

# AG COOPERATIVES: IS EVERYTHING OLD NEW AGAIN

Mike Traxinger, SVP and General Counsel of Agtegra Cooperative

## WHAT IS A CO-OP

A cooperative is an association of persons (organization) that is owned and controlled by the people to meet their common economic, social, and/or cultural needs and aspirations through a jointly-owned and democratically controlled business (enterprise).

**CO-OP  
PRINCIPALS**

**VOLUNTARY AND OPEN  
MEMBERSHIP**

**AUTONOMY AND  
INDEPENDENCE**

**DEMOCRATIC MEMBER  
CONTROL**

**EDUCATION, TRAINING, AND  
INFORMATION**

**MEMBER ECONOMIC  
PARTICIPATION**

**COOPERATION AMONG  
COOPERATIVES**

**CONCERN FOR COMMUNITY**



## HISTORY OF CO-OPS

ENGLAND INDUSTRIAL  
REVOLUTION (1750-1850)

FIRST COOPERATIVE IN  
UNITED STATES (1752)

FIRST RECORDED DAIRY  
AND CHEESE  
COOPERATIVE (1810)

DENMARK FARM  
MARKETING AND SUPPLY  
COOPERATIVES (1870)

ORGANIZATIONS FORMED  
TO SUPPORT AG CO-OP  
DEVELOPMENT (LATE  
1800S)

COOPERATIVE LEAGUE OF  
THE USA FOUNDED (1916)

CAPPER-VOLSTEAD ACT  
PASSED (1922)

FARM CREDIT ACT PASSED  
(1933)

FARM CREDIT UNION ACT  
PASSED (1934)

RURAL ELECTRIFICATION  
ACT PASSED (1937)

SOUTH DAKOTA  
COOPERATIVE  
ASSOCIATION ACT (1939)

