

March 1997

FARM PROGRAMS

Finality Rule Should Be Eliminated





United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-275791

March 7, 1997

The Honorable Dan Glickman
The Secretary of Agriculture

Dear Mr. Secretary:

The U.S. Department of Agriculture's (USDA) Farm Service Agency (FSA) pays billions of dollars annually to farmers for programs such as disaster assistance and agricultural conservation. Occasionally, because of errors, FSA pays farmers too much. In November 1990, as part of the 1990 farm bill, the Congress enacted the "90-day rule," known alternatively as the "finality rule." According to this rule, a farmer does not have to repay an overpayment unless (1) it is discovered within 90 days of the date of the payment or the application for program benefits, (2) fraud on the part of the farmer is involved, or (3) the farmer was aware that an error had occurred.¹ According to its legislative history, the rule was designed to protect farmers from the hardship of repaying large sums of money long after payments were made.

To assess the impact of the finality rule, we reviewed the (1) number and dollar amount of overpayments not repaid by farmers under the rule since its inception in November 1990 and the characteristics of individual overpayments and (2) actions FSA has taken to reduce the number of finality-rule cases and associated dollar amounts.

Results in Brief

From November 1990 through September 1996, FSA applied the finality rule to 10,694 cases in which overpayment errors were not discovered within 90 days of the date of payment or the filing of a program application. The rule allowed farmers to keep about \$4.2 million in overpayments—an average of \$395 per case. Almost 90 percent of the overpayments involved payments made under the disaster assistance and acreage reduction programs. Although the finality rule sought to protect farmers from the hardship of repaying large sums long after payments were made, most of the overpayments to which the finality rule was applied in fiscal years 1995 and 1996 involved small amounts of money, represented only a small percentage of the correct payments, and were discovered within a

¹Prior to October 1994, FSA used the date of payment as the starting date of the 90-day period.

relatively short time—9 months or less.² During these 2 fiscal years, about (1) 86 percent of the finality-rule cases involved \$500 or less, (2) 59 percent had overpayments amounting to 10 percent or less of the correct payment amounts, and (3) 67 percent were discovered within 9 months of the date of payment or the filing of a program application. While most overpayments were small, a few large payments accounted for most of the total dollar value of overpayments.

In recent years, several actions by the FSA and the Congress have reduced the number of finality-rule cases and associated overpayments. For example, the agency has taken action to improve the accuracy of disaster assistance information before payments are made by including district directors and county office review staff in the review of the applications and by targeting for closer review applications for disaster assistance from farms that might have had questionable activity in the past. In addition, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 reduced the potential for disaster assistance payments by requiring farmers to rely primarily on crop insurance for certain crops rather than disaster assistance, and the 1996 farm bill ended the acreage reduction program, thereby eliminating potential overpayments under this program.

Background

The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 farm bill) established the finality rule. According to this act, the decisions of FSA's state and county committees, or employees of the committees, that were made in good faith in the absence of misrepresentation, false statement, fraud, or willful misconduct by the farmer are final within 90 days, and no action should be taken to recover an erroneous overpayment unless the farmer had reason to believe that the payment was in error. According to its legislative history, this provision was intended to protect a farmer from the hardship of having to repay large amounts of money long after the payments were received. Prior to the 1990 farm bill, the Secretary of Agriculture had historically forgiven, on an individual basis, an overpayment to a farmer if the Secretary had determined that a hardship existed. The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 made changes to the finality rule, including establishing the start of the 90-day period as the date the farmer files an application for benefits. The finality rule applies to all FSA and

²Detailed information on individual finality-rule cases is available from headquarters beginning on October 1, 1994. For the period November 28, 1990, through September 30, 1994, FSA headquarters has only summary information.

Commodity Credit Corporation programs that provide payments to farmers.

