



**PennState Law**

Center for Agricultural  
and Shale Law



**FARM CREDIT**

# *Understanding the Basics of the* **FARM CREDIT SYSTEM**

Introduction for Attorneys in Rural America Serving Farmers

Presented by

Pennsylvania State University

Center for Agricultural and Shale Law

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Horizon Farm Credit, ACA 410-848-1033

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**PENNSYLVANIA DEPARTMENT OF AGRICULTURE**  **AGRICULTURAL BUSINESS DEVELOPMENT CENTER**

*Understanding Agricultural Law Webinar Series*



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## Speaker Professional Experience – Douglas S. Durkin

- University of Colorado at Boulder, BA History 1976
- University of Baltimore School of Law, JD 1980
  
- Current or Previous Court Admissions:
  - State: Maryland, Colorado, New Mexico, Virginia, & District of Columbia
  - Federal: Fourth Circuit; USDC: Maryland, Colorado, New Mexico, & Western District of Virginia
  - Bankruptcy: Maryland & Western District of Virginia
  - Pro Hac Vice: State: California & Texas; USDC Connecticut
  
- Private Practice Trial Attorney, Ellicott City, MD & Breckenridge, CO, 1981-1991 –  
savings & loan collections, foreclosure, construction, mechanic's liens, real estate, zoning, land use & general practice
- County Attorney, Doña Ana County, NM, 1991-1994
- County Attorney, Culpeper County, VA, 1994-1995
- County Attorney, St. Mary's County, MD, 1995-1999
- Associate General Counsel, Eastern Savings Bank, fsb, Hunt Valley, MD, 1999-2019
- Association Counsel, Horizon Farm Credit, ACA f/k/a MidAtlantic Farm Credit, ACA,  
Westminster, MD 2021 - present



# Part 1 - The Farm Credit System

- Governed by the Farm Credit Act of 1971, 12 USC §§2001 et seq., and by the regulations of the Farm Credit Administration, 12 CFR §§600 et seq.
- Network of borrower-owned lending institutions and related service organizations serving all 50 states and Puerto Rico
- Provides credit and related services for farmers, ranchers, and aquatic producers and harvesters
- System banks and associations are governed by a board of directors elected by the stockholders
- Stockholders are the farmers/borrowers



# Congressional Purpose

*It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations. 12 USC §2001(a)*



# FCA's Why Farm Credit System Video

Play FCA Why FCS video at

<https://www.youtube.com/watch?v=6go4nJqjAdo>



# Government Sponsored Entity & Instrumentality of the United States of America

- Each component of the System is a **government sponsored enterprise** and an **instrumentality** of the United States of America – *Federal Land Bank of Wichita v. Board of County Commissioners, County of Kiowa, 368 US 146 (1961)*; *Smith v. Russellville Production Credit Ass’n, 777 F2d 1544 (11<sup>th</sup> Cir. 1985)*
- System components are within the scope of the Government Corporation Control Act, 31 USC §§9101 et seq.





# Definition of “Government Sponsored Enterprise”

As set forth in 2 USC §662(8):

The term "*government-sponsored enterprise*" means a corporate entity created by a law of the United States that:

- (A)
  - (i) has a Federal charter authorized by law;
  - (ii) is privately owned, as evidenced by capital stock owned by private entities or individuals;
  - (iii) is under the direction of a board of directors, a majority of which is elected by private owners;
  - (iv) is a financial institution with power to-
    - (I) make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and
    - (II) raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and
- (B)
  - (i) does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce);
  - (ii) does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and
  - (iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to title 5.





# Instrumentality Designation

Congress designated components of the System as an “*instrumentality*” of the United States of America, in 12 USC §2071 and §2091:

*Each production credit association shall continue as a Federally chartered instrumentality of the United States.*

*Each Federal land bank association shall continue as a federally chartered instrumentality of the United States.*



# Authority to Do Business

Pursuant to The *Farm Credit Act of 1971*, including 12 USC §2071(b)(3)(C) and §2091(b)(2)(A), and the Farm Credit Administration regulations, including 12 CFR §614.4070, it is the Farm Credit Administration that authorizes a Farm Credit System (“System”) component to do business within a specified territory, which the Farm Credit Administration specifies in the component’s charter.

Consequently, in accordance with the *Supremacy Clause* of the United States Constitution, Art. VI, ¶2, System components are not subject to any state licensing or registration requirements for the privilege of doing business in the State.

See *Farm Credit Services of Mid America ACA v. Tinsler*, 2002 Ohio 3151 (Ohio App. 2002); *Cfsc Consortium LLC v. Ferreras –Goitia*, 198 F Supp2d 116 (D. PR 2002); *Federal Land Bank of Omaha v. Felt*, 368 NW2d 592 (SD 1984); and *Federal Land Bank of St. Paul v. Gefroh*, 390 NW2d 46 (ND 1986).



