

UNITED STATES GOVERNMENT

KENNETH HEAD
GENERAL ACCOUNTING OFFICE

SSA

00474

Memorandum

TO : Director, CEDD

December 29, 1976

Do not make available to

FROM : Assistant General Counsel, OGC - Thomas F. Williamson

JFW

SUBJECT: GAO's Authority to Audit the Farm Credit Administration, Federal Land Banks, Federal Intermediate Credit Banks, Central and Regional Banks for Cooperatives, and Production Credit Associations;
B-114806

Mr. Fred Rabel of your Division raised a question concerning GAO's authority to audit the Farm Credit Administration and Farm Credit System banking institutions.

Question: Does the General Accounting Office have authority to audit the Farm Credit Administration, the Federal Land Banks, Federal Intermediate Credit Banks, the Central and Regional Banks for Cooperatives, and Production Credit Associations?

Answer: All financial transactions of the Farm Credit Administration (FCA), as well as FCA's regulatory, supervisory, and examining activities, are subject to review by the General Accounting Office under 31 U.S.C. §54 (1970), 31 U.S.C. §1154(a) (Supp. V, 1975) and 12 U.S.C. §1141i (1970).

For such periods as Government capital is invested in the Federal Land Banks, Federal Intermediate Credit Banks, and the Central and Regional Banks for Cooperatives, these Farm Credit System institutions are subject to audit by the General Accounting Office under the Government Corporation Control Act, 31 U.S.C. §§856, 857, 866 (1970) and the Legislative Reorganization Act of 1970, 31 U.S.C. §1154(a) (Supp. V, 1975).

Production Credit Associations are also Farm Credit System institutions but are not subject to audit under the Government Corporation Control Act. Production Credit Associations are privately owned, federally-chartered corporations and, in the absence of a specific access to records authorization, GAO has no clear basis for demanding access to the records necessary to conduct an audit.

B-114806

Attached is a complete discussion of our answer.

Attachment

cc: Mr. Pierson, OGC
Mr. Rabel, CEDD
Ms. Rubar, OGC
Mr. Crowley, CEDD
Mr. Mead, OGC
Index and Files
Index Digest

ATTACHMENT

GENERAL ACCOUNTING OFFICE AUTHORITY TO AUDIT THE
FARM CREDIT ADMINISTRATION AND FARM CREDIT SYSTEM
BANKING INSTITUTIONS

I. DIGESTS

1. All financial transactions of the Farm Credit Administration (FCA), as well as FCA's regulatory, supervisory, and examining activities, are subject to review by the General Accounting Office, the applicable audit and record access authorities being 31 U.S.C. §54 (1970), 31 U.S.C. §1154(a) (Supp V, 1975) and 12 U.S.C. §1141i (1970).
2. For such periods as Government capital is invested in the Federal Land Banks, Federal Intermediate Credit Banks, and the Regional and Central Banks for Cooperatives, these Farm Credit System banking institutions are subject to audit by GAO, the applicable audit and access to records authority being the Government Corporation Control Act, 31 U.S.C. §§856, 857, 866 (1970) and the Legislative Reorganization Act of 1970, 31 U.S.C. §1154(a) (Supp. V, 1975).
3. Although Production Credit Associations (PCA) are Farm Credit System banking institutions and may receive investments of Government capital, they are not subject to audit under the Corporation Control Act. PCA's are privately owned, federally-chartered banking corporations and, in the absence of a specific access to records authorization, GAO has no clear basis for demanding access to the records necessary to conduct an audit.

II. LEGAL ANALYSIS

A. QUESTION

Does GAO have authority to audit the Farm Credit Administration, the Federal Land Banks, Federal Intermediate Credit Banks, the Central and Regional Banks for Cooperatives and Production Credit Associations?

The Farm Credit Administration (FCA) is an independent agency in the executive branch of Government and is responsible for regulating, supervising, and examining the privately-owned, federally-chartered banking corporations, specified below, that comprise the Farm Credit System (FCS). 12 U.S.C. §§2241, 2252(1)-(17), 2254 (Supp. V, 1975). The FCS provides credit and closely related financial services to farmers, ranchers, producers, harvesters, rural homeowners, and certain businesses providing farmers with services essential to their on-farm operating needs. 12 U.S.C. §2001(a) and (b) (Supp. V, 1975). To fulfill these purposes, the country is divided into several Farm Credit Districts. In each district, there exists a four-tiered banking system consisting of a Federal Land Bank, a Federal Intermediate Credit Bank, a Central and Regional Bank for Cooperatives (Banks for Cooperatives) and one or more Production Credit Associations, of which all may provide the financial services described above. See 12 U.S.C. §2002 (Supp. V, 1975); H.R. Doc. No. 93-268, 93d Cong., 2d Sess. 9 (1974).