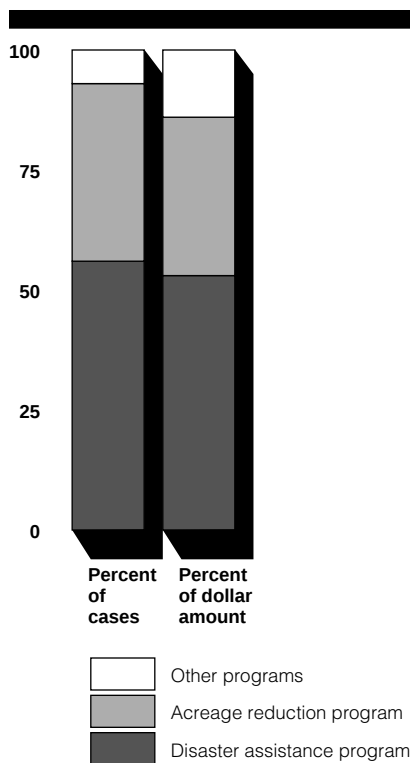
Dollar Amount and Characteristics of Erroneous Overpayments

From November 1990 through September 1996, the finality rule was applied to 10,694 cases, thereby allowing farmers to keep about \$4.2 million in overpayments by FSA—an average of \$395 per case. Most of these overpayments occurred under the disaster assistance and acreage reduction programs. Additionally, although the finality rule sought to protect farmers from the hardship of repaying large sums long after payments were made, most overpayments in fiscal years 1995 and 1996—the period for which detailed information on individual overpayments was available—generally involved (1) small amounts of money, (2) represented only a small percentage of the correct payment amounts, and (3) were discovered within a relatively short time.

Most Overpayments Fell Under the Disaster Assistance and Acreage Reduction Programs

The disaster assistance and acreage reduction programs accounted for most of the finality-rule cases. As figure 1 shows, from November 1990 through September 1996, the disaster assistance program had about 56 percent of the cases (6,038) and about 53 percent of the overpayment amounts (\$2,227,625). The acreage reduction program had the next highest number of cases (3,934) and overpayment amounts (\$1,394,847). The acreage reduction program accounted for about 37 percent of the finality-rule cases and about 33 percent of the dollar amounts. (See app. I for more detailed information.)

Figure 1: Percent of Finality-Rule Cases and Dollars Involved by Program, November 1990 Through September 1996

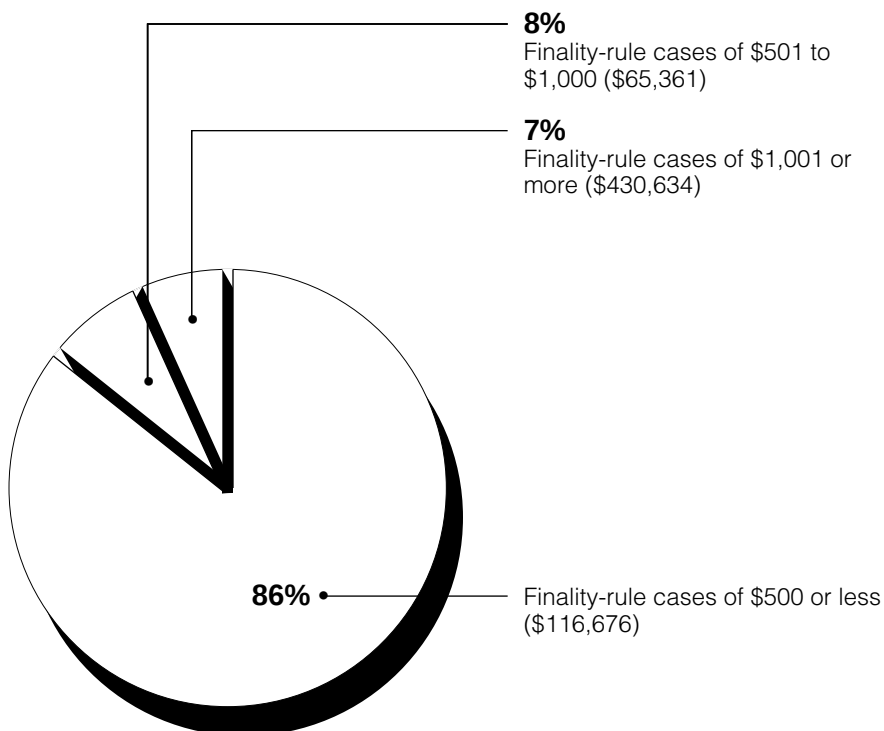


Source: GAO's analysis of FSA's data.

