

# HISTORICAL INTRODUCTION TO THE FARM CREDIT SYSTEM: STRUCTURE AND AUTHORITIES, 1971 TO PRESENT

*Richard L. Manner*<sup>†</sup>

I. Introduction.....	280
II. Snapshot of the System Under the Original 1971 Act.....	281
A. Overview of System Structure: The Traditional Twelve Farm Credit Districts .....	281
B. Additional Organizational and Structural Aspects of the Banks and Associations.....	286
C. Eligibility to Borrow .....	288
D. Non-Loan Authorities.....	289
E. Other Farm Credit System Institutions and Non-Farm Credit System Affiliates .....	290
1. Service Organizations .....	290
2. The Farm Credit Councils.....	292
III. Restructuring of the System Under the Agricultural Credit Act of 1987 .....	292
A. Structural Change under the 1987 Amendments .....	293
1. The Formation of the Farm Credit Banks .....	293
2. The Formation of Agricultural Credit Associations.....	293
3. Remaining Unmerged Associations .....	294
4. Merger of Banks for Cooperatives .....	295
5. Bank Governance .....	296
B. Special Circumstances in the Jackson District.....	296
C. Structural Flexibility; Residual Authorities of Banks.....	297
D. Financial Assistance and Capitalization .....	297
E. Borrower Rights.....	298
F. Other Significant Changes.....	299
IV. More Recent Events in Structure and Authorities.....	299

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<sup>†</sup> Of Counsel, Dorsey & Whitney LLP. Prior to joining Dorsey & Whitney, the author served for over thirty years as internal counsel for various banks and service organizations of the Farm Credit System, most recently CoBank, ACB, and its subsidiary Farm Credit Leasing Services Corporation. The author wishes to thank Allan Kantrowitz, former General Counsel, CoBank, ACB, for helping fill in some gaps in the initial draft, Delmar Banner of Lietz Banner Ford LLP for reading and critiquing the article, and Kelsey Dolven, Associate at Dorsey & Whitney, for assistance with references and footnotes. Mr. Banner was the founding president of The Farm Credit Council. He and Mr. Kantrowitz are both are long-time counsel to various System entities going back to the 1970s.

A. Bank Mergers .....299  
B. Association Restructuring .....301  
C. Newer Service Organizations and Non-System Affiliates.....301  
D. New authorities.....302  
V. Conclusion.....303

I. INTRODUCTION

The Farm Credit System goes back nearly 100 years to the Federal Farm Loan Act of 1916,<sup>1</sup> and indeed some aspects of the System’s more distant history still have occasional relevance to issues that arise today.<sup>2</sup> For the most part, however, the history that remains of primary importance today began in 1971, when the federal statutes enabling the institutions then comprising the System were codified into, and supplanted by, the Farm Credit Act of 1971<sup>3</sup> (referred to in any of its various amended stages as the “Act”). This account of the System’s history therefore begins with the System’s traditional structure under the original 1971 version of the Act and progresses through various amendments,<sup>4</sup> including the major restructuring that took place in the late 1980s, to the present.<sup>5</sup>

The Act today is a confusing statute, especially when compared to the System’s current structure. For example, there is no mention in the Act of an Agricultural Credit Bank,<sup>6</sup> yet CoBank, ACB, is an Agricultural Credit Bank that exists under the Act, and all of its powers and authorities are defined by the Act.<sup>7</sup> Nor is there any codified provision concerning Agricultural Credit Associations, even though there are many throughout the country.<sup>8</sup> The Act “gets there” only through a circuitous route that sometimes travels through uncodified provisions

