Credit[1]

INTRODUCTION

The purpose of this memo is to educate readers about the history, context, and content of the farm bill's Credit Title. The first section briefly introduces the establishment and evolution of federal farm credit programs in order to lay the foundation for a broader policy discussion. The second section summarizes the farm credit system as it exists under the Title V of the 2014 Farm Bill.[2] The final section summarizes current issues and critiques within the Credit Title in contemplation of the next farm bill.

Credit plays a critical role in the agricultural sector. Due to high start-up costs, such as the purchase of land and equipment, farm operators often must invest heavily in their farms before they produce enough revenue to pay for those investments. As a result, farmers and ranchers rely on credit to finance their operations. Furthermore, farming typically generates unpredictable financial returns due to boom-and-bust market cycles and the unpredictability of weather, pests, and other factors. Consequently, private commercial creditors perceive many loans as too risky to back without federal guarantees.[3] Farm bill credit programs attempt to fill in this gap.

The federal farm credit program comprises the spectrum of loans made available to agricultural producers by federal and federally backed entities. The farm bill authorizes a variety of direct and guaranteed loan programs, although their annual budgets are determined through the federal appropriations process.

I. HISTORY

Five major Congressional acts benchmark the evolution of the federal farm credit system: the Federal Farm Loan Act of 1916, the Farm Credit Act of 1933, the Farm Credit Act of 1971, the Farm Credit Amendments Act of 1985, and the Agricultural Credit Act of 1987.

Though historians trace farm credit initiatives back as far as 1732,[4] the modern farm credit system began with the establishment of the Federal Land Banks (FLBs), authorized by the Federal Farm Loan Act of 1916.[5] In response to farmers' need for "dependable sources of adequate credit, on terms suited to the particular needs of agriculture, from lenders who understood their problem[s],"[6] the Act provided long-term credit to farmers through twelve district FLBs, each owned by producers through producer-borrower purchases.[7]

In 1923, Congress supplemented the long-term credit system provided by FLBs with twelve Federal Intermediate Credit Banks (FICBs).[8] The FICBs did not provide direct loans, but instead acted as intermediary banks for various lending institutions, such as commercial banks and agricultural

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[1] The following people contributed to this report: Alyssa Chan (Harvard Law School Food Law and Policy Clinic), Jennifer Benson (Summer Intern, Harvard Law School Food Law and Policy Clinic), Leigh Barton (Georgetown University Law Center), Kate Fung (Georgetown University Law Center), Jacqueline Lerner (Georgetown University Law Center), Anna Menzel (Georgetown University Law Center), and Meaghan Jerrett (Georgetown University Law Center).
[2] Agricultural Act of 2014, 113 P. L. 79, Title V, §§ 5001-5404, 128 Stat. 649.
[3] JIM MONKE, CONG. RESEARCH SERV., RS21278, THE FARM CREDIT SYSTEM 3 (May 17, 2016), https://fas.org/sgp/crs/misc/RS21278.pdf.
[4] *History of FCA and the FCS*, FARM CREDIT ADMIN., (Dec. 7, 2016), https://www.fca.gov/about/history/historyFCA_FCS.html.
[5] *Id.*
[6] Barbara J. Hoekstra & Christopher R. Kelley, *A Guide to Borrower Litigation against the Farm Credit System and the Rights of Farm Credit System Borrowers*, 66 N.D. L. REV. 127, 132 (1990).
[7] *Id.*
[8] *Id.* at 134.

cooperatives, providing discounted lending in order to increase the availability of short- and intermediate-term credit to farmers.[9]

The Farm Credit Act of 1933 completed the modern Farm Credit System (FCS) by creating two new types of institutions: Banks for Cooperatives (BCs), to provide credit for farmers' cooperatives, and a Central Bank for Cooperatives to partner with BCs on loans that exceeded the former's lending capacities.[10] These, in conjunction with FLBs and FICBs, expanded the lending authority of the FCS to cover all types of agricultural activities.[11] In 1933, an executive order by President Franklin D. Roosevelt put all agricultural credit institutions under one central agency, the Farm Credit Administration (FCA).[12]

The post-war economy and its rising prices enabled farmers to pay back their loans, which allowed the FLBs to finally reimburse the government for the full sum of their invested capital.[13] The Farm Credit Act of 1971 broadened the authority of both the FCA and FCS, giving them more flexibility in lending and authorizing lending to commercial fishermen and rural homeowners.[14] An amendment in 1980 made loans more accessible to young, beginning and small farmers.[15]

