



Credit¹

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 2018 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

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² Agricultural Act of 2014, 113 Pub. L. No. 79, § 5001-5404, 128 Stat. 649.

³ JIM MONKE, CONG. RSCH. SERV., RS21278, THE FARM CREDIT SYSTEM 3 (2016), <https://fas.org/sgp/crs/misc/RS21278.pdf>.

⁴ *History of FCA and the FCS*, FARM CREDIT ADMIN. (last updated Dec. 3, 2019), 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.



intermediary banks for various lending institutions, such as commercial banks and agricultural 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% 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

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 FARM CREDIT ADMIN., 2015 ANNUAL REPORT 9 (2015), <https://www.fca.gov/Download/AnnualReports/2015AnnualReport.pdf>.



Credit Association (FLCA).²¹ The FCS also includes the Federal Agricultural Mortgage Corporation (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. In 2018, farms across the country accessed nearly \$7.7 billion in new credit, either directly or guaranteed through commercial lenders, reaching the highest levels in history for guaranteed loans.²⁶ Under USDA’s 2019 Budget, direct loans accounted for 40.8% of the total budget for ownership and operating farm loans and guaranteed unsubsidized loans comprise the remaining 59.2% of the budget.²⁷ Direct loans are primarily distributed through commercial banks (42%) and the FCS (41%), with individuals and life-insurance companies providing a small share as well.²⁸ The FSA provides a small share of total debt through direct loans (2.6%) but also guarantees a share of farm debt made through commercial and FCS loans (4-5%).²⁹

The 2014 Farm Bill introduced a number of changes to the federal farm credit system, including broadening the eligibility requirements for several loan programs, increasing the cap for various loan programs, and establishing credit programs for minorities and socially disadvantaged. With respect to loan eligibility, the 2014 Farm Bill gave USDA discretion to allow alternative legal entities to qualify for farm ownership and operating loans, conservation loans, and emergency loans and relaxed the three-year experience requirement for direct farm ownership loans.³⁰ Additionally, the bill eliminated the rural residency requirement for farm operating loans made to youth for projects in 4-H Clubs, Future Farmers

²¹ *Id.*

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 (2012), https://www.fsa.usda.gov/Internet/FSA_File/fsa_br_01_web_booklet.pdf.

²⁶ INDEP. CMTY OF BANKERS OF AM., FOCUS ON FARM POLICY WHITE PAPER 9 (2018), <https://www.icba.org/docs/default-source/icba/advocacy-documents/2018-farm-bill-white-paper.pdf>.

²⁷ *Id.*

²⁸ See JIM MONKE, U.S. CONG. RSCH. SERV., RS21977, AGRICULTURAL CREDIT: INSTITUTIONS AND ISSUES 1–2 (2018), <https://crsreports.congress.gov/product/pdf/RS/RS21977>.

²⁹ *Id.* at 1.

³⁰ RALPH M. CHITE, R43076, THE 2014 FARM BILL (P.L. 113-79): SUMMARY AND SIDE-BY-SIDE 124-128 (Feb. 12, 2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43076.pdf>; Agricultural Act of 2014, 113 Pub. Law. No. 79, § 5001, 128 Stat. 649.



of America, etc.,³¹ and allowed USDA to provide debt forgiveness for defaults on youth loans if the default was beyond the control of the borrower.³² It further stipulated that this debt forgiveness could not affect eligibility for federal education loans or other agency's loan programs.³³ 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.

The 2014 Farm Bill also adjusted the loan cap for several different FSA loan programs, including conservation loans, down payment loans, and microloans. The 2014 Farm Bill raised the maximum guarantee for conservation loans from 75% to 80%, with a higher limit (90%) for loans made to socially disadvantaged and beginning farmers.³⁴ The 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,³⁵ raising the maximum loan amount from 45% of \$500,000 to 45% of \$667,000³⁶ to reflect the rising cost of farmland. The Bill also codified the Microloan program, which provides a fast-track application process for small, direct loans³⁷ and is designed to better serve beginning farmers and ranchers (BFR) and socially disadvantaged farmers and ranchers (SDFR).³⁸ The 2014 Farm Bill increased the maximum microloan amount from \$35,000 to \$50,000³⁹ and added provisions to further streamline these loans and provide faster access to credit.⁴⁰