# TYPES OF COOPERATIVES

AGRICULTURE

UTILITY

CREDIT

RETAIL

MUTUAL  
INSURANCE

HOUSING

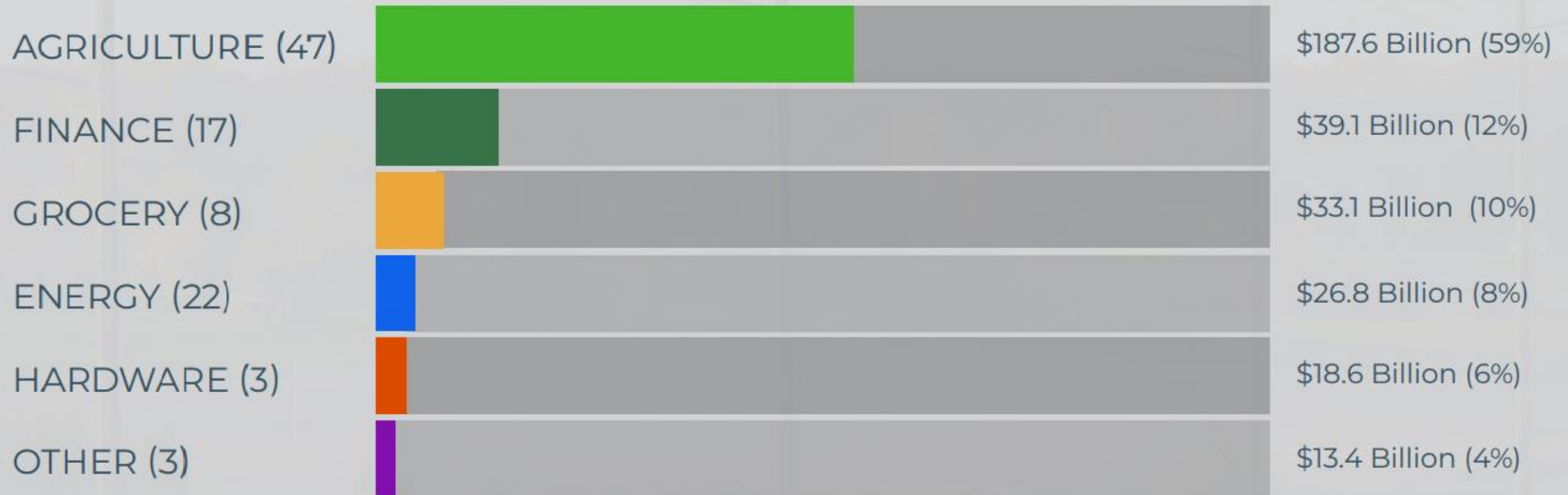
CONSUMER

WORKER



# INDUSTRY REVENUE BY SECTOR

REVENUE IN BILLIONS OF DOLLARS



## TOP 100 CO-OPS

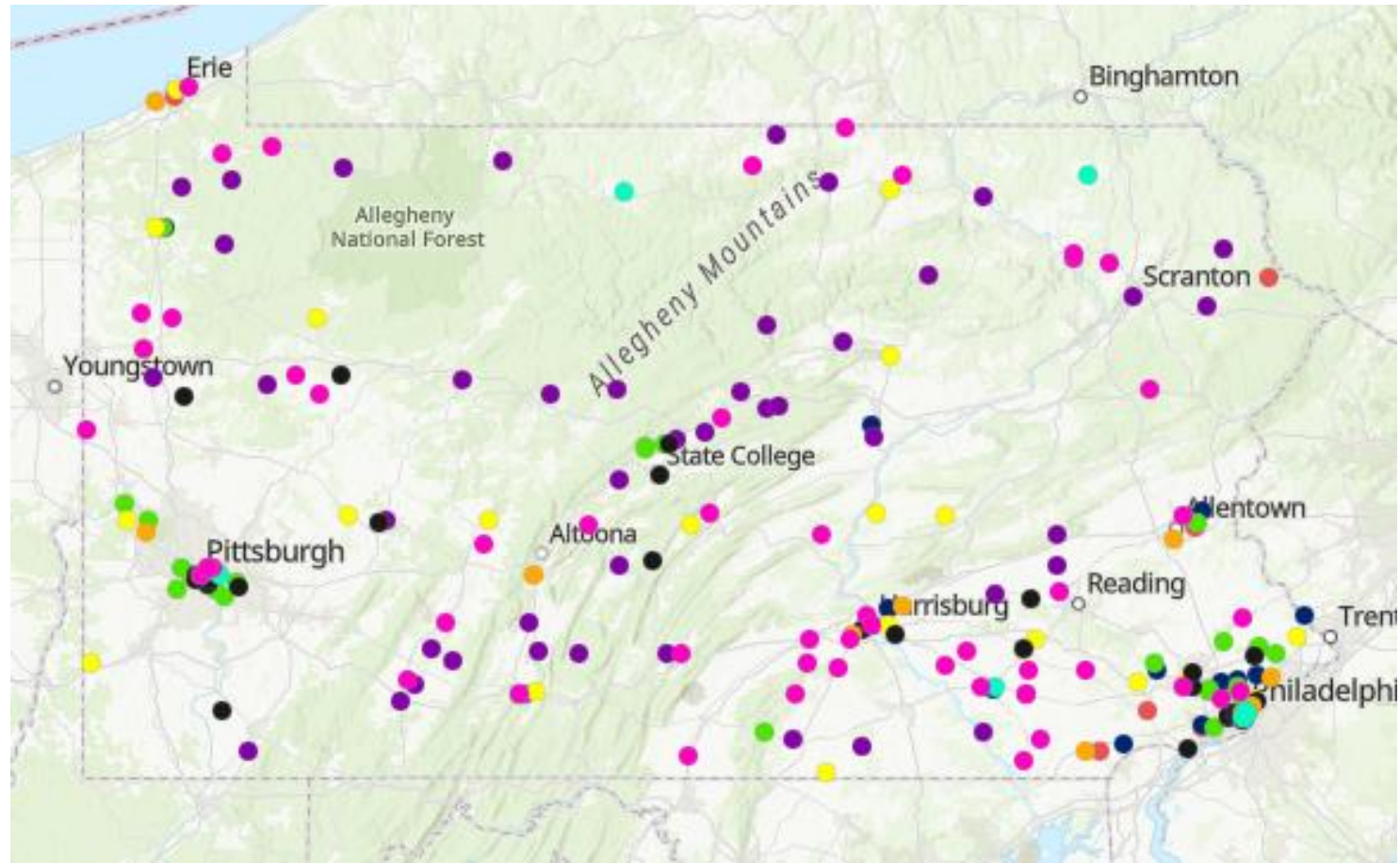
Rank	Cooperative	2022 Revenue (in millions)	2022 Assets (in millions)	Type
1	CHS Inc.	\$48,800	\$18,825	Agriculture
2	Dairy Farmers of America	\$24,517	\$7,716	Agriculture
3	Land O'Lakes, Inc.	\$19,226	\$9,770	Agriculture
4	GROWMARK, Inc.	\$14,577	\$3,783	Agriculture
5	Associated Wholesale Grocers, Inc	\$12,289	\$2,285	Grocery
6	Wakefern Food Corp./Shoprite	\$12,183	\$2,176	Grocery
7	Navy Federal Credit Union	\$9,229	\$156,645	Finance
8	ACE Hardware Corp.	\$9,170	\$3,491	Hardware and Lumber
9	HealthPartners Inc.	\$8,219	\$6,444	Healthcare
10	CoBank	\$7,444	\$203,936	Finance

KDC received funding from the Pennsylvania Department of Agriculture to develop a database of cooperatives currently operating in Pennsylvania. KDC was able to confirm through a lengthy process a total of 707 cooperative businesses existing in Pennsylvania. Pennsylvania is experiencing a growth in the use of the cooperative business model since a low point in the 1990's. Fifty new cooperatives have incorporated in Pennsylvania since 2000.