In the late 1970s and early 1980s, poor economic conditions culminated in the worst year in the history of the FCS in 1985, which in turn spurred another round of loan policy reform. The Farm Credit Amendments Act of 1985 accomplished several things, most notably establishing the FCS and the FCA as two separate agencies, with the FCA acting as the regulatory arm.[16] In 1987, the Agricultural Credit Act created several organizations to support the activities of the FCS: the FCS Assistance Board, the Farm Credit System Insurance Corporation (FCSIC) and the Federal Agricultural Mortgage Corporation ("Farmer Mac").[17]

The comprehensive structural reforms undertaken in the 1980s led to gradually rising capital reserves and a solvent beginning to the 21st century. By 2005, all government loans had been repaid in full, returning the FCS to fully "borrower-owned" status.[18] By 2016, FCS funded approximately 41 percent of all US farm business debt, and held a highly geographically diversified loan portfolio across all 50 states and U.S. territories.[19]

Today, the FCS is a network of borrower-owned financial institutions and specialized service organizations.[20] Its purpose is to provide loans to eligible borrowers at competitive rates, as well as provide insurance and related services. FCS comprises four regional wholesale banks—one Agricultural Credit Bank (CoBank) and three Farm Credit Banks (AgFirst, AgriBank, and FarmCredit Bank of Texas)—which provide loan funds to 72 Agricultural Credit Associations (ACA) and one Federal Land Credit Association (FLCA).[21] The FCS also includes the Federal Agricultural Mortgage Corporation

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9 FARM CREDIT ADMIN., *supra* note 4.
10 *Id.*
11 *Id.*
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.*
17 *Id.*
18 *History*, FARM CREDIT, https://www.farmcreditnetwork.com/about/history (last visited Sept. 21, 2017).
19 *The Farm Credit System*, FED. FARM CREDIT BANKS FUNDING CORP., https://www.farmcreditfunding.com/ffcb_live/current/InvestorPresentation.pdf?uniq=1482771827697&uniq=1483562026353 (last visited Sept. 21, 2017).
20 *2015 Annual Report*, FARM CREDIT ADMIN. 9 (2015), https://www.fca.gov/Download/AnnualReports/2015AnnualReport.pdf.
21 *Id.*

(Farmer Mac), which aims to provide a competitively priced secondary market for agricultural real estate and rural housing mortgage loans, as well as rural utility cooperative loans.[22] The entities related to the FCS are overseen by the USDA Farm Service Agency (FSA), which administers credit programs, as well as farm commodity, crop insurance, conservation, and emergency assistance programs for farmers and ranchers.[23]

Federal farm credit issues either as a *direct* or *guaranteed* loan. A direct loan issues directly from FSA, whereas guaranteed loans issue from banks and credit unions backed by an FSA guarantee against significant loss of principal or interest.[24] FSA generally functions as the "lender of last resort" or "lender of first opportunity," extending credit to farmers and ranchers who are unable to obtain loans elsewhere.[25] Although FSA has a long history of discrimination in granting loans, the agency has begun to prioritize socially disadvantaged farmers in its loan programs and today serves as a critical safety net for beginning and socially disadvantaged farmers who may struggle to access commercial credit.

Today, the demand for farm credit continues to increase as farm incomes decline and commodity prices remain weak. As of 2016, direct loans are primarily distributed through commercial banks (42 percent) and the FCS (41 percent), with individuals and life-insurance companies providing a small share, as well.[26] The FSA provides a small share of total debt through direct loans (2.1 percent) but also guarantees a share of farm debt made through commercial and FCS loans (4-5 percent).[27]

II. THE 2014 FARM BILL

The Credit Title covers five categories of lending: ownership loans, operating loans, conservation loans, emergency loans, and land contract guarantees. Farm ownership (direct and guaranteed) loans help farmers purchase or enlarge a farm or ranch, construct or improve a farm or ranch structure, pay closing costs, or pay for soil and water conservation and protection.[28] Farm operating loans (direct and guaranteed) help farmers purchase livestock or equipment, or pay for minor real estate repairs and annual operating expenses.[29] Conservation loans (guaranteed only) help complete a conservation practice as part of an approved conservation plan.[30] Emergency loans (direct only) help in the wake of a natural disaster, and can be used for a wide variety of activities.[31] Finally, land contract guarantees provide financial guarantees to the seller of a farm or ranch through a land contract; only sales to beginning or socially disadvantaged farmers are eligible for this loan program.[32]