Lastly, the Bill facilitated loans for the purchase of highly fractionated Tribal land by modifying the Highly Fractionated Indian Land (HFIL) loan program, which was introduced in the 2008 Farm Bill and provides funds to help tribes, Tribal members, and Tribal entities to consolidate land and alleviate the problems associated with highly fractionated interest on reservations.⁴¹ Initially a direct loan program that required loans to be made directly to end recipients,⁴² the 2014 Farm Bill converted it to a relending program through which FSA money is lent to intermediaries that then create revolving loan funds to relend to buyers of highly fractionated land.⁴³

³¹ CHITE, *supra* note 30, at 126.

³² *Id.*

³³ *Id.*

³⁴ CHITE, *supra* note 30, at 125.

³⁵ See *Minority and Women Farmers and Ranchers*, U.S. DEP'T OF AGRIC., FARM SERV. AGENCY, <https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/minority-and-women-farmers-and-ranchers/index> (last visited Oct. 19, 2017); *Beginning Farmers and Ranchers Loans*, U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, <https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/beginning-farmers-and-ranchers-loans/index> (last visited Oct. 19, 2017).

³⁶ CHITE, *supra* note 30, at 125.

³⁷ U.S. DEP'T OF AGRIC., FARM SERV. AGENCY, REQUEST FOR MICROLOAN ASSISTANCE (2016), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/Farm-Loan-Programs/pdfs/direct-loan-apps/Form_FSA_2330_Microloan_Application.pdf.

³⁸ *More Microloans Issued in Areas with More Beginning and Socially Disadvantaged Farmers*, U.S. DEPT. OF AGRIC., ECON. RSCH. SERV. (Jan., 3, 2015), <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=81921>.

³⁹ CHITE, *supra* note 30, at 126.

⁴⁰ Agricultural Act of 2014, 113 Pub. L. No. 79, §§ 5001, 5102, 5106, 128 Stat. 649.

⁴¹ 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/usdfiles/FactSheets/2016/hfil_fact_sheet_dec2016.pdf.

⁴² See *Highly Fractionated Indian Land Program*, 80 Fed. Reg. 74966, 74969 (Dec. 1, 2015).

⁴³ *Id.* at 74967.



II. THE 2018 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. Farm operating loans (direct and guaranteed) help farmers purchase livestock or equipment, or pay for minor real estate repairs and annual operating expenses. Conservation loans (guaranteed only) help complete a conservation practice as part of an approved conservation plan. Emergency loans (direct only) help in the wake of a natural disaster, and can be used for a wide variety of activities. 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.

The Credit title (Title V) of the 2018 Farm Bill made several changes to the USDA farm loan programs (7 U.S.C. §§ 1921 *et seq.*), the Farm Credit System (12 U.S.C. §§ 2001 *et seq.*) and the State Agricultural Loan Mediation Program (7 U.S.C. § 5101).

A. Loan eligibility requirements

The 2018 Farm Bill adjusted eligibility requirements for several loan programs, broadening the pool of eligible applicants. Specifically, it gave the Secretary the authority to reduce the 3-year farming experience requirement to 1 or 2 years for qualified beginning farmers or to waive the requirement when certain prerequisites (coursework, military service, or mentoring) are met for farm ownership loans.⁴⁴ The 2018 Farm Bill also amended the acreage exception to the loan amount limitation for loans from the Federal Agricultural Mortgage Corporation (known as Farmer Mac), increasing the amount from 1,000 acres to 2,000 acres.⁴⁵ The Bill allows the Secretary to make emergency loans to a borrower who received a debt write-down or restructuring of a farm loan.⁴⁶ Previously, borrowers who received restructuring were not eligible for emergency loans.⁴⁷

Additionally, and importantly, the 2018 Farm Bill authorized a new relending program to assist heirs in resolving issues of ownership and succession on farmland in which they have an undivided ownership interest. The bill authorized USDA to provide direct loans to certain cooperatives, credit unions, and nonprofit organizations with experience working with socially disadvantaged farmers and ranchers, or limited resource or new and beginning farmers and ranchers, to relend for such purposes.⁴⁸ The addition of this new relending program was a Congressional response to advocacy by organizations like the Federation of Southern Cooperatives and the Land Loss Prevention Project to support heirs' property owners, an ownership status in which a high percentage of Black-owned farms find themselves.⁴⁹

