



## The Farm Credit System<sup>1</sup>

The Farm Credit System (FCS) is a privately owned cooperative of lending institutions that was created by Congress to meet the credit needs of farmers.<sup>2</sup> As a government sponsored enterprise (GSE), FCS receives unique benefits such as certain tax exemptions.<sup>3</sup> These benefits have helped FCS become a huge source of farm lending in the United States: it is responsible for approximately 44% of the dollar amount of farm debt.<sup>4</sup> Although in some ways FCS has fulfilled its purpose, it has not been immune to criticism. Black, indigenous, and people of color (BIPOC) farmers have historically faced discrimination in lending, and there are concerns that FCS has perpetuated this inequity.<sup>5</sup> Some argue that FCS strayed outside of its mission after it made a \$750 million loan to Verizon.<sup>6</sup> Others believe that the benefits the government provides to FCS give it an "unfair competitive advantage over rural community banks."<sup>7</sup> This issue brief will give an overview of the Farm Credit System, the major criticisms it receives, and some of the policy changes that have been recommended to address these criticisms.

### QUICK SUMMARY

- FCS is a privately owned government sponsored enterprise created by Congress to address the credit needs of farmers.
- FCS has been critiqued for inequitable lending practices, its competitive edge in the marketplace due to its government benefits, and its practice of lending to corporations outside of its core mission.
- Policy recommendations for changing FCS include increasing reporting requirements, increasing services to underserved farmers, reducing government benefits, and narrowing lending authority.

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<sup>2</sup> JIM MONKE, CONG. RSCH. SERV., RS21278, FARM CREDIT SYSTEM 2 (2016).

<sup>3</sup> 12 U.S.C. § 2023; 12 U.S.C. § 2077.

<sup>4</sup> JIM MONKE, CONG. RSCH. SERV., R46768, AGRICULTURAL CREDIT: INSTITUTIONS AND ISSUES ii (2022).

<sup>5</sup> Lisa Held, *Farm Credit Can Make or Break Farms. Should it be More Equitable?*, CIV. EATS (June 5, 2023), <https://civileats.com/2023/06/05/farm-credit-can-make-or-break-farms-should-it-be-more-equitable/>.

<sup>6</sup> Jeff Plagge, *Iowa View: Verizon's \$725 Million Loan Shows Farm Credit Reform is Needed*, DES MOINES REGISTER (Nov. 9, 2013), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/1/01/01/iowa-view-verizons-725-million-loan-shows-farm-credit-reform-is-needed/3486347/>.

<sup>7</sup> *Reform and Refocus the Farm Credit System*, INDEP. CMTY. BANKERS OF AM., <https://www.icba.org/our-positions-a-z/agriculture-advocacy/reform-and-refocus-the-farm-credit-system> (last visited Nov. 18, 2023).

## FCS BACKGROUND

The Farm Credit System is a government sponsored enterprise comprised of four banks and 67 regional associations.<sup>8</sup> It was created by Congress in 1916.<sup>9</sup> Today, FCS gets its statutory backing from the Farm Credit Act of 1971, the legislation in which Congress updated the old laws from 1916.<sup>10</sup>

FCS is regulated by the Farm Credit Administration, an independent federal agency.<sup>11</sup> FCS and the Farm Credit Administration should not be confused with the U.S. Department of Agriculture, as they are independent of one another.

FCS raises money to lend by selling securities.<sup>12</sup> One of the major benefits FCS receives from the government is that investors who buy these securities do not have to pay state, local, or municipal tax on the interest, making these securities particularly desirable.<sup>13</sup>

Perhaps the biggest benefit FCS receives from the government is that it does not have to pay state, local, or municipal taxes on interest earned from mortgages.<sup>14</sup> In 2011, this tax benefit was estimated to be worth over \$1 billion.<sup>15</sup> In 2016, the estimated benefit was \$1.61 billion.<sup>16</sup>

Finally, FCS benefits from the perception some have that, although FCS is not actually federally backed, "if needed, the government would support payments to bond holders most likely by allowing the Farm Credit System Insurance Corporation to draw on its line with the Treasury."<sup>17</sup> This means that although the government does not explicitly guarantee FCS securities, some believe that it *implicitly* does.