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1. Federal Farm Loan Act, Pub. L. No. 64-158, 39 Stat. 360 (1916) (repealed 1971).  
2. See DANIEL L. MONSON, FARM CREDIT ACT OF 1971 AND ITS RELATIONSHIP TO COOPERATIVES (1974) (for a general summary of the System’s pre-1971 history).  
3. Farm Credit Act of 1971, Pub. L. No. 92-181, 85 Stat. 583 (1971) (codified as amended at 12 U.S.C. §§ 2001–2279cc (2012)).  
4. *Statutes*, FARM CREDIT ADMIN., <http://www.fca.gov/law/statutes.html> (last visited Sept. 9, 2015).  
5. See Farm Credit Amendments Act of 1985, Pub. L. No. 99-205, 99 Stat. 1678 (codified as amended at 12 U.S.C. § 2001-2279cc).  
6. See 12 U.S.C. §§ 2001–2279cc.  
7. *About CoBank*, <http://www.cobank.com/About-CoBank.aspx> (last visited Mar. 23, 2015).  
8. See 12 U.S.C. §§ 2001–2279; FCS Information, *Organization of the FCS*, FARM CREDIT ADMINISTRATION, <http://www.fca.gov/info/organization.html> (last updated Sept. 2, 2014).

of federal law. It can be very difficult to understand without a basic grounding in the system's traditional structure under the original 1971 Act and the historical events that took it from this traditional structure to where it is today. Retracing that route is the purpose of this article.

Before proceeding, the following prefatory notes may be helpful:

1. Since the enactment of the original 1971 Act, there have been numerous subsequent amendments under statutes informally referred to as "Farm Credit Acts" (including a major one in 1987).<sup>9</sup> These, however, have been all amendatory in nature no matter how extensive, and the Act is still properly cited to today as the Farm Credit Act of 1971, *as amended*.

2. System attorneys typically refer to sections of the Act by their "statutes-at-large" section numbers rather than by their official U.S. Code citation. For example, System attorneys would typically speak of Section 3.8 of the Act, rather than 12 U.S.C. § 2129 (which is the corresponding citation under the U.S. Code).<sup>10</sup> Conveniently, the version of the Act that is found on the Farm Credit Administration website provides cross-references for each section.<sup>11</sup>

3. Institutions of the System are federally regulated by the Farm Credit Administration, an independent agency of the United States.<sup>12</sup> The Farm Credit Administration exists under Title V of the Act, and its regulations are found at 12 C.F.R. Parts 600 to 655.<sup>13</sup>

## II. SNAPSHOT OF THE SYSTEM UNDER THE ORIGINAL 1971 ACT

### A. Overview of System Structure: *The Traditional Twelve Farm Credit Districts*

The bedrock of System structure under the original 1971 Act was a nationwide set of twelve territorially-based districts ("Districts") that had been previously established and simply carried forward by the 1971 Act.<sup>14</sup> Each District

9. Agricultural Credit Act of 1987, Pub. L. No. 100-233, 101 Stat. 1568 (1988); *Statutes*, FARM CREDIT ADMINISTRATION, *supra* note 4.

10. See 12 U.S.C. § 2129; *1971 Act as Amended*, FARM CREDIT ADMIN., (JAN. 2010) <http://www.fca.gov/Download/Handbook/Jan2010/Statutes.pdf>.

11. See *1971 Act as Amended*, FARM CREDIT ADMIN., (JAN. 2010), *supra* note 10.

12. 12 U.S.C. § 2241; *FCA in Brief*, FARM CREDIT ADMIN., [http://www.fca.gov/about/fca\\_in\\_brief.html](http://www.fca.gov/about/fca_in_brief.html) (last visited Sept. 9, 2015).

13. See 12 U.S.C. §§ 2241-2260; 12 C.F.R. §§ 600-655 (2015).

14. Farm Credit Act of 1971, Pub. L. No. 92-181, § 5.0, 85 Stat. 583, 614 (1971) (codified as amended at 12 U.S.C. §§ 2001-2279cc); see W. GIFFORD HOAG, *THE FARM CREDIT SYSTEM: A HISTORY OF FINANCIAL SELF-HELP*, 209-17 (1976) (for background on how the original twelve districts were originally established).

was served by three banks (“Banks”), typically sharing office facilities and sometimes sharing management and employees.<sup>15</sup> In all cases, a single board of directors known as the “District Board” served as the board of all three Banks and, in many respects, all operations within the District.<sup>16</sup> As further described below, two of the Banks, acting in conjunction with locally-owned Farm Credit Associations (“Associations”), worked together to serve production agriculture (farmers, ranchers, etc.), while the third Bank served agricultural cooperatives directly.<sup>17</sup>

More specifically, at the time of the 1971 Act, the three Banks within each District were as follows:

1. *Federal Land Bank*: The Federal Land Bank provided long-term, first-lien real estate loans to eligible farmers and ranchers within the District through a network of locally-owned Federal Land Bank Associations.<sup>18</sup> The Federal Land Bank was the actual “direct” or “retail” lender to the farmer borrower.<sup>19</sup> The Federal Land Bank Associations acted as local servicing agents of the Federal Land Bank within their respective territories and carried out various functions delegated by the Federal Land Bank, but the Federal Land Bank Associations were not themselves lenders.<sup>20</sup> Yet the Federal Land Bank Associations owned the Federal Land Bank on a cooperative basis and elected two members of the District Board.<sup>21</sup> Federal Land Bank borrowers, in turn, became voting stockholders of the local Federal Land Bank Association that serviced their loans and elected its board of directors (sometimes called the “local board” to distinguish it from the District Board).<sup>22</sup> Then, in the election of the two Federal Land Bank Association-elected directors to the District Board, each Federal Land Bank Association had a number of votes equal to its number of voting stockholders.<sup>23</sup> This was referred to as “look-through” voting. This two-tiered cooperative structure was not unlike the structure found among local and regional agricultural cooperatives.

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15. Farm Credit Act of 1971 §§ 1.3, 2.0, 3.0.

16. *Id.*

17. *Glossary*, FARM CREDIT ADMIN., <http://www.fca.gov/info/glossary.html> (last visited Sept. 9, 2015).

18. Farm Credit Act of 1971, § 1.6; the Federal Land Banks and the ancestors of the Federal Land Bank Associations, known as National Farm Loan Associations, were originally authorized under the Federal Farm Loan Act of 1916, Pub. L. No. 64-158, 39 Stat. 360 (1916)(repealed 1971).

19. *Glossary*, FARM CREDIT ADMIN., *supra* note 17.

20. *Id.*

21. Farm Credit Act of 1971 §§ 1.5, 5.2.

22. *Id.* §§ 1.14, 1.16.

23. *Id.* § 5.2(c).

The Act specifically recognized that there could be an area within a District that might not be served by a Federal Land Bank Association, in which case the Federal Land Bank could lend directly to the borrower or lend through a commercial bank or other financial institution as agent.<sup>24</sup> In either case, the borrower would become a direct voting stockholder in the Federal Land Bank,<sup>25</sup> having one vote in connection with District Board elections.<sup>26</sup>

2. *Federal Intermediate Credit Bank*: The Federal Intermediate Credit Bank financed primarily the locally-owned Production Credit Associations within the District, which in turn provided short- and intermediate-term production loans to eligible farmers and ranchers (the same parties eligible for Federal Land Bank loans) within their own respective territories.<sup>27</sup> Note that the Production Credit Associations, unlike the Federal Land Bank Associations, were the actual direct (retail) lenders to the borrowers, and the Federal Intermediate Credit Bank, as its name suggests, served simply as a financial intermediary that financed the Production Credit Associations' portfolios.<sup>28</sup> Yet the Federal Intermediate Credit Bank/Production Credit Association relationship was also a two-tiered cooperative structure like the Federal Land Bank/Federal Land Bank Association structure.<sup>29</sup> The Production Credit Associations owned the Federal Intermediate Credit Bank and elected two members of the District Board on a "look-through" basis in the same fashion as Federal Land Bank Associations.<sup>30</sup> Production Credit Association borrowers became voting members of the Production Credit Association and elected its local board of directors.<sup>31</sup>

From their inception in 1923, the Federal Intermediate Credit Banks also had the authority to finance non-System lenders, commonly referred to today as "Other Financing Institutions," to make the same types of loans authorized for Production Credit Associations.<sup>32</sup> Other Financing Institutions held non-voting participation certificates in the Federal Intermediate Credit Bank.<sup>33</sup> Historically, the use of this authority, which continues today in the successors of the Federal

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24. *Id.* § 1.12.

25. *See id.* §§ 1.12, 1.15.

26. *Id.* § 5.2(c).

27. *Id.* § 2.3.

28. *Glossary*, FARM CREDIT ADMIN., *supra* note 17.

29. *Id.*

30. Farm Credit Act of 1971 §§ 2.2(b), 5.2(c).

31. *Id.* § 5.2(c).