# The Necessity & The Need

**Feeding the nation, and thus agricultural operations, are essential to national security and prosperity. To satisfy this national necessity, farmers require reliable credit.**

The concept of a reliable source of credit for the nation's farmers dates back to 1732, when the first cooperative credit system was organized in New London, Connecticut. Government intervention to meet this need, however, particularly for long-term credit to purchase land, only started in the early 20th century. It was then that most of the free land available in the West under the Homestead Act of 1862 was claimed, and farmers needed long-term credit to purchase land.

However, whereas credit from commercial banks was readily available for business and industry, it was scarce and short term, and at high interest rates for agriculture. With land values rising, the need for long-term fixed-rate credit became acute.



# Origins of the Farm Credit System

- Seeds of the Farm Credit System were planted by President Theodore Roosevelt in 1908
- Appointed a Country Life Commission to address the problems of a predominantly rural population.
- The commission's report documented the lack of fair and adequate agricultural credit



# 1916 - The Federal Farm Loan Act signed by President Wilson

The Act established a federal land bank (FLB) in each of 12 districts across the country, along with hundreds of national farm loan associations (NFLAs) to serve as agents for the FLBs. The FLBs were the first component of what eventually came to be known as the Farm Credit System (FCS). The FLBs, through their agent associations, provided long-term credit to farmers to develop and expand farms. Part of each farmer's loan bought stock in the association, making the individual farmers owners of the association. This concept of land banks came from Germany's successful, century-old *Landschaft* system.



# 1916 - So You Want to Be a Member?

1. Gather ten farmers who want to borrow a total of \$20,000 or more
2. Apply to the local Federal Land Bank for a National Farm Loan Association (NFLA) charter
3. Borrow between \$100 and \$10,000 on your farm mortgage
4. Purchase stock, priced at \$5 a share, for 5% of your loan



# Origins of the Farm Credit System – Post World War I

- Food prices collapse after the war resulting in economic problems that cause distress to the Agricultural sector
- Farmers form cooperatives to better market their goods - enabled by the Capper Volstead act in 1922
- U.S. farmers and ranchers struggled to raise productivity. They needed to mechanize - and to do that they needed short-term operating credit.
- Congress amended the Agricultural Credit Act in 1923 – added 12 Federal Intermediate Credit Banks (FICBs) to make short term operating loans and make direct loans to new marketing cooperatives.





# The 1930s: Rebuilding

- 1933 – The Farm Credit System was in trouble when the Great Depression bottomed out. Legislation restructured and rescued the Farm Credit System
- Emergency Farm Mortgage Act - sought to save farmers delinquent on mortgage payments by recapitalizing the land banks and cut interest rates to deal with the depression
- The Farm Credit Administration was created
- The Farm Credit Act of 1933 provided for Production Credit Associations (PCAs) to be formed to make short and intermediate term loans



# 1939

President Roosevelt issued an Executive order ending FCA's independent status and placing the Agency under the umbrella of the US Department of Agriculture.



# Origins of the Farm Credit System – Post World War II

- 1947 Texas Production Credit Association of San Angelo was the first Production Credit Association in the nation to repay its federal government capital and become fully borrower – owned.
- During and after WWII prosperity returned to the American farmer.
- 1950's saw technology transform agriculture.
- Marked a major period of growth for the Farm Credit System
  - Major period of consolidations and mergers
  - Associations worked diligently to pay off government capital investments, achieved in 1968 by all system components



# Independent Once Again ...

1953 – Congress passed the Farm Credit Act of 1953 which restored the Farm Credit Administration to its independent status



# Recent Farm Credit System – Recent History

In 1971, the Farm Credit Act of 1971 significantly expanded the range of services offered to include:

- Rural home loans,
- Leasing and other related services, and
- International and rural utility lending.



## Trouble in the 1980's

1985 - the Farm Credit System lost \$2.7 billion—largest one-year loss of any financial institution in U.S. history

Farm Credit Act of 1985: Separated Farm Credit Administration (FCA) from the Farm Credit System, making FCA an “arm’s-length” regulator.

- Provided for a full-time, presidentially appointed three-member Board of Directors
- FCA was restructured to give increased oversight, regulatory and enforcement powers



# Trouble in the 1980's

Due to the farm depression in the 1980's, the Agricultural Credit Act of 1987 reorganized the Farm Credit System:

- Strengthened borrower rights (Distressed Loan Restructure, Right of First Refusal and more)
- Created the Farm Credit System Insurance Corporation (FCSIC)
- Created Farmer Mac
- **Created Agricultural Credit Associations (ACA)** to allow Federal Land Bank Associations and Production Credit Associations to merge under an ACA subsidiary holding structure
- Hence, each Association is typically composed of and chartered by FCA as three separate entities – ACA, FLCA (Federal Land Credit Association), & PCA
- **FLCA (formerly Federal Land Bank Association - FLBA)** now holds Farm Credit Bank long term real estate lending authority per 12 USC §2279b