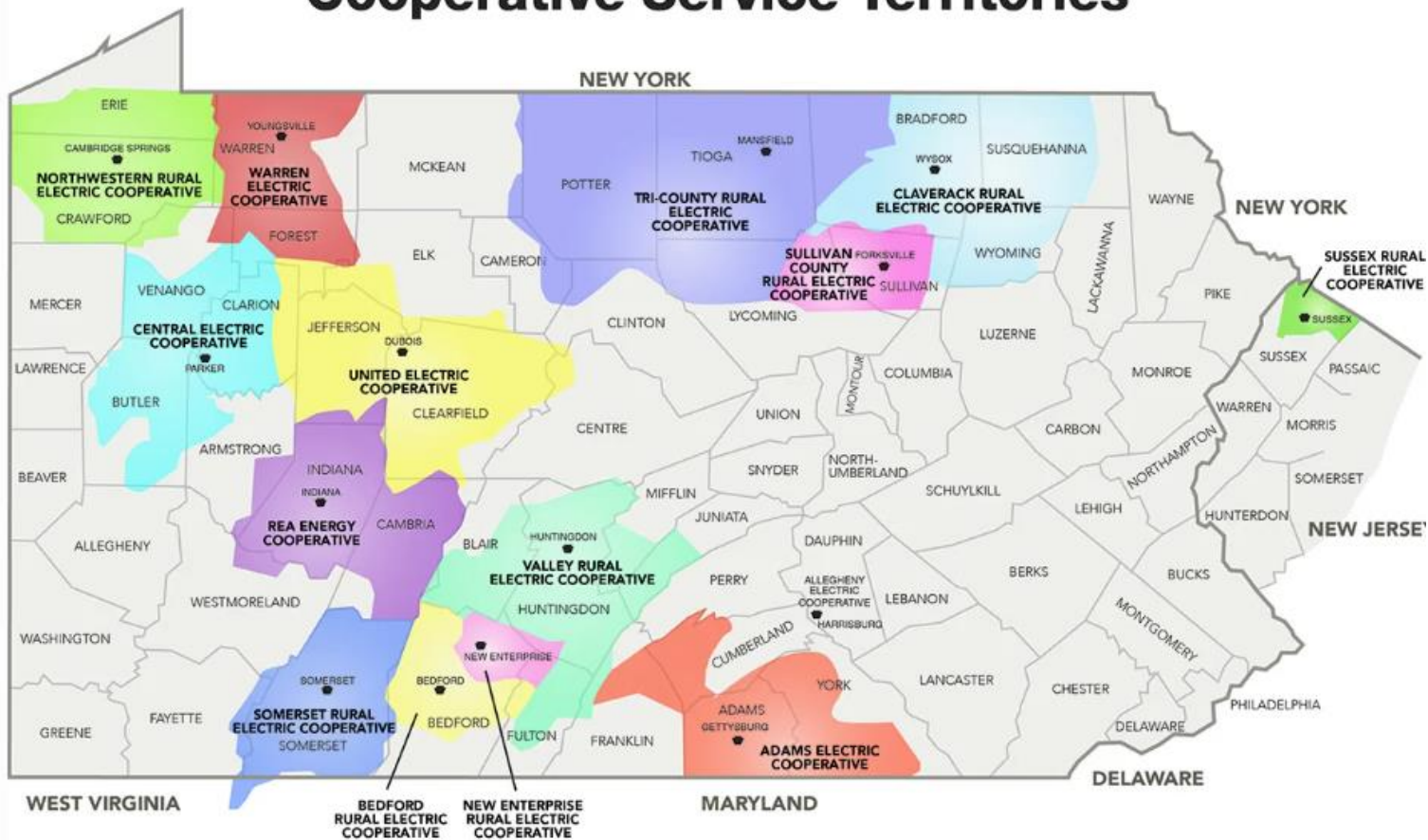
Our data now includes 452 Credit Unions, 48 Agricultural Cooperatives, 47 Mutual Insurance Companies, 36 Real Estate (Housing Cooperatives), 36 Waste Management Authorities, 19 Utilities, primarily rural electric cooperatives, 18 Educational Service Cooperatives, primarily daycare, and 15 food cooperatives, 10 Health Care and Social Assistance Cooperatives, 6 Wholesale and Retail Trade Cooperatives, 6 Arts and Entertainment Cooperatives and 14 other types of cooperatives including transportation, food service, construction, and other business and community services. The primary purpose of our research is to account for the economic impact of cooperatives and mutually-owned businesses in rural communities throughout Pennsylvania.



