. The secretary already notifies farmers of foreclosure and it would not be difficult to include notice of the deferral provisions of section 1981a.<sup>56</sup> Providing notice "poses little if any administrative difficulties for the FmHA."<sup>57</sup>

### B. Legislative History

In addition to the statutory language, legislative history assists courts in statutory interpretation, especially when the express statutory language is ambiguous or unclear.

#### 1. The courts' analysis

The *Markgraf* court discussed legislative intent in determining whether the secretary of agriculture was required to implement section 1981a.<sup>58</sup> However, the court ignored legislative intent when looking for a notice requirement.<sup>59</sup> It simply found that notice was not required because everyone assumedly knows the content of federal statutes and section 1981a does not have an express notice requirement.<sup>60</sup> The court stated, however, that "we in no way preclude the Secretary from mandating, through regulation or otherwise, that the FmHA must provide borrowers with personal notice of the availability of relief under section 1981a. Indeed, we note that providing notice poses little if any administrative difficulties for the FmHA."<sup>61</sup> The court also noted that providing notice would be consistent with the congressional purpose.<sup>62</sup>

On the other hand, the *Matzke* court found that congressional intent was clear. "Congress intended to create a remedy or permit relief for certain borrowers for whom serious concern had been expressed because of repeated drought conditions and

---

55. *Id.*

56. *Markgraf*, 736 F.2d at 1186 (Posner, J., dissenting from denial of rehearing en banc).

57. *Id.*

58. *Markgraf*, 736 F.2d at 1182-83.

59. *Id.* at 1185-86.

60. *Id.*

61. *Id.* at 1186.

62. *Id.*



by reason of unusually low farm prices."<sup>63</sup> Therefore, the secretary's failure to implement the section thwarted congressional efforts.<sup>64</sup> The court stated that regulatory procedures were required and that Congress undoubtedly anticipated such procedures would include notice to all farmers faced with foreclosure.<sup>65</sup>

The *Allison* court also found that Congress's intent was clear. The introductory language of the House report concerning section 1981a "stressed that the legislation was aimed at '[g]iving people a chance' and assisting farmers 'to remain on the land and carry on sound operations.'"<sup>66</sup> At least one witness recognized that "the first step the Government must take is to halt farm loan foreclosures through the passage of emergency Federal legislation."<sup>67</sup> Furthermore, comparison between the House version of section 1981a and language in the Housing Act concerning housing loans administered by the FmHA<sup>68</sup> reveals Congress's expectation that section 1981a would be implemented in the same manner as section 1475.<sup>69</sup> Regulations implementing section 1475 required, among other things, notice of the availability of the moratorium.<sup>70</sup>

63. *Matzke*, 732 F.2d at 801.

64. *Id.* at 802.

65. *Id.* For evidence of the belief that notice would be required note the following statements by the court: "[F]or there to be a 'request' the defaulting borrower must have some sort of notice that he may so request." *Id.* "The obvious need for some notice to defaulting borrowers also dictates some procedural device with a response." *Id.*

66. *Allison*, 723 F.2d at 634 (quoting H.R. REP. NO. 986, 95th Cong., 2d Sess. 22, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 1106, 1127).

67. *Allison*, 723 F.2d at 634.

68. This portion of the housing statute, now codified as 42 U.S.C. § 1475 (1982), states:

During any time that any such loan is outstanding, the Secretary is authorized under regulations to be prescribed by him to grant a moratorium upon the payment of interest and principal on such loan for so long a period as he deems necessary, upon a showing by the borrower that due to circumstances beyond his control, he is unable to continue making payments of such principal and interest when due without unduly impairing his standard of living. In cases of extreme hardship under the foregoing circumstances, the Secretary is further authorized to cancel interest due and payable on such loans during the moratorium. Should any foreclosure of such a mortgage securing such a loan upon which a moratorium has been granted occur, no deficiency judgment shall be taken against the mortgagor if he shall have faithfully tried to meet his obligation.

69. *Allison*, 723 F.2d at 634-35. For the reference to the Housing Act, see H.R. REP. NO. 986, 95th Cong., 2d Sess. 27, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 1106, 1132.

70. 7 C.F.R. § 1951.313 (1984).

## 2. Determination of legislative history

An analysis of legislative history indicates that Congress intended to provide farmers with notice of section 1981a's relief provisions. The express purpose of the Agriculture Credit Act of 1978 was to assist farmers in financially difficult times<sup>71</sup> and to be of greater service to farmers and the rural community.<sup>72</sup> Congress implemented the FmHA's farm lending programs to contribute to the development of rural America.<sup>73</sup> Section 1981a is important in achieving the results Congress desired from FmHA loans.<sup>74</sup> Farmers unable to take advantage of section 1981a because they do not know of its availability are in the same position they were before the FmHA had authority to defer loans.

---

71. H.R. REP. No. 986, 95th Cong., 2d Sess. 6, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 1106, 1111.

72. *Id.* at 22, reprinted in 1978 U.S. CODE CONG. & AD. NEWS at 1127.

73. *Id.* Congress stated:

FmHA's farm lending programs contribute to the development of rural America by:

1. Assisting qualified farm families who want to help themselves become successful.

2. Establishing a reservoir of young farmers to feed and clothe America's growing population and to produce food and fiber should this country ever become involved in another global war.