32. Agricultural Credits Act of 1923, Pub. L. No. 67-503, § 202(a), 42 Stat. 1452, 1455; *see* Farm Credit Act of 1933, Pub. L. No. 73-75, 48 Stat. 257 (this authority to finance Other Financing Institutions actually predates the existence of Production Credit Associations).

33. Farm Credit Act of 1971 § 2.2(e).

Intermediate Credit Banks,<sup>34</sup> has been a lesser part of System operations.

3. *Bank for Cooperatives*: The Bank for Cooperatives provided direct retail financing to eligible agricultural cooperatives within the District.<sup>35</sup> Bank for Cooperatives lending did not involve local Farm Credit Associations, and loans were made directly by the Bank for Cooperatives to the borrowers and serviced by the Bank for Cooperatives' own staff.<sup>36</sup> Borrowers became voting members of the Bank for Cooperatives and elected two members of the District Board, with each cooperative having one vote.<sup>37</sup>

As noted above, the District Board served as the board of all three District Banks, with two members elected by the Federal Land Bank Associations, two by the Production Credit Associations, and two by the borrowers of the Bank for Cooperatives.<sup>38</sup> There was also a seventh member appointed by the head of the Farm Credit Administration (then known as the "Governor" of the Farm Credit Administration) with the advice and consent of what was then known as the Federal Farm Credit Board (effectively the board of the Farm Credit Administration).<sup>39</sup>

This three-Bank structure explains older references in the plural to "Farm Credit Banks," which typically referred to the collective District Banks at a District or System-wide level.

As previously noted, throughout each District's territory were any number of locally-owned Federal Land Bank Associations and Production Credit Associations, each with its own local territory, typically defined by a listing of counties in the Association's charter.<sup>40</sup> In some Districts, it was common for each Federal Land Bank Association to share facilities, management, and employees (but not boards, although there could be common members) with an affiliated Production Credit Association and also to serve the same territory.<sup>41</sup> In other Districts, it was more common for Federal Land Bank Associations and Production Credit Associations to exist independently of each other and with unaligned territories.

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34. 12 U.S.C. § 2015(b)(1)(B) (2012); *see* 12 C.F.R. § 614.4540 (2015).

35. 12 U.S.C. § 2128 (the BCs were originally chartered under the Farm Credit Act of 1933); *see* Farm Credit Act of 1933 § 30.

36. *Glossary*, FARM CREDIT ADMIN., *supra* note 17.

37. Farm Credit Act of 1971 § 5.2(c).

38. *See id.* §§ 5.1, 5.2(c).

39. *Id.* § 5.2(a).

40. *See id.* § 1.13.

41. *See, e.g.*, U.S. GEN. ACCOUNTING OFFICE, FARM CREDIT SYSTEM: POTENTIAL IMPACTS OF FCB MERGERS ON FARMER AND RANCHER BORROWERS 87 n.1 (1994) (examples include the original Springfield and Baltimore Districts).

Years ago, Associations were much smaller than they are today, and in the early 1970s, there were over 500 Federal Land Bank Associations and over 400 Production Credit Associations.<sup>42</sup>

Finally, there was a thirteenth Bank for Cooperatives known as the Central Bank for Cooperatives and sometimes called the “37th Bank.”<sup>43</sup> It existed primarily to participate in larger loans originated by the District Banks for Cooperatives and to provide expertise in structuring and servicing larger credits.<sup>44</sup> The Central Bank for Cooperatives was originally located in Washington, DC, but later relocated to the suburbs of Denver, Colorado.<sup>45</sup> The Central Bank for Cooperatives’s presence in the Denver area is the reason CoBank is headquartered there today, as CoBank is the direct descendent of the Central Bank for Cooperatives.<sup>46</sup>

The twelve Districts, as they existed in 1971, were as follows<sup>47</sup>:

District No. Headquarters City State(s)

1. Springfield, MA, CT, MA, ME, NH, NJ, NY, RI, VT
2. Baltimore, MD, DE, MD, PA, VA, WV (also DC and Puerto Rico)
3. Columbia, SC, FL, GA, NC, SC
4. Louisville, KY, IN, KY, OH, TN
5. New Orleans, LA,<sup>48</sup> AL, LA, MS
6. St. Louis, MO, AR, IL, MO
7. St. Paul, MN, MI, MN, ND, WI
8. Omaha, NE, IA, NE, SD, WY
9. Wichita, KS, CO, KS, NM, OK
10. Houston, TX,<sup>49</sup> TX

42. HOAG, *supra* note 14, at xiii.

43. Farm Credit Act of 1971 § 3.0.

44. HOMER G. SMITH, *THE 13<sup>TH</sup> BANK: THE CENTRAL BANK FOR COOPERATIVES*, 121, 138 (1st ed. 1976).

45. *Id.* at 65.