In addition to its regulatory, supervisory, and examining responsibilities, the FCA is financially involved in the operation of the FCS. This financial involvement is limited to three areas: (1) expenditures from revolving fund accounts to provide the Federal Intermediate Credit Banks, Banks for Cooperatives, and Production Credit Associations with the capital necessary to meet the emergency credit needs of FCS borrowers, 12 U.S.C. §§2151(a), 2152(a) and (b), 2252(10) (Supp. V, 1975); (2) requesting the Secretary of the Treasury to make deposits for the temporary use of Federal Land Banks out of any money in the Treasury not otherwise appropriated, 12 U.S.C. §2152(c) (Supp. V, 1975); and (3) administrative expenditures necessary for the proper administration of the FCS, 12 U.S.C. §2249 (Supp. V, 1975).

B. AUTHORITY TO AUDIT FARM CREDIT ADMINISTRATION (FCA) FINANCIAL TRANSACTIONS AND TO REVIEW FCA'S SUPERVISORY, REGULATORY, AND EXAMINING ACTIVITIES

GAO's authority to audit the FCA is predicated on the provisions of the Act of June 15, 1929 (Agricultural Marketing Act), ch. 24, §14, 46 Stat. 18, 12 U.S.C. §1141i (1970), which provides:

"§1141i. Examination of books and accounts.

"Vouchers approved by the Governor of the Farm Credit Administration for expenditures from the revolving fund pursuant to any loan or advance or from insurance moneys pursuant to any insurance agreement, shall be final and conclusive upon all officers of the Government; except that all financial transactions of the administration shall, subject to the above limitations, be examined by the General Accounting Office at such times and in such manner as the Comptroller General of the United States may by regulation prescribe." (Emphasis added.) See also 31 U.S.C. §53 (1970).

And section 54 of title 31, United States Code (1970), the applicable access to records provision, provides:

"§54. Information furnished to Comptroller General by departments and establishments.

"All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment * * *." See also 31 U.S.C. §2 (1970), which defines departments and establishments as including any "executive department" or "agency." The Farm Credit Administration is an independent agency in the executive branch of Government. 12 U.S.C. §2241 (Supp. V, 1975).

These authorizations give GAO the right to examine "all financial transactions" of the FCA. 1/

GAO's authority to audit the FCA under 12 U.S.C. §1141i and to obtain access to FCA's records under 31 U.S.C. §54 is supplemented by the Legislative Reorganization Act of 1970, relevant provisions of which provide:

§1154. Review and evaluation.

"Results of Government programs and activities reviewed and evaluated by Comptroller General.

"(a) The Comptroller General shall review and evaluate the results of Government programs and activities carried on under existing law when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such programs and activities." 31 U.S.C. §1154(a) (Supp. V, 1975).

Section 1154(a) reflects Congress' recognition that the scope of GAO's audit authority includes the evaluation of Government programs and activities (program audits). See S. Rep. No. 91-202, 91st Cong., 1st Sess. 31 (1969).

We note that the Farm Credit Act of 1971 requires the FCA to regulate, supervise, and examine FCS banking institutions (Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Production Credit Associations). 12 U.S.C. §2252(l)-(17) (Supp. V, 1975).

1/ FCA revolving fund disbursements may be examined for the purpose of reporting the existence of revolving fund transactions and the circumstances under which they were made. See H.R. Conf. Rep. No. 21, 71st Cong., 1st Sess. 19 (1929); S. Rep. No. 3, 71st Cong., 1st Sess. 10-11 (1929).