KEYSTONE DEVELOPMENT  
CENTER MAP OF COOPERATIVES



# Pennsylvania/New Jersey Electric Cooperative Service Territories



PENNSYLVANIA ELECTRIC COOPERATIVES - PREA

## TOP 10 AG CO-OPS

Rank	Cooperative	2022 Revenue (in billions)	2022 Assets (in billions)	Type
1	CHS Inc.	\$48.587	\$18.825	Mixed
2	Dairy Farmers of America	\$24.588	\$7.716	Dairy
3	Land O'Lakes, Inc.	\$19.313	\$9.770	Mixed
4	GROWMARK, Inc.	\$14.616	\$3.783	Mixed
5	Ag Processing Inc.	\$7.312	\$2.273	Grain
6	California Dairies, Inc.	\$4.962	\$1.534	Dairy
7	Prairie Farms Dairy Inc.	\$4.250	\$1.710	Dairy
8	Central Valley Ag Coop	\$3.316	\$1.028	Mixed
9	Agtegra Cooperative	\$2.845	\$1.129	Mixed
10	Select Milk Producers Inc.	\$2.775	\$1.173	Dairy

# USDA AG COOPERATIVE STATISTICS

## 2022

**Table 7: Top 20 States of Top 100 co-ops, ranked by total net sales, 2022 (\$ billion)**

<b>State</b>	<b>Co-ops<sup>1</sup></b>	<b>Marketing</b>	<b>Supply</b>	<b>Total net sales<sup>2</sup></b>
Iowa	36	16.806	8.250	25.056
Minnesota	32	11.967	4.589	16.556
California	13	13.994	0.379	14.373
Nebraska	20	6.816	4.255	11.070
Illinois	24	5.789	4.738	10.527
Wisconsin	18	6.524	2.699	9.222
Washington	15	5.911	1.153	7.063
Missouri	23	3.240	3.210	6.450
Michigan	22	5.192	1.184	6.376
Kansas	18	4.187	1.991	6.179
Texas	17	5.191	0.927	6.119
Ohio	24	3.747	2.048	5.795
New York	12	5.271	0.301	5.572
South Dakota	19	2.223	2.681	4.905
North Dakota	15	2.696	1.933	4.629
Indiana	21	2.065	2.511	4.576
Pennsylvania	15	3.152	0.279	3.431
New Mexico	11	2.860	0.060	2.921
Colorado	10	2.283	0.434	2.717
Other States and foreign	290	31.177	7.007	38.184
<b>Total net sales</b>		<b>141.092</b>	<b>50.628</b>	<b>191.721</b>
<b>Business between co-ops</b>		<b>6.273</b>	<b>26.991</b>	<b>33.264</b>
<b>Total gross sales</b>		<b>147.365</b>	<b>77.620</b>	<b>224.985</b>

<sup>1</sup>Number of co-ops conducting business in the State, not just headquartered there.

<sup>2</sup>Total net sales (does not include sales between co-ops or service and other revenues).