Most Overpayments Were Small

We found that most finality-rule cases involved small amounts of money, as figure 2 shows. For fiscal years 1995 and 1996, there were a total of 1,259 finality-rule cases involving a total of \$612,671. During this period, about 86 percent of the cases involved overpayments of \$500 or less. On the other hand, 7 percent of the cases involved overpayments of \$1,001 or more and made up most of the total overpayment amount. More specifically, the 85 cases involving payments exceeding \$1,000 accounted for 70 percent of the total overpayment amount. (See app. II for more detailed information.)

Figure 2: Number and Amount of Finality-Rule Cases, Fiscal Years 1995 and 1996



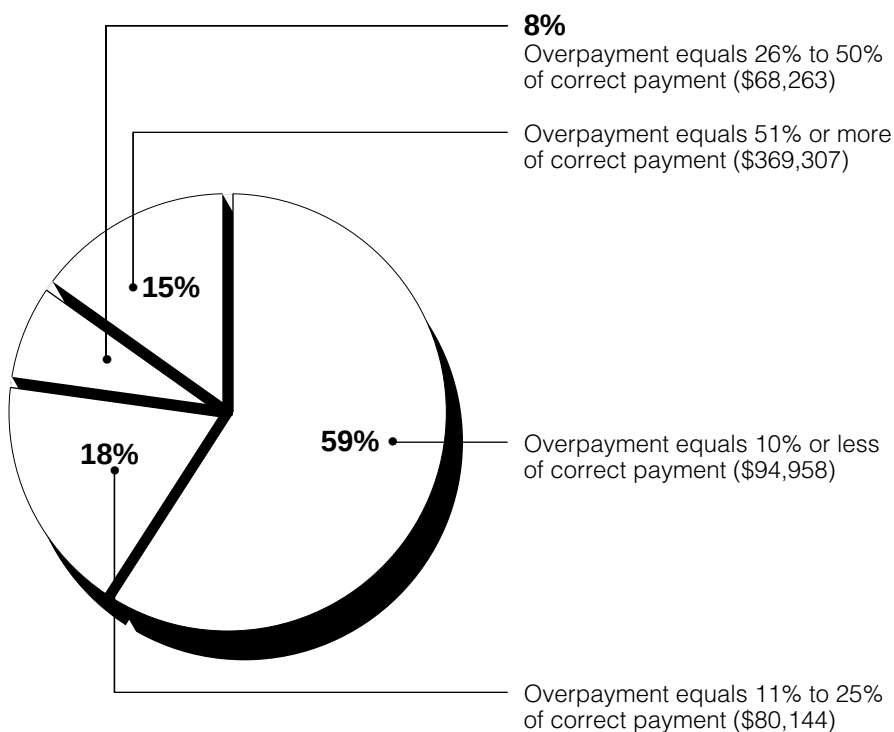
Notes: Total number of cases for the period was 1,259. Total does not equal 100 percent because of rounding.

Source: GAO's analysis of FSA's data.

In addition to involving relatively small overpayment amounts, most finality-rule cases involved overpayment amounts that were only a small percentage of the correct payment amounts. As figure 3 shows, during fiscal years 1995 and 1996, about (1) 59 percent of the total finality-rule cases had overpayments amounting to 10 percent or less of the correct payments, (2) 18 percent had overpayments amounting to 11 to 25 percent of the correct payments, (3) 8 percent had overpayments amounting to 26 to 50 percent of the correct payments, and (4) 15 percent had overpayments amounting to 51 percent or more of the correct payments. While most of the overpayment amounts were small, a few large

overpayments represented the bulk of the total dollar value of overpayments. (See app. III for more detailed information.)

Figure 3: Finality-Rule Cases by Percent of Overpayment, Fiscal Years 1995 and 1996