⁴⁴ Agriculture Improvement Act of 2018, Pub. L. No 115-334, § 5101, 132 Stat. 4490; *Agriculture Improvement Act of 2018: Highlights and Implications*, U.S. DEP'T OF AGRIC., ECON. RSCH. SERV. (Oct. 1, 2019), <https://www.ers.usda.gov/agriculture-improvement-act-of-2018-highlights-and-implications/credit/> [hereinafter *ERS Farm Bill 2018 Highlights and Implications*].

⁴⁵ Agriculture Improvement Act of 2018, Pub. L. No 115-334, § 5410, 132 Stat. 4678.

⁴⁶ Agriculture Improvement Act of 2018, Pub. L. No 115-334, § 5307, 132 Stat. 4673.

⁴⁷ Agricultural Act of 2014, 113 P. L. 79, § 5201, 128 Stat. 649.

⁴⁸ Agriculture Improvement Act of 2018, Pub. L. No 115-334, § 5104, 132 Stat. 4669.

⁴⁹ See, e.g., *The Fair Access for Farmers and Ranchers Act Introduced Today Helps Producers Operating on Heirs' Property*, RURAL COALITION (Jun. 22, 2018), <https://www.ruralco.org/farm-bill/2018/6/22/the-fair-access-for-farmers-and-ranchers-act-introduced-today-helps-producers-operating-on-heirs-property>.



B. Loan amounts

The 2018 Farm Bill adjusted the loan cap for several different loan programs, including the farm ownership loans and operating loans. The Bill raised the loan limit on farm ownership loans from \$300,000 to \$600,000 to reflect the rising cost of farmland across the country.⁵⁰ The 2018 Farm Bill also raised the maximum loan size for operating loans from \$300,000 to \$400,000 for direct loans and from \$700,000 to \$1.75 million for guaranteed loans.⁵¹

As demand for these loans increase, concerns remain that established farmers will receive the bulk of the available funding through these loans.⁵²

C. Other provisions

The 2018 Farm Bill added a new section to the Consolidated Farm and Rural Development Act creating a program to provide equitable relief to farmers who fail to comply with the terms of their farm loan due to some action by USDA. The Secretary is authorized to allow the farmer to retain the loan or provide other relief as appropriate.⁵³ Previously, borrowers were required to return the loan money.⁵⁴

D. Spending

The 2019 federal budget provided \$7.6 billion for farm loans, a slight decrease from the \$8 billion provided in 2018.⁵⁵ The chart below reflects the FY 2020 appropriations for farm loans, and does not reflect any funding for COVID-19 response efforts.⁵⁶

⁵⁰ Agriculture Improvement Act of 2018, Pub. L. No 115-334, § 5103, 132 Stat. 4669; *ERS Farm Bill 2018 Highlights and Implications*, *supra* note 44.

⁵¹ Agriculture Improvement Act of 2018, Pub. L. No 115-334, § 5201, 132 Stat. 4671; *ERS Farm Bill 2018 Highlights and Implications*, *supra* note 44.

⁵² *2018 Farm Bill Drilldown: Beginning and Socially Disadvantaged Farmers*, NAT'L SUSTAINABLE AGRIC. COALITION (Dec. 12, 2018), <https://sustainableagriculture.net/blog/2018-farm-bill-drilldown-beginning-farmers/>.

⁵³ Agriculture Improvement Act of 2018, Pub. L. No 115-334, § 5305, 132 Stat. 4672.