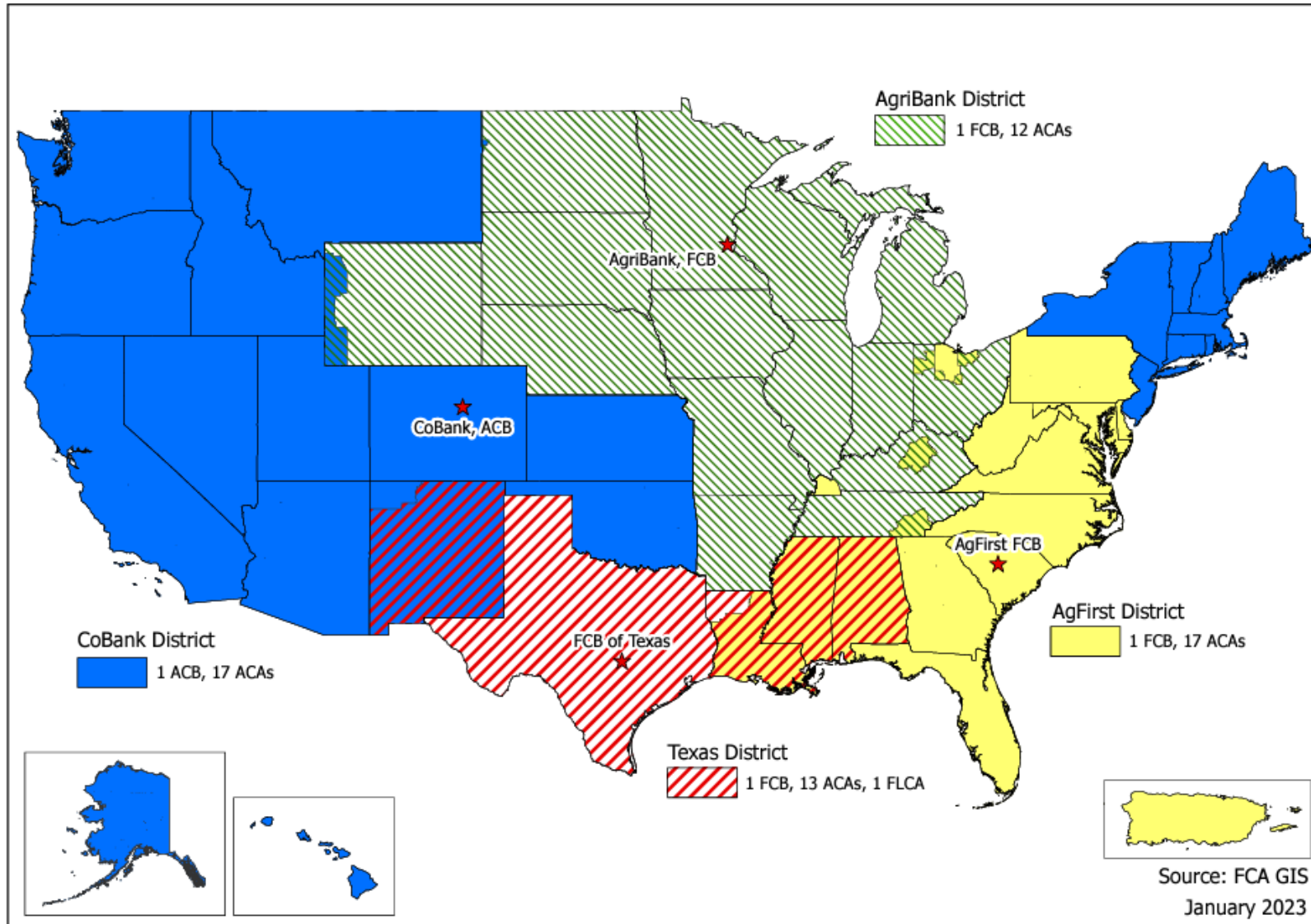


# Differing Tax Treatment of FLCA versus ACA/PCA

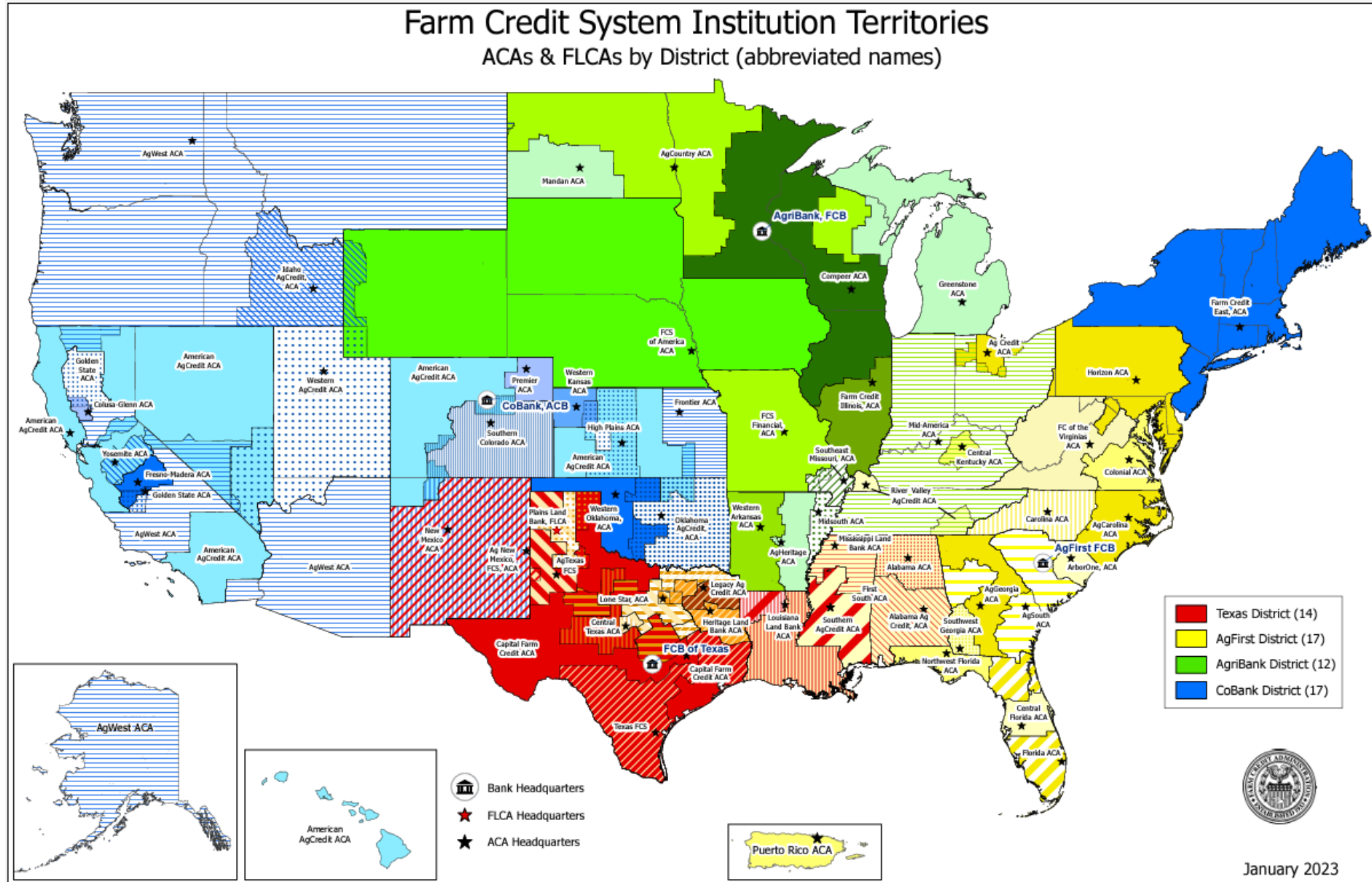
- FLCA - 12 USC §2098 - exempt from federal income tax and all state & local taxes, including recording taxes
- PCA & ACA - 12 USC §2077 – limited tax exemption, but not including federal income tax nor recording taxes
- Some state laws exempt FCS entities from state taxes, such as New York mortgage tax exempts agricultural credit associations as defined by state law

# Resulting Current 2023 Structure

## Farm Credit System District Territories



# Resulting Current 2023 Structure





# Federal Agricultural Mortgage Company (Farmer Mac)

Chartered by Congress in 1987 to establish a secondary market for agricultural real estate and rural housing mortgage loans:

- Purchases loans directly from lenders
- Issues long-term standby commitments for eligible loans

Stockholder owned and publically traded



# Farm Credit December 31, 2022

- American agriculture is a success story
- The Farm Credit System supplies approximately 41 percent of all U.S. farm debt