There is nothing in the Legislative Reorganization Act, the Farm Credit Act of 1971, above, or the legislative histories of these Acts to suggest that the FCA is exempt from section 1154(a) or, alternatively, that FCA's supervisory, regulatory, and examining activities are not to be regarded as " * * * activities carried on under existing law * * *." Since FCA's regulatory, supervisory, and examining activities are carried on under existing law and are not otherwise exempted from review by either the Farm Credit Act of 1971 or the Legislative Reorganization Act of 1970, the described activities are subject to GAO review and the audit staff may properly demand access to FCA records bearing on the conduct and results of such activities under 12 U.S.C. §1141i and 31 U.S.C. §§54, 1154(a), as amended.

Because the authority to audit the FCA is independent of GAO's authority to audit FCS banking institutions, we emphasize that the authority to review FCA's financial, supervisory, regulatory, and examining activities under 12 U.S.C. §1141i and 31 U.S.C. §1154(a) does not in itself include a right to independently verify and evaluate the results of these activities by conducting on-site audits of Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, and Production Credit Associations.

C. AUDIT AUTHORITY: FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, BANKS FOR COOPERATIVES, AND PRODUCTION CREDIT ASSOCIATIONS

1. Background

By the Act of June 15, 1929 (Agriculture Marketing Act), ch. 24, §6, 46 Stat. 14 and the Act of June 16, 1933, ch. 98, title I, §5, 48 Stat. 258, Congress established two FCA revolving fund accounts. And the Farm Credit Act of 1971, Pub. L. No. 92-181, 85 Stat. 624, makes provision for the use of the revolving fund accounts, as well as certain other monies, as temporary investments of the United States in FCS banking institutions. The relevant statutory provisions appear below:

"§2151. Stock purchased by Governor for
the Farm Credit Administration;

* * *

"(a) The Federal land banks, the Federal intermediate credit banks, and banks for cooperatives and * * * the production credit associations may issue stock which may be purchased by the Governor of the Farm Credit Administration on behalf of the United States as a temporary investment in the stock of the institution to help one or several of the banks or associations to meet emergency credit needs of borrowers. The ownership of such stock shall be deemed to not change the status of ownership of the banks or associations, but, during the time such stock is outstanding, the pertinent provisions of the Government Corporation Control Act shall be applicable.

* * * * *

"§2152. Revolving funds and government deposits.

"(a) Investment in stock of intermediate credit banks and production credit associations.

"The revolving fund established by Public Law 87-343, 75 Stat. 758, as amended [see Act of June 16, 1933, previously cited], shall be available at the request of the Governor of the Farm Credit Administration for his temporary investment in the stock of any Federal intermediate credit banks or production credit associations as provided in section 2151 of this title * * *. Funds received from the partial or the full retirement of such investments shall be deposited in this revolving fund.

"(b) Investment in stock of banks for cooperatives.

"The revolving fund established by Public Law 87-494, 76 Stat. 109, as amended [see Agriculture Marketing Act, previously cited], shall be available at the request of the Governor of the Farm Credit Administration for his temporary investment in the stock of any bank for cooperatives as provided in section 2151 of this title. Funds received from the partial or full retirement of such investments shall be deposited in this revolving fund." 12 U.S.C. §§2151(a), 2152(a) and (b) (Supp. V, 1975).

Sections 2151(a) and 2152(a) and (b), above, provide that FCA may use the revolving funds for the principal purpose of temporarily investing in the stock of the Federal Intermediate Credit Banks, Banks for Cooperatives, and Production Credit Associations to assist these institutions in accommodating the emergency credit needs of their borrowers. Although section 2151(a) authorizes the FCA to purchase stock in the Federal Land Banks, no current fund, revolving or otherwise, is available for this purpose. See 12 U.S.C. §2152(a) and (b) (Supp. V, 1975); S. Rep. No. 92-307, 92d Cong., 1st Sess. 33 (1971); H.R. Rep. No. 92-593, 92d Cong., 1st Sess. 26 (1971). But with respect to the capital assistance available to Federal Land Banks, section 2152(c) of title 12 United States Code (Supp. V, 1975), provides:

"(c) Deposits for temporary use of land banks; certificates of indebtedness; maximum aggregate deposits.