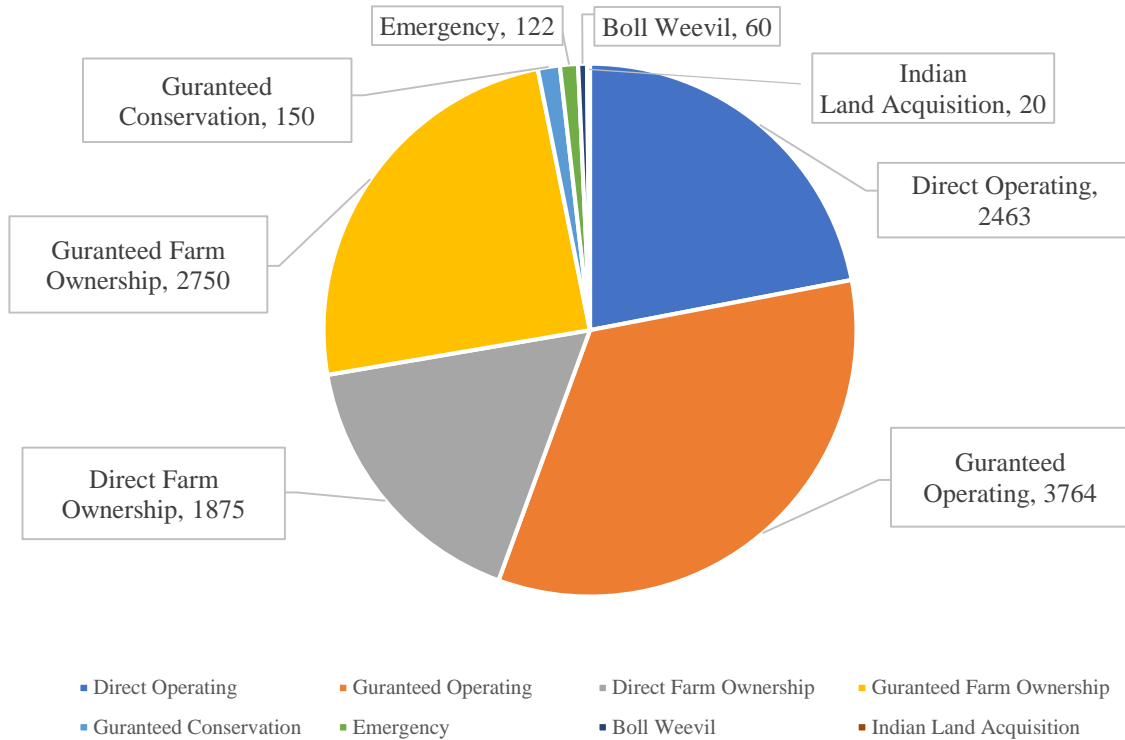
⁵⁴ Agricultural Act of 1961 & Consolidated Farm and Rural Development Act, Pub. Law 87-128 § 366, 75 Stat. 294.

⁵⁵ U.S. DEP'T OF AGRIC, FY 2019 BUDGET SUMMARY, <https://www.ocfo.usda.gov/docs/FY19budsum.pdf>.

⁵⁶ *Funding*, FARM SERV. AGENCY, <https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/funding/index> (last visited Sep. 15, 2020).



FY 2020 FSA Farm Loan Appropriations (in millions)



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.⁵⁷ Although the 2016 budget maintained the same funding for farm loans as in 2015—\$6.4 billion⁵⁸—FSA ran out of loan funding two months before the end of the fiscal year,⁵⁹ leaving some approved applicants waiting for funds and creating a significant backlog in applications.⁶⁰ In September 2016, Congress authorized FSA to continue financing loans using funds

⁵⁷ U.S. DEP'T OF AGRIC., FY 2016 BUDGET SUMMARY AND ANNUAL PERFORMANCE PLAN 16 (2016), <http://www.obpa.usda.gov/budsum/fy16budsum.pdf>.

⁵⁸ *Funding*, FARM SERV. AGENCY, *supra* note 55.

⁵⁹ 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, 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.

⁶⁰ U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, 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.



allocated for FY2017, threatening a shortfall in 2017.⁶¹ The 2017 budget increased funding for loans to \$6.7 million to address the shortage in 2016;⁶² 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.⁶³

FSA's budget for FY 2020 sits at \$7.7 billion, reflecting only a slight increase from its budget of \$7.6 billion in 2019.⁶⁴ However, the funding available reflects a 9% decrease from the previous year in financing for farmers to cover annual operating costs, which is particularly concerning given the prolonged economic downturn.⁶⁵

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.⁶⁶ 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.⁶⁷ Plaintiffs also claimed that USDA had failed to investigate or respond to complaints by African American farmers between 1983 and 1997.⁶⁸ In total, the U.S. government paid over \$2 billion to African American farmers to resolve the *Pigford* suits,⁶⁹ and three additional class action suits followed. 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 lawsuits were filed—*Love v. Vilsack* and *Garcia v. Vilsack*—on behalf of women and Hispanic farmers, respectively.⁷⁰

Yet, even if they eventually received settlement payments, many farmers involved in these cases had been denied the 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

⁶¹ 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>.