## Farm Credit by the Numbers



**601,500+**

Farm Credit customers  
nationwide



**\$19.1 B**

New loans to small  
farmers and ranchers



**957,161**

Loans  
*as of December 31, 2022*



**\$373.3 B**

Total loan volume  
*as of December 31, 2022*

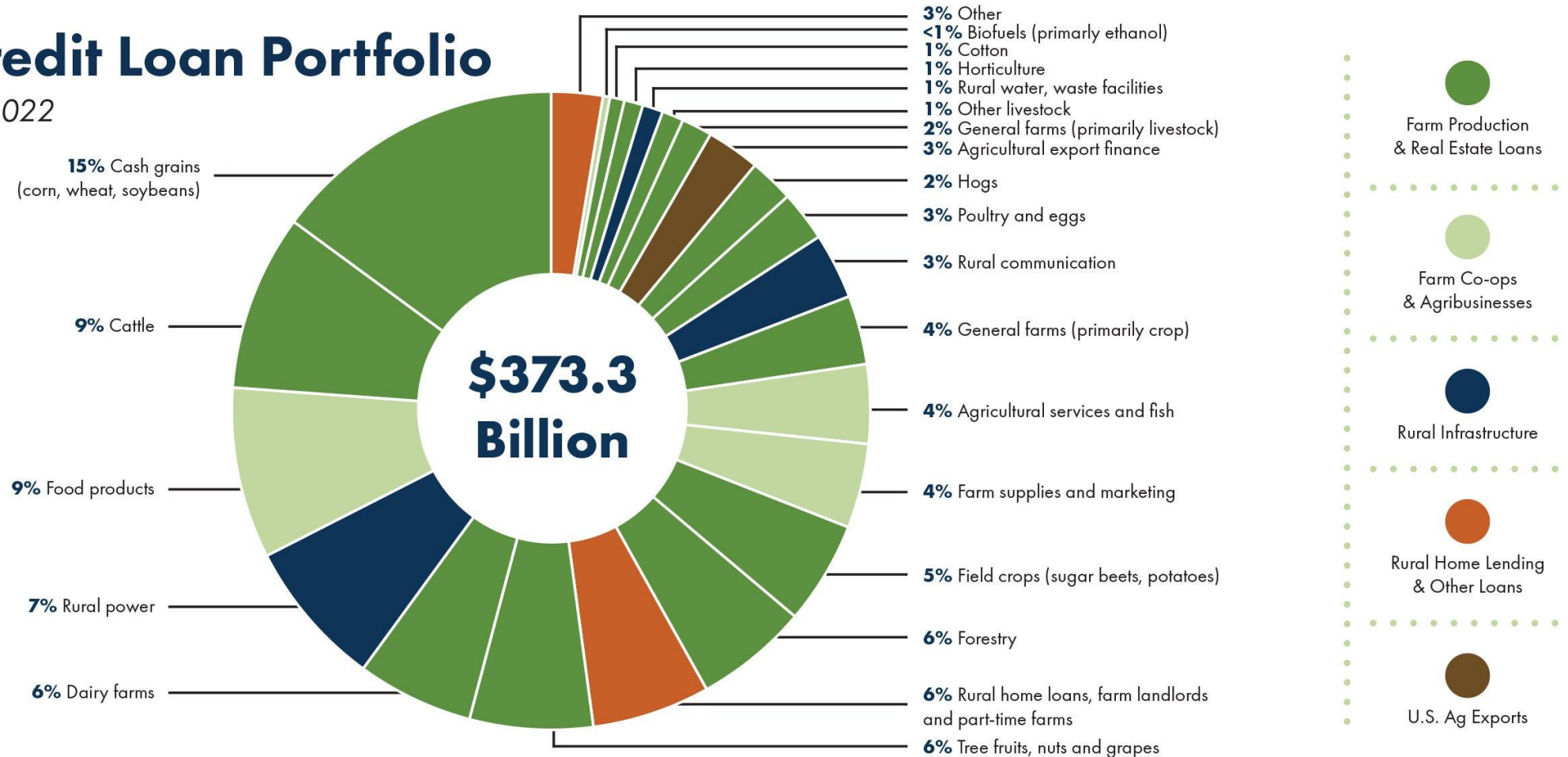




# Farm Credit System Loan Portfolio December 31, 2022

## Farm Credit Loan Portfolio

As of Dec. 31, 2022





# How does it all work?







# FCA's Funding Structure Video

Play FCA video at:

<https://youtu.be/Gz-FIUAVCZ8>



# Funding Corporation

- Obtains funds for all four banks by selling Farm Credit Securities
- Maintains network of purchasers/dealers
- Publishes financial reports for the system
- Based in Jersey City, NJ across the Hudson River from New York City



# Farm Credit Administration (FCA)

- Independent Government Regulator of the Farm Credit System
- Governed by a three member board of directors nominated by the president and confirmed by the Senate (replaced the 13 member Federal Farm Credit Board established in 1953)
- Headquartered in McLean, VA
  - Activities include:
    - Issues Regulations
    - Reports to Congress on the status of the system
    - Conducts regular examinations of Farm Credit Entities



# Farm Credit Council (FCC)

- National Trade Association for the system.
- Represents the system before Congress, the Executive Branch of the US Government, and others.
- Provides the mechanism for grassroots involvement in the development of System positions and policies in respect to Federal legislation and government actions that impact the system.
- Provides services through FCC Services, Inc. (Audit, training, conferences, etc.)