3. Helping those in rural areas remain on the land where they want to live.

4. Promoting a strong cohesive force that binds rural people together.

5. Giving people a chance. People are given a chance to become successful operators or owner-operators of family farms, to make efficient use of their land, labor and other resources, and to carry on sound and successful farming operations. FmHA gives them a chance through the use of credit and supervisory assistance.

6. Strengthening the local tax bases.

7. Aiding small business to continue to be a part of the community. Farmers spend money for gasoline, tires, cars, trucks, tractors, recreation, food and clothing, furniture, building supplies, farm supplies and the list could go on and on. They make good customers for local lending institutions.

8. Furnishing leadership. Some of the most effective leadership in the community, State and nation comes from farm families.

9. Promoting desirable environmental programs through loans controlling the various sources of population.

10. Assisting not only full-time farmers but also part-time farmers to remain on the land and carry on sound operations.

With these comments in mind, we find FmHA's present authorities are inadequate today to meet the credit needs of farmers who qualify for the Agency's services.

*Id.*

74. For example, loan deferral or moratorium assists farm families in becoming successful and gives people a chance to become successful operators, even in financially difficult times.

Furthermore, Senator Eagleton, a proponent of the deferral statute, said: "[A]s the result of the personal assurance I have received from the Secretary of Agriculture that the loan deferral program will be carried out . . . I have modified my amendment so that this deferral program will be within the Secretary's discretionary authority."<sup>75</sup> Senator Eagleton felt certain that the program would be implemented. The program could not be implemented if farmers were required to discover the section on their own.<sup>76</sup> Congress knew farmers' needs and expected the secretary to implement section 1981a by publishing regulations and notifying farmers of the provisions.

Further evidence of congressional intent is found in the reference to the housing act.<sup>77</sup> The secretary implemented the housing legislation with detailed regulations providing for notice and procedures for requesting a moratorium on rural housing loan payments.<sup>78</sup> Congressional reference to the Housing Act indicated an expectation that the secretary would implement section 1981a in the same manner. Failure to promulgate implementing regulations and give notice thwarts Congress's intent in enacting section 1981a.

### C. *Administrative Interpretation*

The final element analyzed in statutory interpretation is the construction given the statute by those charged with its administration.<sup>79</sup> Deference given to agency interpretation results from presuming agency expertise in the specialized area.<sup>80</sup>

#### 1. *The courts' analysis*

None of the three courts of appeals examined administrative interpretation when addressing the notice issue. However, the *Markgraf* court discussed administrative interpretation extensively in determining the need to implement section 1981a.<sup>81</sup> The court noted that the degree of deference given to agency interpretation varies depending on the thoroughness, validity,

75. 124 CONG. REC. 12,133 (1978) (remarks of Sen. Eagleton).

76. See *supra* notes 51-57 and accompanying text.

77. See *supra* notes 68-70 and accompanying text.

78. See 7 C.F.R. § 1951.313 (1984).

79. *United States v. Clark*, 454 U.S. 555, 565 (1982); *Piper v. Chris-Craft Indus.*, 430 U.S. 1, 40 n.27 (1977).

80. *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 568 n.9 (1980).

81. *Markgraf*, 736 F.2d at 1183-84.

and consistency of the agency's reasoning.<sup>82</sup> The court found the agency's interpretation of the act unpersuasive in reference to whether the act should be implemented.<sup>83</sup> However, the court ignored this reasoning when addressing the notice issue.<sup>84</sup>

## 2. *Weight given to administrative interpretation*

The act states that "[i]n addition to any other authority," the secretary of agriculture also "may have to defer principal and interest and forego foreclosure."<sup>85</sup> However, the secretary has not promulgated any new regulations.<sup>86</sup> The Supreme Court has declared that the weight given to administrative interpretations depends "upon the thoroughness evident in the agency's consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade."<sup>87</sup> It has also stated that lack of specific attention to a statutory authorization is especially important.<sup>88</sup> Finally, the Court has stated that an agency's interpretation can be rejected if it is inconsistent with the policy that Congress sought to implement.<sup>89</sup>

The value of an administrative agency's interpretation lies in agency expertise. In the case of section 1981a, the secretary has taken no action to interpret the statute, and the claim that new regulations are not needed is more of an afterthought than a conscious effort to interpret the statute.<sup>90</sup> The secretary's expertise is of little value unless the secretary has attempted to interpret section 1981a, particularly when congressional intent to assist farmers is evident from the section's language and legislative history. Thus, the courts are justified in rejecting the secretary's stance that notice is not required.

---

82. *Id.* at 1184 (citing *Federal Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 37 (1981)).

83. *Markgraf*, 736 F.2d at 1184.

84. *Id.* at 1186.

85. 7 U.S.C. § 1981a (1982).

86. *Markgraf*, 736 F.2d at 1184.

87. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

88. *Adamo Wrecking Co. v. United States*, 434 U.S. 275, 287 n.5 (1978).

89. *Federal Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981).

90. *Allison*, 723 F.2d at 636.

## III. CONCLUSION

Section 1981a was enacted to provide relief to farmers suffering financial difficulty. In enacting the statute, Congress intended that farmers be provided relief. Most farmers are unaware of section 1981a relief. Consequently, such relief is possible only if farmers are notified of the deferral provisions of section 1981a. Congress surely intended to require notification to allow farmers a chance to obtain relief. Accordingly, the secretary of agriculture must take steps to notify farmers of the relief provisions of section 1981a.

*Glen B. Collyer*