⁶² U.S. DEP'T OF AGRIC., *supra* note 57, at 16.

⁶³ NAT'L SUSTAINABLE AGRIC. COALITION, *Senate Appropriations Prioritize Sustainable Agriculture and Rural Development* (Jul. 21, 2017), <http://sustainableagriculture.net/blog/senate-appropriations-markup-2017/>.

⁶⁴ U.S. DEP'T OF AGRIC., FY 2020 BUDGET SUMMARY, <https://www.obpa.usda.gov/budsum/fy2020budsum.pdf>.

⁶⁵ *Id.*

⁶⁶ 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>.

⁶⁷ TADLOCK COWAN & JODY FEDER, CONG. RSCH. SERV., RS20430, THE PIGFORD CASES: USDA SETTLEMENT OF DISCRIMINATION SUITS BY BLACK FARMERS 1-2 (2013), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS20430.pdf>.

⁶⁸ *Id.* at 2.

⁶⁹ *Id.*

⁷⁰ TADLOCK COWAN & JODY FEDER, CONG. RSCH. SERV., RS40988, GARCIA V. VILSACK: A POLICY AND LEGAL ANALYSIS OF A USDA DISCRIMINATION CASE 5, 11 (2013), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R40988.pdf>.



Team concluded: “Minority farmers have lost significant amounts of land and potential farm income as a result of discrimination” by USDA.⁷¹

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 Partnerships and Public Engagement,⁷² Advisory Committees on Minority Farmers⁷³ and Socially Disadvantaged Farmers and Ranchers, the Farming Opportunities Training and Outreach program (which combined the Beginning Farmer and Rancher Development Program and the Outreach and Technical Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers Program (Section 2501 Program)),⁷⁴ and the Microloan Program.⁷⁵ 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.⁷⁶

The 2018 Farm Bill also took steps to increase access to USDA programming for socially disadvantaged farmers and ranchers. The bill adjusted the eligibility document requirement for obtaining a farm number for farmers operating on heirs’ property and, as mentioned above, introduced a new loan program for farmers who want to resolve titles issues with their heirs’ property.⁷⁷ As of September 2020, however, USDA has not proposed rules to effectuate the relending program and the roll-out of the new documentation requirements has been largely muted.

The 2018 Farm Bill further commissioned GAO to prepare a report analyzing access to agricultural credit by socially disadvantaged farmers and ranchers.⁷⁸ According to the GAO report, published in July 2019, socially disadvantaged farmers and ranchers (SDFR) continue to receive proportionately fewer loans and less agricultural credit overall than non-SDFRs.⁷⁹ While SDFRs accounted for 17% of the primary producers in USDA’s annual survey of farm producers (2015-2017), SDFR debt represented only about 9% of total farm ownership debt and 7% of total farm operating debt.⁸⁰ In addition, young, beginning and small farmers continue to experience issues accessing FCS loans, particularly if they do not have a parent co-sign the loan.⁸¹

Steps have been taken in recent years to attempt to ameliorate the legacies of discrimination associated with the farm bill. Nevertheless, how best to support and foster socially disadvantaged farmers including

⁷¹ 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>.

⁷² *Office of Partnerships and Public Engagement*, U.S. DEP’T OF AGRIC., <https://www.usda.gov/partnerships> (last visited Sept. 18, 2020).

⁷³ *Advisory Committees*, U.S. DEP’T OF AGRIC., <https://www.usda.gov/partnerships/advisory-committees> (last visited Sept. 18, 2020).

⁷⁴ Agriculture Improvement Act of 2018, Pub. L. No 115-334, § 12301, 132 Stat. 4950; U.S. DEP’T. OF AGRIC., FARMING OPPORTUNITIES TRAINING AND OUTREACH GRANT PROGRAM (2020), https://www.usda.gov/sites/default/files/documents/2501_FactSheet.pdf.