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[22] *Id.*
[23] *Id.*
[24] *Direct and Guaranteed Farm Loans*, *Grassroots Guide to Federal Farm and Food Programs*, NAT'L SUSTAINABLE AGRIC. COAL. (Oct. 2016), http://sustainableagriculture.net/publications/grassrootsguide/farming-opportunities/farm-ownership-operating-loans/.
[25] U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, YOUR GUIDE TO FSA FARM LOANS 7 (Jun. 2012), https://www.fsa.usda.gov/Internet/FSA_File/fsa_br_01_web_booklet.pdf.
[26] *See* Jim Monke, U.S. CONG. RESEARCH SERV., RS21977, AGRICULTURAL CREDIT: INSTITUTIONS AND ISSUES 1¬2 (Apr. 5, 2016), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS21977.pdf
[27] *Id.* at 1.
[28] U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, *supra* note 25, at 10.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.* at 11.

Title V of the 2014 Farm Bill shaped the functional parameters of current farm credit availability and distribution through these programs.[33] Broadly, the 2014 Farm Bill made relatively minor changes to the permanent statutes for FSA and FCS;[34] the most significant changes are described below.

A. Loan eligibility requirements

The 2014 Farm Bill adjusted eligibility requirements for several loan programs, broadening the pool of eligible applicants. Specifically, it gave USDA discretion to allow alternative legal entities[35] to qualify for farm ownership and operating loans, conservation loans, and emergency loans.[36] Additionally, the 2014 Farm Bill relaxed the three-year experience requirement for direct farm ownership loans,[37] granting USDA discretionary authority to consider other forms of management experience.[38]

For farm operating loans made to youth for projects in 4-H Clubs, Future Farmers of America, etc., the rural residency requirement was eliminated.[39] The bill also allowed USDA to provide debt forgiveness for defaults on youth loans if the default was beyond the control of the borrower.[40] It further stipulated that this debt forgiveness could not affect eligibility for federal education loans or other agency's loan programs.[41]

Finally, the 2014 Farm Bill eliminated term limits on guaranteed farm operating loans, allowing borrowers unable to obtain credit from commercial lenders to remain within the program; prior to 2014, eligibility was limited to 15 years.[42]

B. Loan Amounts

The 2014 Farm Bill also adjusted the loan cap for several different FSA loan programs, including conservation loans, down payment loans, and microloans. Conservation loans operate distinctly from ownership loans, in that there is a limit on the percentage of the principal of the loan that FSA can guarantee.[43] The 2014 Farm Bill raised the maximum guarantee from 75 percent to 80 percent, with a higher limit (90 percent) for loans made to socially disadvantaged and beginning farmers.[44]

The 2014 Farm Bill also adjusted the cap for the Down Payment Loan Program, a subcomponent of the farm ownership loan program focused on serving beginning and socially disadvantaged farmers.[45] The

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33 Agricultural Act of 2014, 113 P. L. 79, Title V, §§ 5001-5404, 128 Stat. 649.
34 RALPH M. CHITE, R43076, THE 2014 FARM BILL (P.L. 113-79): SUMMARY AND SIDE-BY-SIDE 12-13 (Feb. 12, 2014), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43076.pdf.
35 Prior to the 2014 Farm Bill, loans for these programs could be granted to cooperatives, corporations, partnerships, joint operations, trusts, and limited liability companies. See *id.*, at 124-128.
36 *Id.* at 124-128. The bill also included a 75 percent ownership requirement in certain cases (within the farm ownership, farm operating, and emergency loan programs).
37 The three-year experience requirement requires applicants to have participated in the management or operation of a farm for at least three out of the past ten years. Agricultural Act of 2014, 113 P. L. 79, Title V, § 5001, 128 Stat. 649.
38 NAT'L SUSTAINABLE AGRIC. COAL., supra note 24.
39 CHITE, *supra* note 34, at 126.
40 *Id.*
41 *Id.*
42 *Id.* at 127.
43 *Conservation Loans*, *Grassroots Guide to Federal Farm and Food Programs*, NAT'L SUSTAINABLE AGRIC. COAL. (Oct. 2016), http://sustainableagriculture.net/publications/grassrootsguide/.
44 CHITE, *supra* note 34, at 125.
45 See U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, *Minority and Women Farmers and Ranchers*, https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/minority-and-women-farmers-and-ranchers/index (last visited Oct. 19, 2017); U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, *Beginning Farmers and Ranchers Loans*,

bill raised the maximum loan amount from 45 percent of $500,000 to 45 percent of $667,000[46] to reflect the rising cost of farmland.