# USDA AG COOPERATIVE STATISTICS

## 2022

Figure 1 - Net & gross business volume, U.S. ag co-ops, 2012-2021

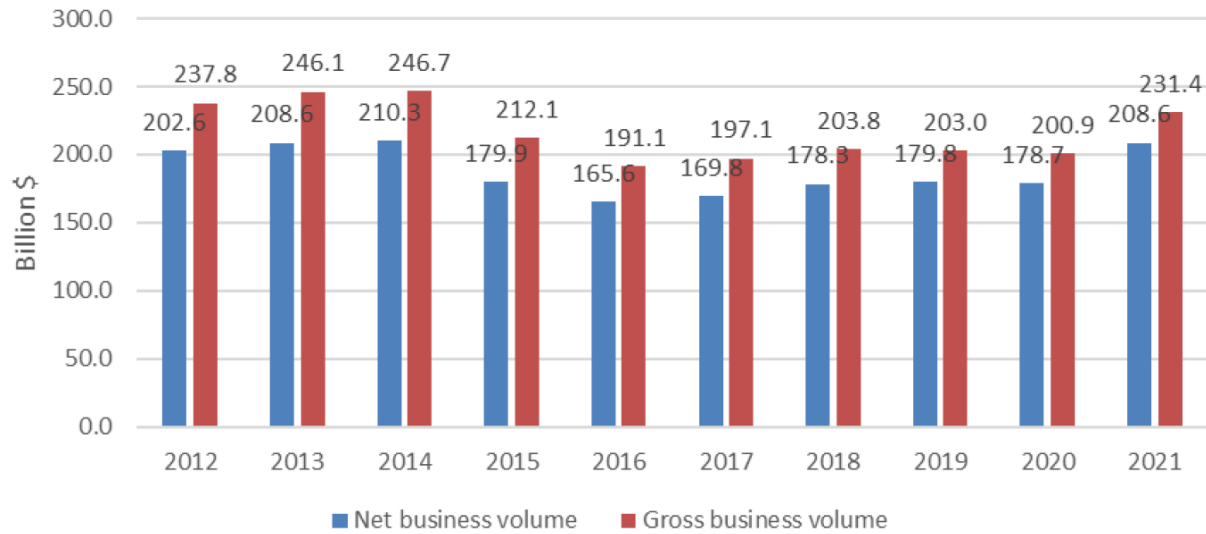
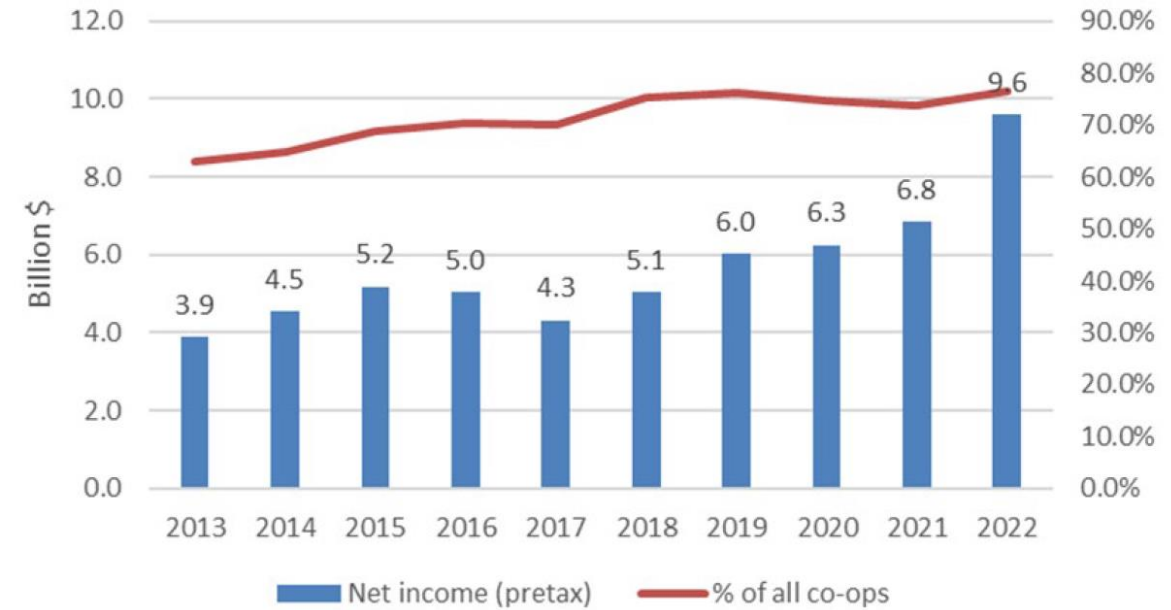