## CRITIQUES OF THE SYSTEM

Although there is robust anecdotal evidence of discrimination by Farm Credit Institutions,<sup>18</sup> the full picture is unclear. This lack of clarity is largely due to a federal rule that says: "A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction" except in certain situations.<sup>19</sup> In March of 2023, the Consumer Financial Protection Bureau (CFPB) issued a final rule implementing Section 1071 of the Dodd-Frank Act, which requires lending institutions to collect information on applications

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<sup>8</sup> *About Banks & Associations*, FARM CREDIT ADMIN., <https://www.fca.gov/bank-oversight/about-banks-and-associations> (last visited Nov. 13, 2023).

<sup>9</sup> *Id.*

<sup>10</sup> *Historical Highlights of FCA and the FCS*, FARM CREDIT ADMIN., <https://www.fca.gov/about/historical-highlights-of-fca-and-the-fcs> (last visited Nov. 12 2023).

<sup>11</sup> *Farm Credit Administration*, USA Gov., <https://www.usa.gov/agencies/farm-credit-administration> (last visited Nov. 12, 2023).

<sup>12</sup> *About Banks & Associations*, FARM CREDIT ADMIN., <https://www.fca.gov/bank-oversight/about-banks-and-associations> (last visited Nov. 12, 2023).

<sup>13</sup> MONKE, *supra* note 2, at 3–4.

<sup>14</sup> 12 U.S.C. § 2023.

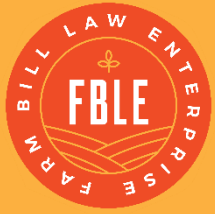
<sup>15</sup> MONKE, *supra* note 2, at 3.

<sup>16</sup> *Farm Credit Watch: Tax Bill Reduced FCS's Competitive Edge in Real Estate Lending*, ABA BANKING J. (Jan. 31, 2018), <https://bankingjournal.aba.com/2018/01/farm-credit-watch-tax-bill-reduced-fcss-competitive-edge-in-real-estate-lending/>.

<sup>17</sup> *Farm Credit System*, FITCH RATINGS (Oct. 19, 2022), <https://www.fitchratings.com/research/non-bank-financial-institutions/farm-credit-system-19-10-2022>.

<sup>18</sup> Held, *supra* note 5.

<sup>19</sup> 12 C.F.R. § 202.5(b) (2023).



from women-owned, minority-owned, and small businesses and report this information to the CFPB.<sup>20</sup> Once implemented, the rule would mark a major shift in the data available to evaluate lending institutions' business practices and service provision regarding such businesses. As written, the rule would sweep in farm businesses and agricultural lending. FCS is actively litigating against the CFPB to stop implementation of the new rule, claiming that it is too broad and will be too costly to implement.<sup>21</sup> FCS is also lobbying Congress for an exemption so that the rule will not apply to it.<sup>22</sup> Critics have suggested that the real reason FCS does not want to comply with these requirements is because its inequitable lending practices would be exposed.<sup>23</sup>

Another critique of the Farm Credit System is that the benefits it receives from the government give it an unfair advantage in the marketplace.<sup>24</sup> The Independent Community Bankers Association says that FCS uses "their tax and funding advantages as government sponsored enterprises (GSEs) to siphon the best loans from community banks' loan portfolios."<sup>25</sup>

Finally, critics have pointed out that FCS does not only lend to farmers. Under a provision known as the "similar entities" provision, FCS "may participate with other lenders to make loans to those who are not eligible to borrow directly from the System but whose activities are functionally similar to those of eligible borrowers."<sup>26</sup> Using its authority under this provision, FCS extended credit to Verizon so that the company could purchase the portion of Verizon Wireless that it did not already own.<sup>27</sup> In response, the Independent Community Bankers Association criticized FCS for lending to a multinational corporation instead of businesses who need financing for agricultural purposes.<sup>28</sup>

## PROPOSALS FOR CHANGE

To address inequity in FCS lending, the first necessary change is transparency in FCS' lending practices. The new CFPB data reporting rule would help address this issue, but because of the current litigation, Farm Credit System does not currently have to comply with the reporting rule.<sup>29</sup> And if FCS is successful in their push for an exemption in the 2023 Farm Bill, then advocates will have to find a new avenue for change. One proposal is changing the mission of FCS to explicitly include promoting

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<sup>20</sup> 15 U.S.C. § 1691c-2.

<sup>21</sup> *Farm Credit Joins Other Lenders to Halt Costly Implementation of CFPB Rule*, FARM CREDIT (Sept. 8, 2023), <https://farmcredit.com/press-release/farm-credit-joins-other-lenders-halt-costly-implementation-cfpb-rule>.