Finally, the 2014 Farm Bill also codified the extremely successful Microloan Program, which began in 2013 under the Direct Operating Loan Program.[47] Microloans provide a fast-track application process for small, direct loans,[48] and are designed to better serve BFR and SDFR, groups that were not being served through traditional FSA credit programs.[49] The 2014 Farm Bill increased the maximum microloan amount from $35,000 to $50,000[50] and added provisions to further streamline these loans and provide faster access to credit.[51] Over the past three years, SDFR and BFR have utilized microloans at a higher rate than any other USDA loan program;[52] at the same time, eighty-one percent of microloans were awarded to BFR, and 35 percent were awarded to SDFR.[53] Further, data suggests that the Microloan Program has successfully served new borrowers who would not have received traditional DOLs (Direct Operating Loans).[54]

C. Other provisions

The 2014 Farm Bill also facilitated loans for the purchase of highly fractionated tribal land by modifying the Highly Fractionated Indian Land (HFIL) loan program, which provides funds to help tribes, tribal members, and tribal entities to consolidate land and alleviate the problems associated with highly fractionated interest on reservations.[55] Created by the 2008 Farm Bill, the program was initially a direct loan program that required loans to be made directly to end recipients.[56] Fourteen tribal consultations were held across the country to assess the program's efficacy and produce recommendations.[57] The recommendations from the consultations helped to reshape the program, converting it to a relending program by which FSA money is lent to intermediaries that then create revolving loan funds to relend to buyers of highly fractionated land.[58] In total, $10 million was authorized for HFIL, the same amount authorized by the 2008 Farm Bill.[59]

D. Spending

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https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/beginning-farmers-and-ranchers-loans/index (last visited Oct. 19, 2017).

46 CHITE, *supra* note 34, at 125.

47 *Microloans*, NAT'L SUSTAINABLE AGRIC. COALITION (Oct. 2016), http://sustainableagriculture.net/publications/grassrootsguide/credit-crop-insurance/microloans/.

48 U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, REQUEST FOR MICROLOAN ASSISTANCE (2016), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Farm-Loan-Programs/pdfs/direct-loan-apps/Form_FSA_2330_Microloan_Application.pdf.

49 U.S. DEPT. OF AGRIC., ECON. RESEARCH SERV., *More Microloans Issued in Areas with More Beginning and Socially Disadvantaged Farmers*, https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=81921.

50 CHITE, *supra* note 34, at 126.

51 Agricultural Act of 2014, 113 P. L. 79, Title V, §§ 5001, 5102, 5106, 128 Stat. 649.

52 NAT'L SUSTAINABLE AGRIC. COALITION, *supra* note 47.

53 Sarah Tulman *et. al.*, U.S. DEPT. OF AGRIC., ECON. RESEARCH SERV., *USDA Microloans for Farmers: Participation Patterns and Effects of Outreach* 8 (Dec. 2016), https://www.ers.usda.gov/webdocs/publications/81871/err-222.pdf?v=42761.

54 *See id.* at iii; NAT'L SUSTAINABLE AGRIC. COALITION, *supra* note 47.

55 U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, HIGHLY FRACTIONATED INDIAN LAND LOAN PROGRAM (HFIL) (Dec. 2016), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2016/hfil_fact_sheet_dec2016.pdf.