Figure 2 - Top 100 ag co-ops net income, 2013-2022







COOPERATIVE  
STRUCTURE

MUTUAL BENEFIT OF THE  
MEMBER-OWNERS

FOR-PROFIT OR NON-PROFIT

MEMBER-CONTROL

# TYPES OF COOPERATIVES

STOCK

NON-STOCK

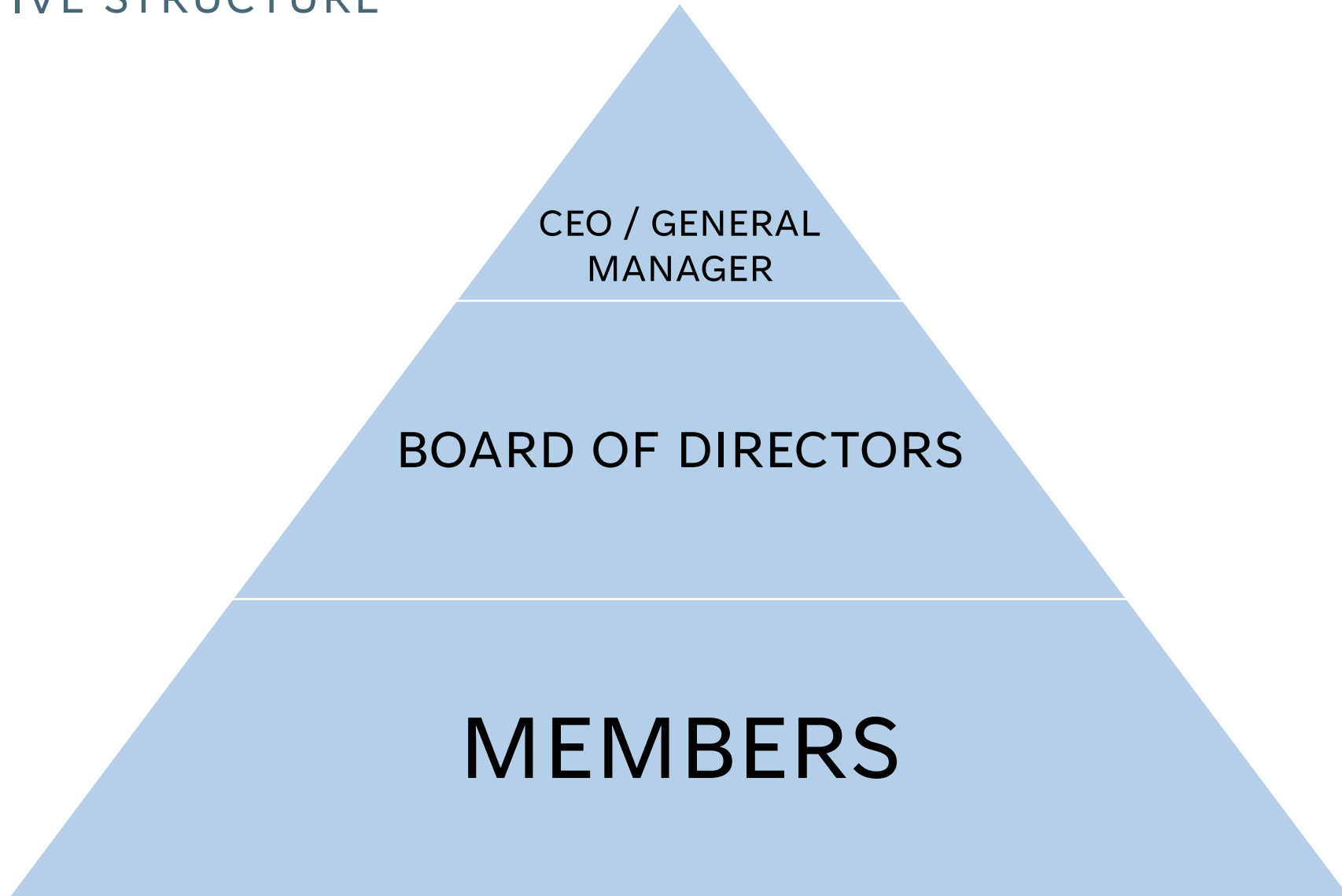
LOCAL

FEDERATED

HYBRID



# COOPERATIVE STRUCTURE





# COMPARING BUSINESS STRUCTURES

	<b>Cooperative Corporation (Chapter 185)</b>	<b>Unincorporated Cooperative Association (UCA) (Chapter 193)</b>	<b>Corporation (C Corporation or S Corporation)</b>	<b>Limited Liability Company (LLC)</b>	<b>Partnership</b>	<b>Proprietorship</b>	<b>Non-Profit</b>
<b>Who are the owners?</b>	Members (individuals or entities) *	Members (individuals or entities); may include both patron and investor classes	One or more shareholders; (individuals or entities).(An S Corporation is limited to 100 shareholders)	One or more individuals who are members	At least two individuals or entities	Individual proprietor	No ownership
<b>What are membership requirements?</b>	Determined by bylaws. Usually one share/fee per member. Bylaws may include other requirements with other rights attached.	Determined by bylaws.	One share of stock, with rights and privileges attached to it determined by the articles of incorporation, bylaws, shareholder agreement, and applicable law.	At discretion of LLC members	At discretion of partners	At discretion of owner	Membership fee may be required to participate.
<b>Who controls?</b>	Board of Directors elected by patron members.	Board of Directors elected by patrons, and investor members if any	Board of Directors elected by shareholders	LLC members	Partners	Proprietor	Board of Directors
<b>What is the primary purpose of the business?</b>	To meet member needs for goods or services	To meet member needs for goods or services, earn a return on member investment	To earn a return on owner investment	To earn a return on members' investments; to provide employment for members	To provide employment for partners and a return on partners' investment	To provide employment for owner and a return on owner's investment	To provide services or information
<b>How is the business financed?</b>	Sale of stock/shares to members and outside investors; retained profits	Sale of shares to patron and nonpatron members; retained profits	Sale of shares; retained profits	LLC members' investments; retained profits	Partners' investments; retained profits	Proprietor's investment; retained profits	Grants, individual contributions, fees for services
<b>Who receives profits?</b>	Members in proportion to their use, preferred shareholders in proportion to investment	Patron members in proportion to their use; patron and nonpatron members in proportion to their investment	Shareholders in proportion to investment	LLC members in proportion to investment or by agreement	Partners in proportion to investment or by agreement	Proprietor	Retained within the organization