<sup>22</sup> Held, *supra* note 5.

<sup>23</sup> *Id.*

<sup>24</sup> *Reform and Refocus the Farm Credit System*, *supra* note 7.

<sup>25</sup> *Id.*

<sup>26</sup> *About Banks & Associations*, *supra* note 12.

<sup>27</sup> Plagge, *supra* note 6.

<sup>28</sup> *ICBA Asks Farm Credit Administration to Explain \$12 Billion Loan to Verizon*, THE NAT'L AGRIC. LAW CTR., (Oct. 25, 2013), <https://nationalaglawcenter.org/icba-asks-farm-credit-administration-to-explain-12-billion-loan-to-verizon/>.

<sup>29</sup> *Small Business Lending Rulemaking*, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/1071-rule/#:~:text=Section%201071%20of%20the%20Dodd%2DFrank%20Act%20amended%20the%20Equal,%20Downed%2C%20and%20small%20businesses> (last visited Nov. 13, 2023).

equity.<sup>30</sup> Another is to require FCS to use a portion of its profits for grants, similar to the way banks in the Federal Home Loan Bank system (which is a GSE like FCS) are required to set aside a portion of annual net earnings to fund the Affordable Housing Program.<sup>31</sup>

To address FCS lending outside of the agriculture industry, some argue that the "similar entity" authority that allowed them to lend to Verizon should be reformed.<sup>32</sup> But while FCS has been criticized for what some see as lending outside of their purpose, FCS is seeking to expand their authority even more. One proposal would expand its lending authority to businesses that support the fishing industry, while another would make it easier for it to lend to rural institutions such as schools and hospitals.<sup>33</sup>

The concern over FCS' unfair competitive advantages has come from, naturally, its competitors. The American Bankers Association (ABA) and the Independent Community Bankers Association (ICBA) have a long history of opposing the expansion of FCS. In the late 1990s, the two groups tried to overturn the expansion of FCS lending authority in court.<sup>34</sup> Today, the ABA and the ICBA continue to oppose the expansion of FCS authority, saying that Congress should "reconsider the Farm Credit System's significant funding and tax advantages"<sup>35</sup> and "reform the FCS's 'similar entity' authorities by which FCS lenders make loans to large non-rural and publicly traded corporations," respectively.<sup>36</sup>

## CONCLUSION

The Farm Credit System is a government sponsored enterprise that has served many farmers and rural Americans, but it has also been the subject of criticism and controversy. Racial inequity, unfair competition, and expanded lending practices are the primary areas of concern. Proposals for change include requiring increased transparency in lending practices, increasing services to underserved farmers narrowing the acceptable FCS loan recipients, and reducing or eliminating FCS' government benefits altogether.

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<sup>30</sup> FRANCINE MILLER ET AL., FARM BILL L. ENTER., EQUITY IN AGRICULTURAL PRODUCTION & GOVERNANCE (2022).

<sup>31</sup> *Why Congress Should Mandate a Farm Credit Grant*, NAT'L SUSTAINABLE AGRIC. COAL. (May 15, 2023), <https://sustainableagriculture.net/blog/why-congress-should-mandate-a-farm-credit-grant/>.

<sup>32</sup> *Reform and Refocus the Farm Credit System*, *supra* note 7.

<sup>33</sup> Noah Wicks, *Farm Credit Institutions Seek Expanded Authority Through Farm Bill*, AGRI-PULSE (Aug. 2, 2023), <https://www.agri-pulse.com/articles/19775-farm-credit-institutions-seek-expanded-authorities-through-farm-bill>.

<sup>34</sup> *2 Bank Groups Appeal Grant of Wider Farm Credit Scope*, AM. BANKER (Jan. 21, 1998), <https://www.americanbanker.com/news/2-bank-groups-appeal-grant-of-wider-farm-credit-scope>.

<sup>35</sup> *Farm Credit System Competition*, AM. BANKERS ASS'N., <https://www.aba.com/advocacy/our-issues/farm-credit-system-competition#:~:text=ABA%20believes%20Congress%20should%20reconsider,the%20tax%20code%20more%20equitable> (last visited Nov. 19, 2023).

<sup>36</sup> *Reform and Refocus the Farm Credit System*, *supra* note 7.