# Farm Credit System Insurance Corporation (FCSIC)

- Established by the Agricultural Credit Act of 1987
- Enhances the financial integrity of the Farm Credit System
- Insures the timely payment of principal and interest on insured notes, bonds, and other obligations issued on behalf of Farm Credit System Banks
- Administers the Farm Credit Insurance Fund and collects annual insurance premiums from System banks



# PART 2

## ISSUES ON WHICH OUTSIDE ATTORNEYS INTERACT WITH FARM CREDIT SYSTEM



# Understanding the Farmer and the Farm

- A farm is the principal capital asset of a small business
- A farm is not a house with a big yard; cannot be treated as a consumer residence
- A farm often consists of multiple parcels, some leased
- Equipment often subject to UCC financing liens
- Other primary assets include living things that require care and input
- In bankruptcy – different cash collateral use considerations – livestock must be fed
- Other interested parties – e.g. poultry integrators
- High degree of federal, state and local regulation





# Understanding Farm Finance

- A farmer will frequently have **more than one lender**, often with overlapping collateral, including real estate finance, equipment finance, operating loans, and crop and processor advances
- Farmers **borrow annually**, and typically have **multiple mortgages** with cross-default and cross-lien provisions encumbered by multiple parcels with **future advance or revolving provisions**
- Creditors often have **different lien priorities** as a consequence of multiple federal and state laws, including Perishable Agricultural Commodities Act (PACA), Packers and Stockyards Act (PSA), and Food Security Act (FSA)



# Interest Rate & Loan Terms – Federal Preemption

**Interest rates** and **cost of credit** loan terms, such as late charges and prepayment premiums, are governed by federal law, not state law, per US Constitution *Supremacy Clause* and express preemption of 12 USC §2205; see also 12 USC §2016

Interest rates are set by the System component's board per 12 CFR §614.4155, but are also dependent upon cost of funds provided by Funding Corporation upon bond sales

FLCA real estate secured loans must be secured by a “first lien” per 12 CFR §615.5060



# First Lien & Loan Limit Requirements

12 CFR §614.4200 requires:

**Long-term real estate mortgage loans** must be secured by a **first lien interest in real estate**, except that the loans may be secured by a second lien interest if the institution also holds the first lien on the property. **No funds** shall be advanced, under a legally binding commitment or otherwise, if the outstanding loan balance after the advance **would exceed 85 percent ... of the appraised value of the real estate, .....**

The real estate that is used to satisfy the loan-to-value limitation must be comprised **primarily of agricultural or rural property, including agricultural land and improvements thereto, a farm-related business**, a marketing or processing operation, a rural residence, or real estate used as an integral part of an aquatic operation.

The title insurance policy must meet the requirements of 12 CFR §615.5060, and must be issued by a title insurance company approved by the funding Farm Credit Bank.

**Short- and intermediate-term loans** may be secured or unsecured as the documented creditworthiness of the borrower warrants.



# FLCA First Liens & Title Insurance

Per 12 CFR §614.4200 and §615.5060, all FLCA long term loans require a “**first lien**” and title insurance; hence Standard Exceptions are to be routinely removed, including:

- Gap exception – matters appearing in land records after commitment date
- Easements and other liens not shown in the public records
- Claims of parties in possession
- Mechanic’s and contractor’s liens
- Past due and current taxes
- Special taxes and government assessments not of record, especially in urban/suburban areas
- Patent matters and water rights
- Survey exception



# FLCA First Liens & Title Insurance

Per 12 CFR §614.4200 and §615.5060, all FLCA loans require a “first lien” and title insurance; hence loan policy endorsements are required, including:

COVERAGE

- Adjustable rate (*if applicable; included in enhanced*)
- Environmental protection lien (*included in enhanced*)
- Restrictions, encroachments, minerals (*included in enhanced*)
- Modification (*if mod of prior loan, maintains lien priority*)
- Tie-in (*if applicable for multiple non-contiguous parcels*)  
\*In Delaware and Pennsylvania, tie-in is limited to other title policies covering land within the state
- Future advances (*if applicable, varies per state law, maintains lien priority*)
- Access
- Separate tax lot (not taxed with other lots)
- Contiguity (no gaps or gores between parcels)
- First Loss (*if applicable, when 2+ parcels and cross-liens*)
- Same as survey (may require a recent survey)
- Usury (lien insured even if state usury law violated)
- Easement Damage Loss (*not needed if 9-06 issued*)
- Mining Damage Loss (*not needed if 9-06 issued*)
- PA coal, oil, gas, mineral impacted loans

FORM #

- ALTA 6-06 or 6.1/PA 710
- ALTA 8.1 & 8.2/PA 900 & 910
- ALTA 9-069.2-06, 9.3-06, 9.7-06, & PA 100, 300, 1030
- ALTA 11-06/PA 500 & 501
- ALTA 12-06/PA 1260
- ALTA 14-06/PA 1015
- ALTA 17-06, 17.1-06/PA 1200, 1210
- ALTA 18-06,18.1-06/PA 1230, 1240
- ALTA 19-06, 19.01-06, 19.02/PA 1250, 1251, 1252
- ALTA 20-06/PA 1110
- ALTA 25-06/PA 300, 1270
- ALTA 27-06 Prohibited in Pennsylvania and New York.
- ALTA 28-06, 28.1, 28.2, 28.3/PA 1310, 1312, 1314, 1316
- ALTA 35.1-06, 35.3-06/PA 1351, 1361
- ALTA 35-06\*/PA 1341
- PA 1030, 1034 & 1341