<b>Who pays income taxes on the profit?</b>	Members on qualified profit allocations profit and cash distributions**; co-op pays on nonqualified and unallocated profits	Members pay on individual rate; or elect to be taxed as cooperative corporation profits	C corp. pays on profits, shareholders pay individual capital gains rate on dividends; S corp. shareholders pay individual rate on profit share and capital gains	LLC members pay individual rate, or can elect to be taxed as a corporation	Partners pay individual rate	Proprietor pays individual rate	Not applicable; tax exempt
<b>What is the owner's legal liability?</b>	Limited to members' investment in the cooperative	Limited to members' investment in the UCA	Limited to shareholder's investment in the corporation	Limited to LLC member's investment in the LLC	Unlimited for general partners, limited to limited partner's investment in the partnership	Unlimited for owner	Limited to assets of the organization

\*Preferred stock shareholders may include nonmembers, and may only vote on limited issues such as dissolution. As a group, preferred stock shareholders do not set policy. Only members have full voting rights and can vote for the board of directors.

\*\* Members of personal consumer co-ops do not pay taxes on patronage allocations that follow certain IRS guidelines.

There may be exceptions to what is summarized here. See statutes for further information.

Prepared by the University of Wisconsin Center for Cooperatives. Updated January 2019.



## KEY COOPERATIVE LEGAL AREAS OF FOCUS

FORMATION / INCORPORATION

PATRONAGE

GOVERNANCE

TAXATION



# PENNSYLVANIA – COOPERATIVE CORPORATION LAW

## Cooperative Corporations Generally:

- 15 Pa. Cons. Stat. 7501 to 7125

## Electric Cooperatives:

- 15 Pa. Cons. Stat. 7301 to 7359

## Cooperative Agricultural Associations:

- 15 Pa. Cons. Stat. 7501 to 7585

## Workers' Agricultural Associations:

- 15 Pa. Cons. Stat. 7701 to 7783

## The National Agricultural Law Center

[nationalaglawcenter.org](http://nationalaglawcenter.org) | [nataglaw@uark.edu](mailto:nataglaw@uark.edu) | [@nataglaw](https://twitter.com/nataglaw)

Agricultural Cooperative Formation:

*Pennsylvania*

# AG COOPERATIVE LAWS

## Federal

- Tax (Subchapter T)
- Capper-Volstead
- Case Law

## State

- Incorporation
- Act
- Case Law



## CAPPER-VOLSTEAD ACT

Capper-Volstead Act (signed into law in 1922)

- Intended to protect agricultural producers from being prosecuted for acting together to market their products
- Permits agricultural producers to form a cooperative to collectively market
- The act provides limited anti-trust protections
- To be eligible, the act requires:
  1. All of the members of the cooperative must be agricultural producers;
  2. The cooperative cannot deal in non-members products more than member products (member business must be at least 50% of the cooperative's business); and
  3. One member, one vote OR the cooperative cannot pay dividends in excess of 8% per year.
- If a cooperative meets the requirements of the act, a cooperative can collectively market their members products.

## INCORPORATION / FORMATION

- State of incorporation
- Type of cooperative
- Annual reporting requirements

## PATRONAGE

- Types (qualified / non-qualified)
- Definition
- Policies and Procedures

## GOVERNANCE

- Articles of Incorporation
- Bylaws
- Policies and Procedures

## TAXATION

- Patronage
- Section 199A(g)