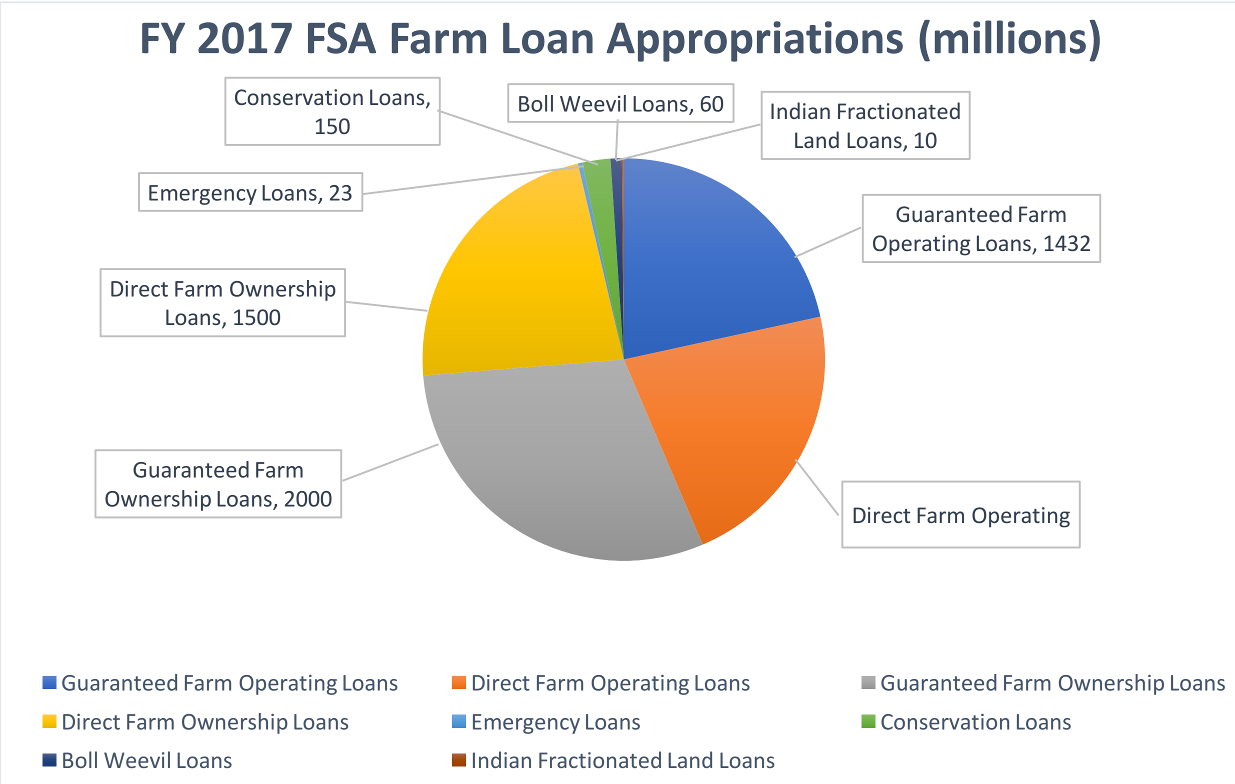
56 U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, *Highly Fractionated Indian Land (HFIL) Loan Program* 7 (Mar. 23-25, 2016), http://www.indianaglink.com/wp-content/uploads/2013/09/Highly-Fractionated-Indian-Land-Loan-Program.pptx.

57 *Id.* at 9.

58 *Id.* at 8-10.

59 U.S. DEP'T OF AGRIC., FY 2017 BUDGET SUMMARY 17, https://www.obpa.usda.gov/budsum/fy17budsum.pdf.

The 2016 federal budget provided $6.4 billion for farm loans through the FSA, the same level provided in 2015.[60] FY 2017 appropriations included a total of $6.7 billion for farm loans, broken out in the chart below.[61]



III. Key Issues

This section will describe some of the major topics of debate within the Credit Title, exploring the policy critiques and justifications of the existing farm credit regime.

A. Funding levels

Recently, FSA has struggled to meet demand for loan programs, due to low commodity prices and challenging market conditions that have taken a toll on farm incomes and made it difficult for many farmers to access commercial credit.[62] Although the 2016 budget maintained the same funding for farm loans as in 2015—$6.4 billion[63]—FSA ran out of loan funding two months before the end of the fiscal year,[64] leaving some approved applicants waiting for funds and creating a significant backlog in

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[60] U.S. Dep't of Agric., FY 2016 Budget Summary and Annual Performance Plan 18, http://www.obpa.usda.gov/budsum/fy16budsum.pdf.
[61] *Funding*, Farm Serv. Agency, U.S. Dept. of Agric., https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/funding/index (last visited Sept. 21, 2017).
[62] U.S. Dep't of Agric., *supra* note 59, at 16.
[63] U.S. Dept. of Agric., *supra* note 60, at 18.
[64] P.J. Huffstutter, *U.S. Seeks Options as Farm Loan Funds Run Out of Cash*, Reuters (July 25, 2016), http://www.reuters.com/article/us-usda-loans-farmers-idUSKCN1052C9?il=0; U.S. Dep't of Agric. Farm Serv. Agency,

applications.[65] In September 2016, Congress authorized FSA to continue financing loans using funds allocated for FY2017, threatening a shortfall in 2017.[66] The 2017 budget increased funding for loans to $6.7 million to address the shortage in 2016;[67] yet FSA struggled to address the backlog of applications, while handling increased demand for FSA loan programs caused by the downturn in the farm economy.[68]