⁷⁵ *Microloan Programs*, FARM SERV. AGENCY, <https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/microloans/index> (last visited Sept. 18, 2020).

⁷⁶ See *Funding*, FARM SERV. AGENCY, *supra* note 55. Navigate to “Is any of the money targeted or reserved for use by specific groups of farmers?”

⁷⁷ Agriculture Improvement Act of 2018, Pub. L. No 115-334, §§ 12615, 5104, 132 Stat. 5014, 4669.

⁷⁸ Agriculture Improvement Act of 2018, Pub. L. No 115-334, § 5416, 130 Stat. 4275.

⁷⁹ U.S. GOV’T ACCOUNTABILITY OFFICE, *Agricultural Lending: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers Is Limited* (2019), <https://www.gao.gov/assets/710/700218.pdf>.

⁸⁰ *Id.*

⁸¹ INDEP. CMTY. OF BANKERS OF AMERICA, *FOCUS ON FARM POLICY WHITE PAPER* (2018), <https://www.icba.org/docs/default-source/icba/advocacy-documents/2018-farm-bill-white-paper.pdf>.



a newly emerging, young, beginning and small 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 through the microloan and crop valuation provisions, represented 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 Scientists⁸³ to the Agricultural and Applied Economics Association.⁸⁴ Smaller-scale lending programs can be a pathway to incentivizing local food sales and increasing the supply of healthier and more varied crops. This 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 This trend continues under the 2018 Farm Bill with additional support provided for local food systems through programs related to marketing and promotion, community development, and credit.⁸⁸ The 2018 Farm Bill also created new authorities to support urban, indoor and other emerging agricultural production.⁸⁹

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 Tribal 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

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 (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.

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).

⁸⁸ See generally CONG. RSCH. SERV., 2018 FARM BILL PRIMER: SUPPORT FOR LOCAL FOOD SYSTEMS (2019), <https://fas.org/sgp/crs/misc/IF11252.pdf>.

⁸⁹ See generally *id.*



owned by as many as thousands of individual owners.⁹⁰ As of 2016, more than three million fractionated land interests existed, held by upwards of 245,000 owners across approximately 150 reservations.⁹¹

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.⁹² The 2018 Farm Bill included a provision enabling GAO to study the agricultural credit needs of Indian tribes on Tribal lands and FCS institutions' authority and resources.⁹³ Under the study, GAO found that Tribal stakeholders reported a general lack of commercial credit on tribal lands due to factors such as land use restrictions, weaker loan readiness as well as legal challenges by lenders to recover loan collateral due to the unique legal status of tribes.⁹⁴ Several options were suggested, including increased use of loan guarantees.⁹⁵ Based on the study, the next farm bill should introduce additional provisions enabling better access to credit for Indian tribes.

E. Farm Credit System

FCS is a national financial cooperative established in 1916 with a government mandate to serve agriculture.⁹⁶ It currently provides over 40% of farm loans, and is a commercial, for-profit lender; it receives tax benefits but no federal appropriations or guarantees.⁹⁷ 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 loans.⁹⁸ 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.⁹⁹

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.¹⁰⁰ 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).

⁹⁰ Highly Fractionated Indian Land (HIFL) Loan Program, 7 C.F.R. §§ 761, 769 (2015).

⁹¹ *USDA Expands Farm Loans for Native Americans Farming and Ranching on Tribal Land*, U.S. DEP'T OF AGRIC. (2016), https://www.fsa.usda.gov/news-room/news-releases/2016/nr_20161206_rel_255.

⁹² CHITE, *supra* note 30, at 129.

⁹³ U.S. GOV'T ACCOUNTABILITY OFFICE, *INDIAN ISSUES: AGRICULTURAL CREDIT NEEDS AND BARRIERS TO LENDING ON TRIBAL LANDS* (2019), <https://www.gao.gov/assets/700/699019.pdf>.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ JIM MONKE, CONG. RESEARCH SERV., RS21278, *THE FARM CREDIT SYSTEM 2* (2016), <https://fas.org/sgp/crs/misc/RS21278.pdf>.

⁹⁷ *Id.* at 2-3.

⁹⁸ 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.

⁹⁹ 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>.

¹⁰⁰ 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>.