# Eligibility for Loans

Eligibility requirement of 12 USC §2017:

- (1) bona fide farmers, ranchers, or producers or harvesters of aquatic products (both full and part-time);
- (2) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs (farm related businesses providing services directly related to agricultural production);
- (3) owners of rural homes; OR
- (4) Borrowers engaged in Processing and Marketing (must be owned or controlled by farmers)

FCA criteria also applies; for example see: *FCA Bookletter BL-059 Determining Eligibility & Scope of Financing for LLCs*





# Definitions: Bona Fide Farmer or Rancher & Agricultural Land

12 CFR §613.300 definition:

Bona fide farmer or rancher means a person owning agricultural land or engaged in the production of agricultural products, including aquatic products under controlled conditions.

12 CFR § 619.9025 definition of agricultural land

Land improved or unimproved which is devoted to or available for the production of crops and other products such as but not limited to fruits and timber or for the raising of livestock.

“Devoted” means primarily, wholly, chiefly, or entirely used for agriculture.

*Francis v. Retirement Board of Employees’ Retirement System of Rhode Island*, Case # C.A. No. PC 07-6005 (RI Super. 2013); *New York & Atlantic Rwy Co. v. Town of Babylon*, 22 N.Y.S.3d 138 (NY Sup. Ct. 2015); *Brackey v. County Of Washington*, Case # C4-06-7837 (Minn. Tax Ct 2008)



# Loan Purpose & Objective Requirements

Purpose requirement of 12 USC §2017, 12 CFR §613.3005, and 12 CFR §613.3020 :

Bona fide farmers, ranchers, or producers or harvesters of aquatic products - for any **agricultural or aquatic purpose and other credit** needs - **full credit**, to the extent of creditworthiness

Part-time farmers - **conservative credit** to less than full-time farmers **for agricultural enterprises**, and more restricted credit for other credit requirements

Farm-related services - All of the farm-related business activities of an eligible borrower who derives **more than 50 percent of its annual income** (as consistently measured on either a gross sales or net sales basis) from **furnishing farm-related services that are directly related to the agricultural production** of farmers and ranchers; or

Owners of rural homes – for **single-family, moderate-priced** dwellings and their appurtenances not inconsistent with the general quality and standards of housing existing in, or planned or recommended for, the rural area where it is located



# Prohibited Financing

Per 12 CFR §613.3005 :

Credit shall not be extended where investment in agricultural assets for speculative appreciation is a primary factor.



# Farm Related Businesses

- Individual or entity providing farm-related services directly related to agricultural production needs of farmers
- When 50% or more of annual income is related to farm-related services, FCS can finance all business activities
- When less than 50% of annual income is related to farm-related services, FCS can finance only the farm-related services portion of the business



# Farm Related Businesses

## Eligible examples:

- Custom spraying & fertilizing
- Tillage, harvesting
- Farm animal and poultry veterinary services
- Grain drying & storage
- Custom orchard operations such as pruning, grafting & budding

## NOT Eligible:

- Equipment only sales
- Fertilizer or pesticide only sales
- Feed mills selling only bulk or bagged feed



# Underwriting Analysis of Eligibility

Determine:

1. Agricultural or non-agricultural purpose
2. Farmer classification
3. Amount of permissible financing
4. Evaluate land for permissible or prohibited financing





# Rural Home Financing

Per 12 CFR §613.3030

(1) Rural homeowner means an individual who resides in a rural area and is **not a bona fide farmer**, rancher, or producer or harvester of aquatic products.

(2) Rural home means a **single-family moderately priced dwelling** located in a rural area that will be owned and occupied as the rural homeowner's principal residence.

(3) Rural area means open country within a State or the Commonwealth of Puerto Rico, which may include a town or village that has a **population of not more than 2,500 persons**.

(4) Moderately priced means the price of any rural home that either:

(i) Satisfies the criteria in section 8.0 of the Act pertaining to rural home loans that collateralize securities that are guaranteed by the Federal Agricultural Mortgage Corporation; or

(ii) Is otherwise determined to be moderately priced for housing values for the rural area where it is located, as documented by data from a credible, independent, and recognized national or regional source, such as a Federal, State, or local government agency, or an industry source. **Housing values at or below the 75th percentile of values** reflected in such data will be deemed moderately priced.

(b) Eligibility. Any rural homeowner is eligible to obtain financing on a rural home. No borrower shall have a loan from the Farm Credit System on more than one rural home at any one time.

(c) Purposes of financing. Loans may be made to rural homeowners for the purpose of buying, building, remodeling, improving, repairing rural homes, and refinancing existing indebtedness thereon.