The FY2018 budget has not yet been passed, yet appropriate funding levels for FSA loan programs has already begun to be an important topic of debate. The recent Senate agricultural appropriations bill proposed maintaining FY2017 funding levels for farm loan programs,[69] while the House agricultural appropriations bill proposed significant cuts to Direct Operating Loans and Guaranteed Farm Ownership Loans.[70] In the 2018 reauthorization process, debates over how to maintain the farm safety net while practicing fiscal responsibility will likely continue.

B. Legacies of discrimination

USDA has a long history of discrimination against women and minority farmers, particularly black farmers, through institutional practices and administration of FSA credit programs. FSA programs are generally administered by county-level committees comprised primarily of white farmers, and these bodies have historically limited the credit available to socially disadvantaged farmers and ranchers through loan denials, long processing times, insufficient loan amounts, or high interest rates.[71] In 1997, decades of complaints about USDA's treatment of African American farmers culminated in a class-action discrimination suit, *Pigford v. Glickman*, which alleged discrimination by USDA local county committees in granting loans or other program assistance to black farmers.[72] Plaintiffs also claimed that USDA had failed to investigate or respond to complaints by African American farmers between 1983 and 1997.[73] In total, over $2 billion was paid to African American farmers to resolve the *Pigford* suits,[74] and three additional class action suits followed soon after the *Pigford* case. Each followed the general format of the *Pigford* case, claiming discrimination by USDA in granting loans and benefits to minority farmers. In 1999, Native American farmers filed *Keepseagle v. Vilsack*, and the following year, two more class action

Release No. 107.16, *USDA Announces Availability of Additional Farm Loan Funding* (Sept. 2, 2016), https://www.fsa.usda.gov/news-room/news-releases/2016/nr_20160902_rel_0107.

[65] U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, *supra* note 64.

[66] Roxana Hegeman, *Congress' Budget Patch Averts National Farm Loan Crisis*, ASSOCIATED PRESS (Dec. 27, 2016), https://apnews.com/a699414680c5453ab2ab6e307e804a5b/congress-budget-patch-averts-national-farm-loan-crisis.

[67] U.S. DEP'T OF AGRIC., *supra* note 59, AT 16.

[68] NAT'L SUSTAINABLE AGRIC. COALITION, *Senate Appropriations Prioritize Sustainable Agriculture and Rural Development* (Jul. 21, 2017), http://sustainableagriculture.net/blog/senate-appropriations-markup-2017/.

[69] S. 1603, 115th Cong. (2017).

[70] *See* the House Agriculture Appropriations Subcommittee Bill released June 27, 2017, https://appropriations.house.gov/uploadedfiles/bills-115hr-sc-ap-fy2018-agriculture-agriculture.pdf; *see also* NAT'L SUSTAINABLE AGRIC. COALITION, *House Appropriations Bill Largely Rejects President's Proposed Cuts to Agriculture Programs* (Jun. 29, 2017), http://sustainableagriculture.net/blog/house-ag-funding-bill-fy18/.

[71] ANTHONY GIANCATARINO & SIMRAN NOOR, BUILDING THE CASE FOR RACIAL EQUITY IN THE FOOD SYSTEM 12 (2014), http://www.centerforsocialinclusion.org/wp-content/uploads/2014/07/Building-the-Case-for-Racial-Equity-in-the-Food-System.pdf.

[72] TADLOCK COWAN & JODY FEDER, CONG. RESEARCH SERV., RS20430, THE PIGFORD CASES: USDA SETTLEMENT OF DISCRIMINATION SUITS BY BLACK FARMERS 1-2 (May 29, 2013), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS20430.pdf.

[73] *Id.* at 2.