"The Secretary of the Treasury is authorized, in his discretion, upon the request of the Farm Credit Administration, to make deposits for the temporary use of any Federal land bank, out of any money in the Treasury not otherwise appropriated. Such Federal land bank shall issue to the Secretary of the Treasury a certificate of indebtedness for any such deposit, bearing a rate of interest not to exceed the current rate charged for other Government deposits, to be secured by bonds or other collateral,

to the satisfaction of the Secretary of the Treasury. Any such certificate shall be redeemed and paid by such land bank at the discretion of the Secretary of the Treasury. The aggregate of all sums so deposited by the Secretary of the Treasury shall not exceed the sum of \$6,000,000 at any one time. * * *

Thus, unlike the Federal Intermediate Credit Banks, Banks for Cooperatives, and Production Credit Associations, Federal Land Banks receive their capital assistance from monies in the Treasury not otherwise appropriated or available to the FCA.

2. Audit Authority Under the Government Corporation Control Act

GAO's authority to audit an FCS banking institution, as distinguished from GAO's authority to audit the FCA, is based on the Government Corporation Control Act, 31 U.S.C. §841 et seq. (1970), providing in pertinent part:

"SUBCHAPTER III--MIXED-OWNERSHIP GOVERNMENT CORPORATIONS

"§856. Definition of 'mixed-ownership Government corporations.'

"* * * the term 'mixed-ownership Government corporations' means (1) the Central Bank for Cooperatives and the Regional Banks for Cooperatives, (2) Federal Land Banks, (3) Federal Intermediate Credit Banks, * * *

"§857. Audit of financial transactions; rules and regulations; place of audit; access to books, records, etc.; effective date.

"The financial transactions of mixed-ownership Government corporations for any period during which Government capital has been invested therein shall be audited by the General Accounting

Office * * * under such rules and regulations as may be prescribed by the Comptroller General * * *.

This provision further provides:

"The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the respective corporations and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.
* * *" 31 U.S.C. §§856, 857 (1970).

Thus, for an FCS institution to be within the purview of the Corporation Control Act and therefore subject to audit by the GAO, two statutory criteria must be satisfied: (1) the institution must constitute a "mixed-ownership Government corporation" as defined by the Act or other applicable statutory authority; and (2) for the period covered by the audit, Government capital must be invested in the institution.

a. FCS Institutions Subject to the Corporation Control Act

The Corporation Control Act defines Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives as "mixed-ownership Government corporations" and expressly subjects these institutions to audit for periods in which Government capital is invested therein. 31 U.S.C. §856 (1970). During periods in which the Government's investment is outstanding, Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives are therefore subject to audit by GAO, the applicable audit and access to records authority being the Corporation Control Act, 31 U.S.C. §§856, 857. During periods in which Government capital is not invested in these FCS banking institutions, GAO has no express statutory basis for demanding access to the records necessary to conduct an audit. See B-114828, November 25, 1975.

Notwithstanding the presence of Government investments in the capital structure of Production Credit Associations, these institutions, unlike the Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives, have never been considered mixed-ownership Government corporations and have never been subject to audit under the Corporation Control Act. See 31 U.S.C. §§856, 857 (1970); See also Act of June 16, 1933, ch. 98, title IV, §20, 48 Stat. 259. Our research disclosed no statutory audit or access to records provisions specifically applicable to Production Credit Associations. And GAO has no independent basis for demanding access to the records of privately owned, although federally-chartered, corporations in the absence of specific statutory or contractual provisions to that effect.^{2/} See B-114828, November 25, 1975; B-184000-O.M., October 6, 1975; 12 U.S.C.

2/ It could be argued that GAO's basic authority for access to records, the Budget and Accounting Act of 1921, 31 U.S.C. §54 (1970), previously quoted, applies to the records of Production Credit Associations. However, 31 U.S.C. §54 applies only to "departments and establishments." 31 U.S.C. §2 (1970) defines the term "department and establishment" to include--

" * * * any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including any independent regulatory commission or board * * * but do not include the legislative branch of the Government or the Supreme Court of the United States; * * * "

The lack of written GAO precedent for the application of this access authority to privately-owned, although federally-chartered, corporations such as Production Credit Associations may be cited to counter the right to access argument set forth above. Furthermore, 31 U.S.C. §2 was amended in 1939 to include independent regulatory commissions which, like privately-owned, although federally-chartered, corporations, were not significant governmental structures at the time 31 U.S.C. §§2 and 54 were written. The absence of an amendment to 31 U.S.C. §2 adding Government corporations or privately-owned, but federally-chartered, corporations may indicate that they are not included in the definitions of departments and establishments and are therefore not within the purview of 31 U.S.C. §54.