# Rural Home Financing

- Loans to non-farmers
- Generally subject to and controlled by federal consumer lending laws
- Not entitled to Patronage
- Not entitled to FCA Borrower Rights



# Borrower's Rights Under Farm Credit Act

## Borrower Rights – 12 USC §§ 2202a – 2202e; 12 CFR Subpart 617

- Generally may not be waived §617.7010
- *Effective Interest Rate* Disclosure 12 USC §2199 & §617.7105 et seq.
- *Differential Interest Rate* Disclosure 12 USC §2199 & §617.7200
- Actions on applications 12 USC §2201 & 12 CFR §617.7300
- Review of credit decisions 12 USC §2202 & 12 CFR §617.7305 et seq.
- Protection of borrowers who meet all loan obligations 12 USC §2202d & 12 CFR §617.7400 et seq. – e.g. cannot require additional collateral nor principal reduction
- Notice of non-interest earning status 12 USC §2202a, §2202d, & 12 CFR §617.7400
- Distressed Loan Restructuring 12 USC §§2201 - 2202e, & §617.7405 et seq. – loss mitigation for FCS farmers
- Farmer's Right of First Refusal 12 USC §2219a & §617.7600 et seq.



# Summary of Borrower's Right – Distressed Loans

In distressed loan situation, Farm Credit System Borrower's Rights include:

- Notice before the lender exercises remedies
- Right to submit a restructure application before remedies are executed
- Appeal rights relative to adverse restructure decisions
- Rights of first refusal as to assets acquired by a Farm Credit lender in foreclosure
- Borrower can object to sale of the farmer's loan



# Borrower Divorce or Death – Patronage Payments & Stock Price Refunds

- Patronage typically paid annually, typically in March of every year
- Stock price refunded when loans payoff or member dies
- Membership and eligibility requirements - a key factor in payee changes
- Please do not close probate estate prior to receipt of patronage and stock refund, and then ask ACA to change payee
- Please do not omit patronage and stock refund in divorce proceedings, and coordinate with ACA, which will require written authorization on ACA form to accommodate payee change
- Please do not ignore patronage and stock refund until funds escheat to state



# Not a Bank nor Credit Union

- No depository function and no checking accounts
- Loan disbursements only



# Civil Subpoena & Document Requests

- FCS components are *government sponsored enterprises* and access to records is highly restricted
- Controlled by federal law, not state law, including 12 USC §2200 and 12 CFR Subparts, 602, 603, and 618
- Motion to quash or for protective order is mandatory for all subpoena
- Borrower record access limited to:
  - Loan documents delivered at closing
  - Documents signed by borrower
  - Appraisal
  - Association charter and bylaws





# Observations - Difficulties Frequently Encountered – Business Entities

- Excessively complex business entity structures including trusts, corporations, LLCs, general partnerships, and LLPs that are too complex for farmers to implement, routinely document, and manage, often resulting in comingling of cash and accounts, and no documentation of transactions between the entities
- Do-it-yourself, thinly documented LLCs created on state websites with no other business entity documents
- Complex estate planning and tax trusts, some creating multiple trusts, for ownership of an operating small business that farmers do not understand and often find too difficult to use
- Please discuss ongoing business documentation and management duties with farmers before drafting business entity documents



# Observations - Difficulties Frequently Encountered – Real Property

- Farmers borrow annually, and typically have multiple mortgages with cross-default and cross-lien provisions encumbered by multiple parcels with future advance provisions
- Consideration of such points should be considered when drafting real estate instruments and revocable trusts
- Several farms have recently altered existing estate and tax plans to discontinue use of trusts with shift to LLC based ownership, which is not easily accomplished when there are multiple parcels, diverse forms of ownership, and multiple mortgage liens
- Please consider the operating small business aspect before implementing consumer type estate plans such as revocable trusts, or drafting real estate instruments that make business operations and borrowing difficult



# Observations - Troubled Estate Plans

- Frequently, only one of a farmer's children engages in farming
- Often, farmers do not want the farm subdivided, and desire continuation of the farming operation after their death – perpetuation of their farming legacy (think of Kevin Costner in *Yellowstone*)
- When the farm parcels are divided amongst all children, but only one farms, such often results in:
  - a termination of farming,
  - perhaps subdivision of the farm,
  - the farming child taking out a large loan to buy out siblings, or
  - family feud litigation

Please discuss these topics with farmers before implementing a standard form or consumer estate plan



# Observations - Large Scale Solar Leases & Conservation Easements

- Large scale solar leases adversely impact FCS loans in several respects:
  - Eligibility for FCS financing and loan limits, and thus impairs present and future FCS financing, and may result in required loan pay down or pay off
  - Solar leased land no longer qualifies as *agricultural land* under regulatory definition, and that adversely impacts present and future FCS financing
  - Solar financing secured by UCC fixture filing recorded in land records impairs annual farm production financing
  - Solar lease cannot impair, waive nor assign Borrower Rights including right of first refusal
- Likewise, conservation easements that restrict agricultural activity can also produce like adverse consequences