46. *About CoBank, supra* note 7.

47. See Kerry Webb, *The Farm Credit System*, FED. RES. BANK OF KAN. CITY ECON. REV. 16, 18 (June 1980).

48. See *id.* (later moved to Jackson, MS).

49. See *id.* (later moved to Austin, TX).

11. Berkeley, CA,<sup>50</sup>AZ, CA, HI, NV, UT

12. Spokane, WA, AK, ID, MT, OR, WA

In addition to the foregoing, the 1980 amendments to the Act added authority to serve the Virgin Islands if determined feasible by the then Federal Farm Credit Board (predecessor of the Farm Credit Administration Board).<sup>51</sup>

*B. Additional Organizational and Structural Aspects of the Banks and Associations*

Farm Credit System Banks and Associations were then, as they are today, federally-chartered by the Farm Credit Administration and designated as “instrumentalities of the United States.”<sup>52</sup> Moreover, Banks are what Farm Credit System attorneys sometimes call “statutory corporations” in that they were created by law.<sup>53</sup> The Act itself then serves the purpose of articles of incorporation, listing the authorities of each type of Bank, just as articles of incorporation normally would.<sup>54</sup> Thus, while Banks have bylaws, they have no articles.<sup>55</sup>

Associations, on the other hand, were not then (nor are they today) statutory corporations in that the Act did not automatically create them. Rather, it provided the mechanism by which Associations could be voluntarily created under the Act in a similar fashion to the creation of state-chartered corporations.<sup>56</sup> Organizers would file a petition with the Farm Credit Administration, as the chartering entity, as well as articles of association, and the Farm Credit Administration could deny the petition for good cause.<sup>57</sup>

Under the 1971 Act’s original provisions, Banks could only merge with like Banks,<sup>58</sup> and Associations could only merge with like Associations.<sup>59</sup> For example, a Bank for Cooperatives could merge with another Bank for Cooperatives, but could not merge with a Federal Land Bank. This did not stop unlike Banks or unlike Associations from adopting joint management and joint employ-

50. *See id.* (later moved to Sacramento, CA).

51. Farm Credit Act Amendments of 1980, Pub. L. No. 96-592, § 501, 94 Stat. 3437, 3448-49 (codified as amended at 12 U.S.C. §§ 2001-2279cc (2012)); 12 U.S.C. § 2002(b).

52. *See* 12 U.S.C. §§ 2011(a), 2071(a), 2091(a), 2121.

53. *See* Farm Credit Act of 1971, Pub. L. No. 92-181, §§ 1.3, 2.0, 3.0, 85 Stat. 583, 583, 590, 602 (codified as amended at 12 U.S.C. §§ 2001-2279cc).

54. *See* 12 U.S.C. §§ 2013, 2122.

55. *See id.*

56. *See id.* §§ 1.13, 2.10.

57. *See id.* §§ 1.13, 2.10.

58. *Id.* § 4.10.

59. *Id.* §§ 1.3, 2.0, 3.0.



ee structures for efficiency.<sup>60</sup> Some Districts adopted joint management of all three Banks within the District early on, and many Federal Land Bank Associations and Production Credit Associations with common territory adopted joint management.<sup>61</sup>

During the 1980s, mergers of like Associations were common, and in some Districts, all or nearly all Federal Land Bank Associations merged into a District-wide Federal Land Bank Association, and likewise for the Production Credit Associations.<sup>62</sup> The merged Federal Land Bank Association and Production Credit Association were then jointly managed and in many ways operated as a single entity. The results of these mergers are still seen today in some of the larger Associations, such as Farm Credit Services of America (Omaha), Farm Credit Mid-America (Louisville), and Northwest Farm Credit Services (Spokane).