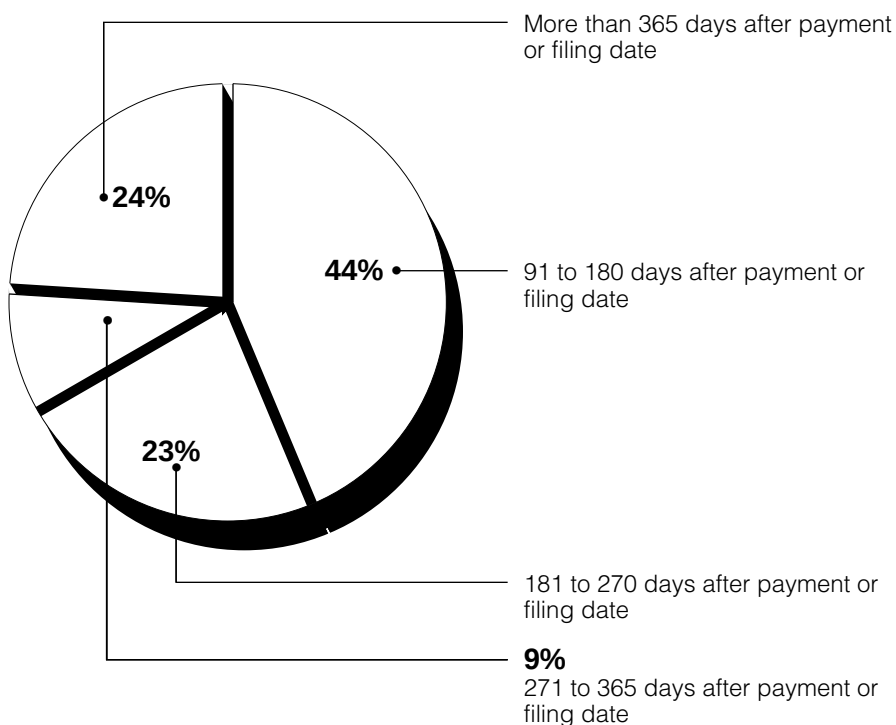


Source: GAO's analysis of FSA's data.

Most Overpayments Were Discovered Within 9 Months of Payment or Filing of Application

Most finality-rule cases were identified within a relatively short time. Specifically, about 67 percent of the finality-rule cases identified during fiscal years 1995 and 1996 were discovered within 9 months (270 days) of the date of payment or the date the program application was filed. Figure 4 shows the percentage of finality-rule cases discovered for different periods from the date of payment or filing of a program application: About (1) 44 percent of the total number of finality-rule cases were discovered between 91 and 180 days; (2) 23 percent, between 181 and 270 days; (3) 9 percent, between 271 and 365 days; and (4) 24 percent, more than 365 days. (See app. IV for more detailed information.)

Figure 4: Percent of Finality-Rule Cases Discovered Within Various Time Periods After the Date of Payment or Filing of Application, Fiscal Years 1995 and 1996



Source: GAO's analysis of FSA's data.

Most overpayments were discovered after 90 days primarily because most of FSA's internal reviews and USDA's Office of Inspector General audits were not performed within the 90-day limit. Thus, errors discovered by internal reviews and audits were generally discovered too late for overpayments to be collected.

If the time limit for the finality rule were extended to 270 days, 67 percent of the known overpayments discovered during fiscal years 1995 and 1996 for which FSA cannot now seek repayment could be pursued for collection. These overpayment cases involved 44 percent of the overpayment amounts. (See app. V for other time periods.) According to officials in USDA's Office of General Counsel, there is no clear-cut rationale for 90 days as the cutoff point for overpayment collections. USDA did not conduct a study to support using 90 days as the appropriate time period for the rule.

While all of FSA's programs that provide payments operate under the finality rule, most other USDA programs require program participants to repay any overpayments they receive. For example, the Food Stamp Program requires the state agencies administering the program at the local level to establish an administrative error claim against any household that has received more food stamp benefits than it is entitled to receive as a result of a state agency's action or failure to take action. According to the time criteria for establishing an administrative claim, (1) at a minimum, the state agency is to take action on those claims for which 12 months or less has elapsed between the month an overissuance occurred and the month the state agency discovered the overissuance, (2) states may choose to take action on those claims for which more than 12 months has elapsed, and (3) state agencies shall not take action on claims for which more than 6 years has elapsed. To settle claims, program participants can repay overpayments of food stamps they received either through cash payments or a reduction in their monthly food stamp allotments.