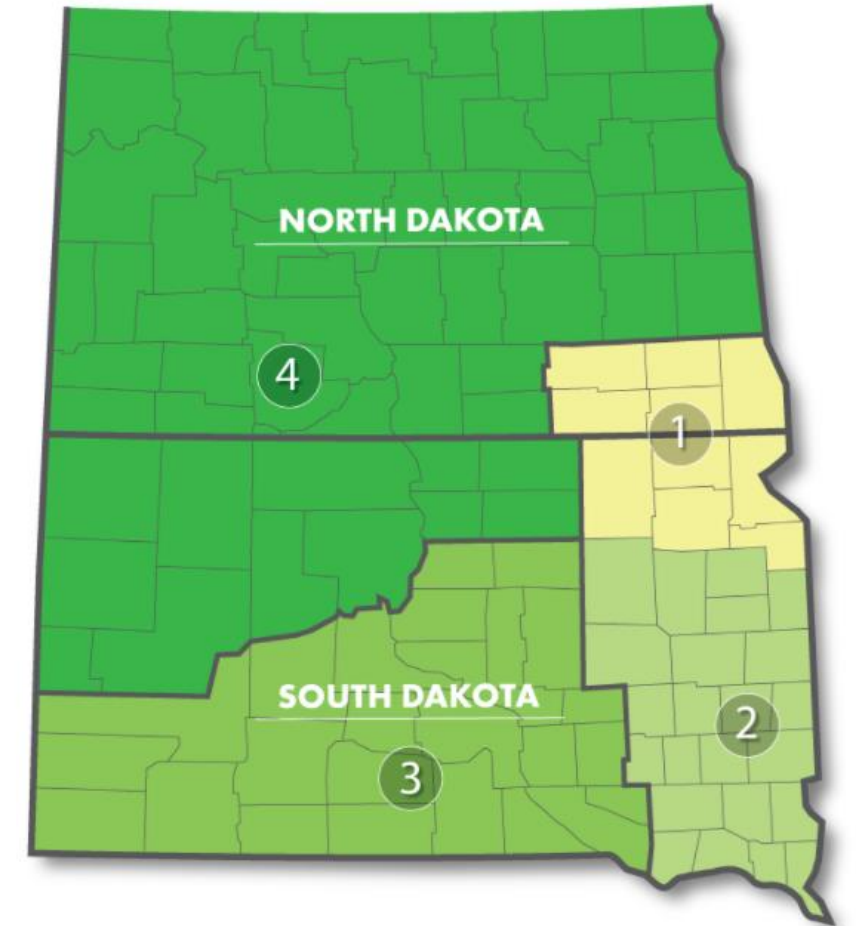
## GOVERNANCE

- You can't think through every scenario, but does the cooperative have the right structure in place to succeed
- Think ahead to different scenarios...
- Harder to make changes without a legitimate reason (i.e. merger)
- A breakdown in governance can negatively impact the ability of the organization to succeed (i.e. - board hires CEO – board does not get involved with employee matters)
- Think through potential conflicts of interest



## AGTEGRA COOPERATIVE BOARD OF DIRECTORS

- 15 elected directors (3-year term)
  - 12 from territorial districts (3 per district)
    - Must reside in the district
  - 3 at-large (cannot all come from the same territorial district)
- Up to two non-voting directors appointed by board (must be member)
- Meets monthly
- Requirements:
  - Primary occupation must be a farmer or rancher
  - Cannot be an employee
  - Cannot be nominated, elected, appointed if the individual is age 70 or more
  - Cannot have a loyalty to another organization that interferes with loyalty to Agtegra
  - Must pass a background check



## GOVERNANCE POLICY IDEAS

- Committee Charters
- Account Policy
- Ag Finance Loan Program Policy
- Audit, Budget and Capital Expenditures Policy
- Board Meetings Policy
- Capitalization Policy
- CEO Succession Plan Policy
- Committees of the Cooperative Policy
- Compensation and Expense Policy
- Delegate Council Meetings Policy
- District Policy
- Donations Policy
- Election of Officers Policy
- Energy Marketing Risk Management Policy
- Examination of Books and Records Policy
- Fertilizer Risk Management Policy
- Grain Marketing and Risk Management Policy
- Identify Theft Protection Policy
- Management Risk Policy
- Member Vote Policy
- Membership Policy
- Nonvoting Advisory Director Policy
- Patronage Dividend Policy

## OTHER COOPERATIVE CONSIDERATIONS FOR ATTORNEYS REPRESENTING AG COOPERATIVES

- Culture
- Compliance
- Change dynamic
- Director education / member education
- Director and officer duties and liabilities
- Meeting rules processes and procedures
- Auditing the membership list
- And more...

## OTHER COOPERATIVE CONSIDERATIONS FOR ATTORNEYS REPRESENTING MEMBERS

- Estate planning considerations
- Patronage allocation tax implications
- Patronage programs
- Cooperative culture
- Use of the word cooperative
- And more...



# QUESTIONS





THANK YOU

Mike Traxinger

1-605-377-4110

[mike.traxinger@agtegra.com](mailto:mike.traxinger@agtegra.com)