As for Banks, talk of merger was heard from time to time (especially the possibility of a nationwide merger of the Banks for Cooperatives), but no Banks that existed under the original 1971 Act actually merged prior to the restructuring brought about by the 1987 amendments to the Act.<sup>63</sup>

The Federal Land Banks and Federal Intermediate Credit Banks exercised considerable authority over their affiliated Associations. First, the District Board, in addition to being the board of the three Banks of the District, was to “[a]ct as the board of directors for the district” and “provide rules and regulations governing the banks and associations in the district.”<sup>64</sup> In spite of the fact that the Associations had their own local boards, it was the District Board the really made the policy and rules for District operations as a whole.<sup>65</sup> Second, the Act gave the Bank general supervisory authority over the Associations, and many aspects of Association operations were subject to Bank approval.<sup>66</sup> For example, the Banks had the authority to approve the salary scales of Association officers

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60. *See id.*

61. For example, the Farm Credit Banks of Springfield were historically operated with joint management and employees (functioning in many practical ways as a single entity but each with its own statutory purpose and powers). *About CoBank History*, CO BANK, <http://www.cobank.com/About-CoBank/History.aspx> (last visited Sept. 9, 2015).

62. *See History of FCA and the FCS*, FARM CREDIT ADMIN., [http://www.fca.gov/about/history/historyFCA\\_FCS.html](http://www.fca.gov/about/history/historyFCA_FCS.html) (last visited Sept. 9, 2015).

63. *See History of FCA and the FCS*, FARM CREDIT ADMIN., *supra* note 62; Agricultural Credit Act of 1987, Pub. L. No. 100-233, §§ 410-16, 101 Stat. 1568, 1637-42 (1988) (codified as amended at 12 U.S.C. §§ 2011, 2071, 2221, 2121 (2012)).

64. Farm Credit Act of 1971 § 5.6.

65. *Id.* §§ 1.14, 5.6.

66. *Id.* §§ 1.15, 2.12.

and employees.<sup>67</sup> As such, Associations had limited autonomy although they had the ability to influence District policy by electing four of the seven members of the District Board.<sup>68</sup>

Carrying forward their status from the pre-1933 acts under which they were chartered, the Federal Land Banks, Federal Intermediate Credit Banks, and Federal Land Bank Associations were exempt from all federal and state taxes except local *ad valorem* property taxes on their real estate.<sup>69</sup> Consistent with their original status under the 1933 legislation that authorized them, Banks for Cooperatives and Production Credit Associations, however, were generally taxable entities.<sup>70</sup> Occasionally, certain state tax laws, by their own language, exempt Farm Credit System institutions.<sup>71</sup>

### C. Eligibility to Borrow

On the production agriculture side of Farm Credit System operations (meaning the Federal Land Banks, lending through agent Federal Land Bank Associations, and the direct lender Production Credit Associations operating with funding from the Federal Intermediate Credit Bank), eligibility under the original 1971 Act extended to “bona fide farmers and ranchers,” as well as to certain farm-related services and owners of rural homes for moderately-priced, single-family homes.<sup>72</sup> Production Credit Association eligibility also included “producers or harvesters of aquatic products.”<sup>73</sup> In 1980, the Act was amended to add “producers or harvesters of aquatic products” to Federal Land Bank eligibility,<sup>74</sup> as well as to provide new authority for Federal Land Banks and Production Credit Associations to finance farmer-owned marketing and processing operations so long as the farmer owners provided at least twenty percent of what is commonly referred to as the operation’s “throughput.”<sup>75</sup>

For the Banks for Cooperatives, the original 1971 Act provided eligibility for farmer-owned cooperatives,<sup>76</sup> with eligibility rules closely resembling those of the Capper-Volstead Act, which provided an antitrust exemption for qualify-

67. *Id.* §§ 1.4(13), 2.1(15).

68. *Id.* §§ 1.5, 2.2, 5.2(a), 5.2(c).

69. *Id.* §§ 1.6, 1.12, 1.21, 2.8.

70. *Id.* §§ 2.17, 3.13.

71. *See, e.g.*, W. VA. CODE § 11-13-3(b)(4) (2015).