Actions Taken to Reduce Overpayments Under the Finality Rule

In recent years, FSA has taken various actions to reduce the number of cases and associated overpayments under the finality rule. For example, the agency has taken action to improve the accuracy of disaster assistance information before payments are made. FSA has performed national assessments of disaster program payments for the 1990 through 1993 crop years to collect historical payment data on individual farms. FSA used these data to identify areas of concern or discrepancies, such as unusual increases in the acreage planted or payment amounts or farmers who continually file for disaster benefits. FSA also used these data to review applications for the 1994 crop year disaster assistance before it made payments. In addition, FSA has included district directors and county office review staff in the application review process for disaster payments to ensure that disaster payments are properly distributed.

Furthermore, recent legislation has resulted in fewer finality-rule cases in fiscal years 1995 and 1996 than in previous years. For example, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 reduced the potential for disaster assistance payments by requiring farmers to rely primarily on crop insurance for certain crops rather than disaster assistance. In addition, the 1996 farm bill ended the acreage reduction program and thus eliminated potential overpayments under this program.

Finally, FSA has attempted to get the finality rule repealed or revised. In April 1995, in response to an audit report by USDA's Office of Inspector General, FSA recommended to the Under Secretary for Farm and Foreign Agricultural Services that the administration's proposals for the new farm bill include a proposal to eliminate the finality rule or, at a minimum, restrict its application to those situations for which relief is justified because of the meritorious circumstances of the case. However, the provision was not included in the administration's proposed farm bill.

Conclusions

While the finality rule was designed to protect farmers from having to repay large overpayments discovered long after they were made, we found that most finality-rule cases generally involved relatively small amounts of money, represented only a small percent of the correct payment amounts, and were discovered within a relatively short time. On the basis of these findings, we believe that the finality rule could be eliminated. Such an action would make the treatment of overpayments to farmers more consistent with all other USDA programs, which generally require program participants to repay overpayments made to them regardless of whether the overpayments were made in error or the repayment would cause them a hardship.

Recommendation to the Secretary of Agriculture

To reduce the overpayments by the federal government associated with the finality rule, we recommend that you submit a legislative proposal to the Congress to eliminate the finality rule.

Agency Comments and Our Evaluation

We provided a draft of this report to USDA for its review and comment. The Department agreed with the report's findings and conclusions and part of our original recommendation to eliminate the finality rule. However, the Department disagreed with the part of our recommendation to continue the finality rule's application in hardship cases. The Department believed that continuing the rule in hardship cases would duplicate procedures already in place. We agree and have revised our original recommendation to eliminate the portion relating to limiting the finality rule to hardship cases. USDA's written comments are included as appendix VI.

Scope and Methodology

To determine the number, dollar amount, and characteristics of overpayments covered by the finality rule since its inception in November 1990, we reviewed finality-rule data compiled by USDA's Kansas

City Management Office. We also reviewed the legislative history of the rule and discussed its origin with officials in USDA's FSA and its Office of General Counsel. To determine the actions FSA has taken to minimize overpayments under the rule, we reviewed FSA's policies and procedures on the rule and discussed the matter with FSA headquarters officials.

We conducted our review from August 1996 through February 1997 in accordance with generally accepted government auditing standards.

This report contains a recommendation to you. As you know, the head of a federal agency is required by 31 U.S.C. 720 to submit a written statement of the actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Reform and Operations not later than 60 days after the date of this letter and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of this letter.

We are sending copies of this report to the congressional committees with responsibility for appropriations and legislative matters for USDA and to the Administrator of FSA. We will also make copies available to others on request.

Please contact me at (202) 512-5138 if you or your staff have any questions. Major contributors to this report are listed in appendix VII.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert A. Robinson". The signature is fluid and cursive, with a large initial "R" and a stylized "A".

Robert A. Robinson
Director, Food and
Agriculture Issues

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Abbreviations

FSA	Farm Service Agency
GAO	General Accounting Office
USDA	U.S. Department of Agriculture

Number of Cases and Dollars Involved by Program for Finality-Rule Cases Identified From November 1990 Through September 1996

Program	Number of cases	Dollar amount
Acreage Reduction	3,934	\$1,394,847
Agricultural Conservation	163	90,228
Compliance	9	2,045
Conservation Reserve	117	33,120
Dairy Refund Payment	8	2,851
Disaster Assistance	6,038	2,227,625
Emergency Conservation	32	36,415
Emergency Feed	1	167
Forest Incentive	23	22,735
Integrated Farm Management	1	244
Livestock Feed	193	111,961
Payment Limitation	23	159,845
Price Support	120	127,669
Sugar	1	5,144
Tree Assistance	2	3,832
Water Bank	7	5,341
Wetland Conservation	5	3,577
Wool and Mohair	17	2,264
Total	10,694	\$4,229,909

Source: GAO's analysis of FSA's data.