§2091 (Supp. V, 1975); Report to the Congress, Audit of Certain Banks of the Farm Credit System Supervised by the Farm Credit Administration, B-114806, p. 6 (February 9, 1970).

b. Investments of Government Capital

As explained above, the Corporation Control Act requires, as a prerequisite to an audit of "mixed-ownership Government corporations," the investment of Government capital in the corporation for the period covered by the audit. 31 U.S.C. §857 (1970). Pursuant to the provisions of sections 2151 and 2152 of title 12, United States Code (Supp. V, 1975), the Governor of the FCA may utilize the revolving funds for investments in the stock of the Federal Intermediate Credit Banks, Banks for Cooperatives, and Production Credit Associations. The Government's ownership of such stock does not mean that the United States has an ownership interest in the FCS banking institutions. 12 U.S.C. §2151(a) (Supp. V, 1975). But Congress, in enacting the Farm Credit Act of 1971, characterized disbursements from the revolving fund accounts (i.e., investments in the stock of certain FCS institutions) as investments " * * * purchased * * * on the behalf of the United States * * * and specifically provided that during such periods as the investments were outstanding, pertinent provisions of the Corporation Control Act would be applicable. 12 U.S.C. §1141d (1970); 12 U.S.C. §§2151(a), 2152(a) and (b) (Supp. V, 1975); see also H.R. Rep. No. 92-593, 92d Cong., 1st Sess. 26 (1971); S. Rep. No. 92-307, 92d Cong., 1st Sess. 32-33 (1971). Thus, even though the status of institution ownership is not altered by the acquisition of stock in the name of the United States, an FCS institution, if subject to the Corporation Control Act, may be audited for periods in which the stock purchased with revolving funds is outstanding.

The Federal Land Banks receive no capital assistance from FCA's revolving fund accounts. See, in this regard, S. Rep. No. 92-307, 92d Cong., 1st Sess. 33 (1971); 12 U.S.C. §2152(a) and (b) (Supp. V, 1975). Instead, Federal Land Banks receive capital assistance from monies in the Treasury not otherwise appropriated or available to the FCA. And this capital assistance is in the form of collateral secured, interest bearing deposits of public monies, represented by a certificate of indebtedness redeemable by the Secretary of the Treasury. See Act of July 17, 1916, ch. 245, title I, §32, 39 Stat. 384 (now 12 U.S.C. §2152(c)

(Supp. V, 1975), previously quoted). This type of capital assistance constitutes an investment of Government capital within the meaning of the Corporation Control Act, 31 U.S.C. §857 (1970). See H.R. Rep. No. 856, 79th Cong., 1st Sess. 26-27 (deposits in Federal Land Banks classified as "capital" of the United States) (1945); Blacks Law Dictionary 262, 960 (Rev. 4th ed. 1968). Thus, like the Federal Intermediate Credit Banks and Banks for Cooperatives who hold outstanding stock purchased with FCA revolving funds, Federal Land Banks holding unredeemed, income-producing deposits of Government capital, are subject to audit by the General Accounting Office, the applicable audit and access to records authority being the Corporation Control Act, 31 U.S.C. §§856, 857 (1970).

We emphasize that any audit of Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives conducted pursuant to the Corporation Control Act will be of the commercial type, as distinguished from the standard Government audit involving the disallowance of expenditures made in violation of law. The Corporation Control Act, section 858 of title 31, United States Code (1970) prescribes the scope and content of a commercial audit:

"§858. Audit report to Congress; scope and contents; specific itemization of operations without color of authority; copies to President, etc.

"* * * The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep Congress informed of the operations and financial condition of, and the use of Government capital by, each such corporation, together with such recommendations with respect thereto as the Comptroller General may deem advisable, including a report of any impairment of capital or lack

of sufficient capital noted in the audit and recommendations for the return of such Government capital or the payment of such dividends as, in his judgment, should be accomplished. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. * * *

The audit contemplated by section 858 is designed to determine the financial condition of Federal Land Banks, Federal Intermediate Credit Banks, and Banks for Cooperatives as of a given date and the results of their operations during the period under audit. See H.R. Rep. No. 856, 79th Cong., 1st Sess. 8 (1945). Additionally, the report is to show specifically any program, expenditure, financial transaction, or other undertaking observed in the course of the audit which, in the opinion of the Comptroller General, has been carried on or made without the authority of law. See S. Rep. No. 694, 79th Cong., 1st Sess. 9 (1945). And to facilitate this review, the FCA is required to furnish the audit staff with the reports of bank examinations made by FCA examiners. Similarly, the audit staff is required to utilize the bank examination reports to the maximum practicable extent. 31 U.S.C. §866(a) (1970).