[74] *Id.*

lawsuits were filed—*Love v. Vilsack* and *Garcia v. Vilsack*—on behalf of women and Hispanic farmers, respectively.[75]

Yet, even if they eventually received settlement payments, many farmers involved in these cases had been denied the very credit necessary to keep their farms. As a result, many lost their land, as well as the opportunity to train a future generation of farmers. These settlement payments were thus decades late, and insufficient to restore minority farming communities. The federal government has acknowledged its role in shaping the farmer demographics observed today. In a 1997 report, the USDA Civil Rights Action Team concluded: "Minority farmers have lost significant amounts of land and potential farm income as a result of discrimination" by USDA.[76]

In recent years, USDA has attempted to facilitate program access for minority and women farmers through several new institutions and programs, including the Office of Advocacy and Outreach,[77] the Minority Farmers and Ranchers Advisory Committee,[78] Outreach and Technical Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers Program (Section 2501 Program),[79] and the Microloan Program.[80] Additionally, most FSA loan programs have incorporated loan set-asides to reserve a share of available credit for socially disadvantaged farmers and ranchers and women.[81] Yet, how best to support and foster minority and women farmers, as well as to what degree, continue to be important questions within farm bill debates.

C. *Emphasis on small-scale, local, and diversified operations*

The 2014 Farm Bill's increased focus on provisions that benefit locally or regionally produced agricultural products, particularly the microloan and crop valuation provisions, represent a shift in program support toward specialty crops.[82] By and large, these provisions have been popular with policy groups across the political spectrum, ranging from the Union of Concerned Scientists[83] to the Agricultural and Applied Economics Association.[84] Smaller-scale lending programs can be considered as a pathway to incentivizing local food sales, and increasing the supply of healthier and more varied crops. This

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75 TADLOCK COWAN & JODY FEDER, CONGRESSIONAL RESEARCH SERVICE, RS40988, GARCIA V. VILSACK: A POLICY AND LEGAL ANALYSIS OF A USDA DISCRIMINATION CASE 5, 11 (Feb 22, 2013), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R40988.pdf (last visited Jun 5, 2017).

76 U.S. DEP'T. OF AGRIC., CIVIL RIGHTS ACTION TEAM, CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF AGRICULTURE: A REPORT OF THE CIVIL RIGHTS ACTION TEAM 30 (Feb. 1997), http://www.federationsoutherncoop.com/pigford/research/CRAT%20Report%201997.pdf.

77 *Department of Advocacy & Outreach*, U.S. DEP'T OF AGRIC., https://www.outreach.usda.gov/grants/ (last visited Oct. 19, 2017).

78 *Advisory Committee on Minority Farms*, U.S. DEP'T OF AGRIC., https://www.outreach.usda.gov/sdfr/FAC.htm (last visited Oct. 19, 2017).

79 *Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program*, U.S. DEP'T OF AGRIC., https://www.outreach.usda.gov/sdfr/ (last visited Oct. 19, 2017).

80 U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/microloans/index (last visited Oct. 19, 2017).

81 *See* U.S. DEP'T OF AGRIC., FARM SERV. AGENCY, *supra* note 61. Navigate to "Is any of the money targeted or reserved for use by specific groups of farmers?"

82 Specialty crops are defined as fruits, vegetables, tree nuts, dried fruits, horticulture, and nursery crops, including floriculture. *USDA Definition of Specialty Crop*, U.S. DEP'T OF AGRIC. 1, https://nifa.usda.gov/sites/default/files/resources/definition_of_specialty_crops.pdf (last visited Sept. 24, 2017).

83 *Ensuring the Harvest: Crop Insurance and Credit for a Healthy Farm and Food Future*, UNION OF CONCERNED SCIENTISTS (Apr. 2012) http://www.ucsusa.org/food_and_agriculture/solutions/expand-healthy-food-access/ensuring-the-harvest.html#.WG2XM7YrJE5.

84 Alba J. Collart & Keith Coble, *Highlights of the Agricultural Act of 2014 for Specialty Crops*, 29 CHOICES: THE MAGAZINE OF FOOD, FARM, AND RESOURCE 2 (2014), http://www.choicesmagazine.org/UserFiles/file/cmsarticle_373.pdf.

increased availability and emphasis on nutritional crops can help to address food scarcity and health issues, and support for local and regional operations provides stimuli for local growth and overall increased wealth.[85] Indeed, "the bill's inclusion of provisions that benefit locally or regionally produced agricultural products translates into direct support for small and medium agricultural businesses."[86] Increased crop diversity can help protect against vulnerability from fluctuations in market prices of any one crop, as well as increase resilience toward pests and weather events.[87]

There are many benefits to providing increased capital to smaller, local, and diversified operations. However, in writing the next farm bill, legislators will have to grapple with how to maintain this support while balancing the needs of larger commodity farms in a tough farm economy.