Number of Cases and Dollars Involved for Finality-Rule Cases Identified for Fiscal Years 1995 and 1996

Range in dollars	Number of cases	Cumulative number of cases	Cumulative percent of cases	Dollar amount	Cumulative dollar amount	Cumulative percent of dollars
\$100 or less	704	704	56	\$27,665	\$27,665	5
101 to 250	221	925	73	35,102	62,727	10
251 to 500	154	1,079	86	53,909	116,676	19
501 to 1,000	95	1,174	93	65,361	182,037	30
\$1,001 and over	85	1,259	100	430,634	\$612,671	100
Total	1,259			\$612,671		

Source: GAO's analysis of FSA's data.

Finality-Rule Overpayments as a Percent of the Correct Payment Amount, Fiscal Years 1995 and 1996

Percent of correct amount	Number of cases	Cumulative number of cases	Cumulative percent of cases	Dollar amount	Cumulative dollar amount	Cumulative percent of dollars
1 or less	207	207	16	\$8,288	\$8,288	1
2 to 10	537	744	59	86,669	94,958	15
11 to 25	228	972	77	80,144	175,101	29
26 to 50	96	1,068	85	68,263	243,364	40
51 or more	191	1,259	100	369,307	\$612,671	100
Total	1,259			\$612,671		

Source: GAO's analysis of FSA's data.

Number of Finality-Rule Cases and Dollars Discovered Within Various Time Periods After the Date of Payment or Filing of Application, Fiscal Years 1995 and 1996

Days after application ^a	Number of cases	Cumulative number of cases	Cumulative percent of cases	Dollar amount	Cumulative dollar amount	Cumulative percent of dollars
91 to 180	548	548	44	\$194,708	\$194,708	32
181 to 270	288	836	67	72,214	266,921	44
271 to 365	117	953	76	44,010	310,931	51
More than 365	301	1,254	100	300,376	\$611,307	100
Total	1,254			\$611,307		

^aIncludes some cases in which the date of the government payment was the starting date for the 90-day time limit.

Note: Table does not include five cases with overpayments of \$1,364. These cases erroneously showed less than 91 days between the date of payment or filing of application and the date FSA discovered the error.

Source: GAO's analysis of FSA's data.

Analysis of Fiscal Year 1995 and 1996 Finality-Rule Cases Under Alternative Time Periods

Various time periods under a revised finality rule	Cumulative number of cases eliminated	Cumulative percent of cases	Cumulative dollar amount eliminated	Cumulative percent of dollars
180 days	548	44	\$194,708	32
270 days	836	67	266,921	44
365 days	953	76	310,931	51
Over 365 days	1,254	100	\$611,307	100

Note: Table does not include five cases with overpayments of \$1,364. These cases erroneously showed less than 91 days between the date of payment or filing of application and the date FSA discovered the error.

Source: GAO's analysis of FSA's data.

Comments From the U.S. Department of Agriculture



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

FEB 13 1997

Robert A. Robinson, Director
Food And Agricultural Issues
Resources, Community, and Economic Development
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Robinson:

Thank you for your letter of January 6, 1997 requesting comments on the draft report entitled Farm Programs: USDA's Finality Rule Needs to be Reconsidered (GAO/RCED-97-46, Code150716). Although we do have a concern with part of the report, we are in fundamental agreement with the basic conclusion that the Finality Rule should be eliminated. The report was reviewed by the Farm Service Agency.

The General Accounting Office (GAO) recommends in the report that the finality or 90-day rule should be eliminated. USDA agrees with this recommendation. We do not agree however, with the stated necessity of an alternative legislative proposal to limit the application of the finality rule to hardship cases. We believe that such an alternative would duplicate procedures already in place for debt collection in hardship cases and is unnecessary.

We appreciate the opportunity to comment on the report.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dallas R. Smith".

for Dallas R. Smith
Acting Under Secretary for Food
and Foreign Agricultural Services

Major Contributors to This Report

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