3. Audit Authority Under the Legislative Reorganization Act of 1970

The Legislative Reorganization Act of 1970, Pub. L. No. 91-510, 84 Stat. 1168, 31 U.S.C. §1154(a) (1970), as amended, provides an additional statutory basis for auditing the Federal Land Banks, Federal Intermediate Credit Banks, and the Banks for Cooperatives. The same Act provides some basis for auditing Production Credit Associations which, unlike other FCS banking institutions, are not subject to audit under the Corporation Control Act.

The Legislative Reorganization Act of 1970 authorizes GAO to " * * * review and evaluate the results of Government programs and activities carried on under existing law * * *." See 31 U.S.C. §1154(a) (Supp. V, 1975), previously quoted.

The legislative history of section 1154(a) shows that Congress contemplated reviews, hereafter referred to as program audits, of "agency" programs and activities. S. Rep. No. 91-202, 91st Cong., 1st Sess. 31 (1969); 115 Cong. Rec. 2556 (1969). Although the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, and Production Credit Associations are clearly not "Federal agencies" in the ordinary sense of the word, the Legislative Reorganization Act of 1970 defines "Federal agency" as meaning:

" * * * any department, agency, wholly owned Government corporation, establishment, or instrumentality of the Government of the United States * * *. 31 U.S.C. §1157 (1970) (emphasis added).

And the Farm Credit Act of 1971, 12 U.S.C. §§2011, 2071, 2121 (Supp. V, 1975), specifically denominates Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, and Production Credit Associations as " * * * federally chartered instrumentalities of the United States * * *." For this reason, we believe the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, and Production Credit Associations are within the coverage of the Legislative Reorganization Act of 1970. Compare B-114831-O.M., July 14, 1975. Furthermore, the activities and programs of all FCS banking institutions are carried out under the authority of the Farm Credit Act of 1971, 12 U.S.C. §2001 et seq., (Supp. V, 1975). And for the purpose of 31 U.S.C. §1154(a), these activities may therefore be considered "activities carried on under existing law."

Significantly, the applicability of section 1154(a) to Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, and Production Credit Associations does not depend upon the contemporaneous applicability of the Corporation Control Act. Thus, a basis could be seen for arguing that Federal Land Banks, Federal Intermediate Credit Banks, and Banks for Cooperatives are subject to GAO audit notwithstanding the absence of Government invested capital and the resulting inapplicability of the Corporation Control Act. A similar argument pertains in the case of Production Credit Associations, which are not subject to audit under the Corporation Control Act, notwithstanding the presence or absence of Government invested capital.

However, the Legislative Reorganization Act of 1970 does not contain an express access to records provision. While it could be argued that a right of access to essential records logically flows from the authority to conduct program audits, this argument is substantially weakened by the fact that in other statutes, notably the Corporation Control Act, 31 U.S.C. §857, an access provision is not merely implied in, but is coupled with the authority to audit.

Clearly, a more persuasive basis for conducting a program audit of FCS banking institutions under the Legislative Reorganization Act of 1970 exists when the Corporation Control Act applies. The applicability of the Corporation Control Act and the resulting applicability of the Act's broad access to records provision, 31 U.S.C. §857, previously quoted, would provide a basis for obtaining access to the materials necessary to conduct a program audit under the Legislative Reorganization Act of 1970, 31 U.S.C. §1154(a).

Further support for this view may be found in section 858 of title 31, United States Code (Corporation Control Act), which requires GAO to report on "programs" that have been carried on illegally by Federal Land Banks, Federal Intermediate Credit Banks, and Banks for Cooperatives. In view of this reporting requirement, it is unlikely that the Corporation Control Act's broad access to records provision could be declared inapplicable to records considered necessary to conduct section 1154(a) program audits of those FCS banks that are subject to audit under the Corporation Control Act when the Government's capital investment is outstanding.

SPECIAL STUDIES AND ANALYSIS

By: Kenneth M. Mead