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March 19, 1992

To: The Chief Executive Officer

All Farm Credit Institutions

From: David C. Baer, Director

Office of Examination

Subject: Government Seizure of Property Used in Connection with Controlled Substances

Under various authorities, law enforcement agencies may seize, and cause to be forfeited, real property and improvements which are obtained with the proceeds of activities or which are used in any manner to facilitate violations committed in connection with controlled substance offenses. Conveyances which are used or intended for use in any manner to facilitate the transportation of controlled substances are also subject to seizure and forfeiture. These activities are permitted by several Federal, State, or local laws and are governed principally by the Drug Abuse Prevention and Control Act, the Controlled Substances Act, and the Comprehensive Crime Control Act. Although enforcement is often connected with conveyances, authority exists to seize liened real property or chattels held by lenders, including Farm Credit System institutions.

Specifically, 21 U.S.C. 881 provides forfeiture authority for particular subject property. Paragraph (a)(7) provides that the following is subject to forfeiture to the United States: "All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner." In relation to possible chattels, the statutes provide that all conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of controlled substances, are subject to seizure and forfeiture.

The "innocent owner" concept, included in the quoted portion of section 881, provides an avenue of relief from forfeiture to a lienholder. The lienholder institution seeking to judicially protect its innocent owner status must establish that the act giving rise to the seizure was committed without the lending institution's knowledge or consent nor at any time did it have any reason to believe that the property was being or would be used in a violation of the law. Altogether, the guidelines for exercising the innocent owner defense are rather stringent.

Any Farm Credit System institution encountering situations where collateral may be involved with possible illegal controlled substance offenses should contact the U.S. Attorney's office where the property is located. An important course of action for judicially protecting a lender's innocent owner status is prompt and cooperative communication with law enforcement agencies. Each institution is encouraged to begin a dialogue with its local U.S. Attorney's Office to establish procedures that can be used to protect the institution's innocent owner status.

All seizures of property should also be promptly reported to the appropriate FCA examination field office.

Please contact Robert Coleman at (703) 883-4231 if you have any questions.