D. Consolidation of highly fractionated tribal lands

As mentioned above, the Credit Title provides loans to facilitate the consolidation of highly fractionated Indian lands. Land fractionation on tribal lands is an issue caused by the Dawes Act of 1887, which allocated reservation land to individual tribal members, such that every subsequent heir to the original title retained an undivided interest in the title. This meant that each heir owned a percentage interest in the land, rather than a portion of the land itself. The exponential growth of these interest-holders widely resulted in what the farm bill refers to as "highly fractionated land": land that has come to be commonly owned by as many as thousands of individual owners.[88] As of 2016, more than three million fractionated land interests exist, held by upwards of 245,000 owners across approximately 150 reservations.[89]

Legislators have sought to address this issue by providing loans to tribal entities so that they may purchase these lands. As discussed above, the 2014 Farm Bill authorized FSA to make these loans to intermediaries rather than directly to end recipients.[90] The next farm bill will require legislators to evaluate the efficacy of these loans (and the new structure). They may also consider extending similar loans to black farmers in the Southeast, where fractionated land is similarly a significant problem.[91]

E. Farm Credit System

FCS is a national financial cooperative established in 1916 with a government mandate to serve agriculture.[92] It currently provides over 40 percent of farm loans, and is a commercial, for-profit lender; it receives tax benefits but no federal appropriations or guarantees.[93] One of the biggest critiques leveled against the Farm Credit System is the breadth of qualifying applicants since entities like Cracker Barrel, Verizon Communications, vacation homes, restaurants, and car washes have benefitted from these

[85] *Id.* at 4.
[86] *Id.* at 3.
[87] *From uniformity to diversity: a paradigm shift from industrial agriculture to diversified agroecological systems*, INTERNATIONAL PANEL OF EXPERTS ON SUSTAINABLE FOOD SYSTEMS 15, 21 (2016), http://www.ipes-food.org/images/Reports/UniformityToDiversity_FullReport.pdf.
[88] Highly Fractionated Indian Land (HIFL) Loan Program, 7 C.F.R. §§ 761, 769 (2015).
[89] Press Release, *USDA Expands Farm Loans for Native Americans Farming and Ranching on Tribal Land*. Release No. 0255.16, U.S. DEPT. OF AGRIC. (Dec. 6, 2016), https://www.fsa.usda.gov/news-room/news-releases/2016/nr_20161206_rel_255.
[90] CHITE, *supra* note 34, at 129.
[91] THE EMERGENCY LAND FUND, THE IMPACT OF HEIRS' PROPERTY ON BLACK RURAL LAND TENURE IN THE SOUTHEASTERN UNITED STATES (1980), https://babel.hathitrust.org/cgi/pt?id=coo.31924067935720;view=1up;seq=7.
[92] JIM MONKE, CONG. RESEARCH SERV., RS21278, THE FARM CREDIT SYSTEM 2 (May 17, 2016), https://fas.org/sgp/crs/misc/RS21278.pdf.
[93] *Id.* at 2-3.

loans.[94] Because these loans increasingly seem to benefit those who on face value do not qualify as farms, the Independent Community Bankers of America and the American Bankers Association argue that the farm credit system should be privatized.[95]

On the other hand, the Farm Credit Council, among others, takes the position that FCS remains necessary in rural communities for both policy and economic reasons: it creates competition between farm credit institutions and commercial banks, which ultimately benefits the farmers by keeping loan prices down and improving customer service.[96] As is often the case in economics debates, there exists a trade-off between allocative efficiency (full privatization, which would allow the market to function on its own) and distributive justice (government intervention to ensure more equal distribution and access to the market).

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[94] Thomas Heath, *Critics say Farm Credit System needs to be reined in*, WASH. POST, (Apr. 11, 2016). https://www.washingtonpost.com/business/capitalbusiness/critics-says-farm-credit-system-needs-to-be-reined-in/2016/04/11/b3ce0dd2-fb6a-11e5-9140-e61d062438bb_story.html?utm_term=.a60b53b28c51.

[95] Bert Ely, *The Farm Credit System: Lending Anywhere but on the Farm: How the Farm Credit System is aggressively seeking to increase its off-farm lending activities*, ELY & CO., INC. (2006), http://www.aba.com/Tools/Function/Documents/Horizons2006ELY.pdf.

[96] Todd Van Hoose, *Make no mistake: The bank lobby wants to kill farm credit*, AGRI-PULSE (May, 27, 2016). http://www.agri-pulse.com/Opinion-make-no-mistake-the-bank-lobby-wants-to-kill-farm-credit-05272016.asp