72. 12 U.S.C. § 2015 (b)(1)(B) (2012); Farm Credit Act of 1971 § 1.8.

73. Farm Credit Act of 1971 § 2.15.

74. Farm Credit Act Amendments of 1980, Pub. L. No. 96-592, § 103, 94 Stat. 3437, 3438 (codified as amended at 12 U.S.C. § 2014).

75. Farm Credit Act Amendments of 1980 §§ 107, 210.

76. Farm Credit Act of 1971 § 3.8.

ing cooperatives.<sup>77</sup> Eligible entities included cooperatives handling agricultural products and service cooperatives.<sup>78</sup> The 1980 amendments added international import-export authorities,<sup>79</sup> and the 1985 amendments expanded rural utility authorities to include non-cooperatives that were eligible for financing from the Rural Electrification Administration (now the Rural Utilities Service) or the Rural Telephone Bank.<sup>80</sup>

Original participation authorities under the 1971 Act were rather limited.<sup>81</sup> However, in the 1980 amendments, those authorities were expanded to allow any Farm Credit System lender to participate with any other Farm Credit System lender in a loan the originating lender was authorized to make (even if the loan would not be eligible for the participating lender) and also to allow Farm Credit System lenders to participate with non-Farm Credit System lenders if the loan would be eligible for the System participant to make directly.<sup>82</sup>

#### *D. Non-Loan Authorities*

*Leasing:* Under the 1971 Act, Federal Land Banks could lease facilities, and Production Credit Associations and Banks for Cooperatives could lease equipment, to those eligible to borrow.<sup>83</sup> In 1980, Banks for Cooperatives were also given leveraged leasing authorities under which they could finance non-Farm Credit System lessors for the purpose of acquiring and leasing equipment to eligible parties.<sup>84</sup> Interestingly, leasing authorities have been construed as nationwide for all Farm Credit System institutions and not subject to the territorial constraints that have applied to lending.<sup>85</sup> This is reflected today in Farm Credit Administration regulations.<sup>86</sup>

*Financially-Related Services:* Farm Credit System lenders were (and remain today) authorized to provide various financially-related services to those eligible to borrow.<sup>87</sup> Current Farm Credit Administration regulations specify the

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77. Capper-Volstead Act, Pub. L. No. 67-146, 42 Stat. 388-89 (1922) (codified as amended at 7 U.S.C. §§ 291-92).

78. Farm Credit Act of 1971 § 3.8.

79. Farm Credit Act Amendments of 1980 § 304(b).

80. Food Security Act of 1985, Pub. L. No. 99-188, § 1322, 99 Stat. 1354, 1534 (1985) (codified as amended at 12 U.S.C. § 2129).

81. See Farm Credit Act of 1971 §§ 1.8, 3.8.

82. Farm Credit Act Amendments of 1980 §§ 101, 105.

83. Farm Credit Act of 1971 §§ 1.10, 2.15(a), 3.7(a).

84. Farm Credit Act Amendments of 1980 § 304(b).

85. Out-of-Territory Leasing, 12 C.F.R. § 616.6200 (2015).

86. *Id.*

87. 12 U.S.C. §§ 2020, 2076, 2093(15), 2128(a)(2012); Farm Credit Act of 1971 §§ 1.11,

types of services that can be offered and the prerequisites for offering them.<sup>88</sup>

*Insurance:* While loan-related insurance was clearly within the scope of the financially-related services just mentioned, the original 1971 Act gave no guidance as to the proper scope and range of authorized coverages.<sup>89</sup> The 1980 amendments to the Act clarified the authorities of Banks and Associations to offer to borrowers, on an optional basis, credit and term life insurance, credit disability insurance, hail and multiple-peril crop insurance, and title insurance.<sup>90</sup>

#### *E. Other Farm Credit System Institutions and Non-Farm Credit System Affiliates*

##### *1. Service Organizations*

The 1980 amendments to the Act authorized the Banks to organize “service organizations” to carry out various functions delegated to them by the Banks.<sup>91</sup> Service organizations were authorized to do anything the Bank(s) that owned them could do, except they could not extend credit or provide insurance services.<sup>92</sup> Service organizations, like Banks and Associations, were designated as instrumentalities of the United States and chartered by the Farm Credit Administration.<sup>93</sup> Originally, only Banks could establish service organizations.<sup>94</sup> However, amendments to the Act in 1996 authorized Associations to establish service organizations as well.<sup>95</sup> Early examples of service organizations include:

(a) *Federal Farm Credit Banks Funding Corporation* (“Funding Corporation”): The Funding Corporation was the first service organization and was chartered to carry out the function of the statutory “fiscal agent” in the issuance of Farm Credit System debt securities that funded Farm Credit System operations.<sup>96</sup> The Funding Corporation was later transitioned into a statutory corporation.<sup>97</sup>

(b) *Farm Credit Leasing Services Corporation* (“Farm Credit Leasing”):

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2.16, 3.7.

88. 12 C.F.R. § 618.8000.

89. *See, e.g.*, Farm Credit Act of 1971 § 1.4.

90. Farm Credit Act Amendments of 1980 § 404.

91. *See* 12 U.S.C. §§ 2211-2214(a); Farm Credit Act Amendments of 1980 § 404.

92. Farm Credit Act Amendments of 1980 § 404.

93. *Id.* § 404.

94. *Id.*

95. Farm Credit System Reform Act of 1996, Pub. L. No. 104-105, § 209, 110 Stat. 162, 174 (codified as amended at 12 U.S.C. § 2214).

96. *See* 12 U.S.C. § 2159(a); *see also* Richard M. Todd, *Taking Stock of the Farm Credit System: Riskier for Farm Borrowers*, FED. RES. BANK OF MINNEAPOLIS, Fall 1985, at 14, 16.

97. *See* 12 U.S.C. § 2160(f).

Farm Credit Leasing was organized in 1983 by several Farm Credit System Banks as a full-service leasing company<sup>98</sup> and today is a wholly-owned subsidiary of CoBank, ACB.<sup>99</sup>

(c) *FarmBank Services*: With origins that actually precede the 1980 amendments, FarmBank Services provided centralized training and communication services for the Farm Credit System and helped administer Farm Credit System insurance policies.<sup>100</sup> It was headquartered in Denver and shared office space with the Central Bank for Cooperatives.<sup>101</sup>

(d) *Farm Credit Corporation of America*: Chartered in 1985 and based in Denver, the Farm Credit Corporation of America was an attempt by the System to form a “central entity” that would serve as policy-making body for the System as a whole and to centralize other services.<sup>102</sup> Farm Credit Corporation of America absorbed FarmBank Services.<sup>103</sup> The mission of the Farm Credit Corporation of America was never fully realized, and it was dissolved in 1990.<sup>104</sup> Most of its remaining functions were taken on by the Funding Corporation and the Farm Credit Council.<sup>105</sup>

(e) *The Farm Credit System Capital Corporation* (“Capital Corporation”): Originally chartered as a service organization, the Capital Corporation was formed to establish a program of self-help financial assistance among System institutions and was later re-chartered as a statutory corporation under the 1985 amendments to the Act.<sup>106</sup>

(f) *The Farm Credit System Building Association*: Chartered in 1981, the Farm Credit System Building Association owns the headquarters building of the Farm Credit Administration in McLean, Virginia.<sup>107</sup> The Farm Credit System

98. FARM CREDIT SYSTEM: POTENTIAL IMPACTS OF FCB MERGERS ON FARMER AND RANCHER BORROWERS, *supra* note 41 at 51.

99. *Organization of the FCS*, FARM CREDIT ADMIN., *supra* note 8.

100. HOAG, *supra* note 14, at 271-72.

101. *Id.*

102. Richard Orr, *Change is for the Better, Reworked Loan Board Says*, CHI. TRIB., July 27, 1985, [http://articles.chicagotribune.com/1985-07-27/news/8502190358\\_1\\_federal-intermediate-credit-bank-production-credit-association-structure-and-operations](http://articles.chicagotribune.com/1985-07-27/news/8502190358_1_federal-intermediate-credit-bank-production-credit-association-structure-and-operations).

103. FARM CREDIT SYSTEM: POTENTIAL IMPACTS OF FCB MERGERS ON FARMER AND RANCHER BORROWERS, *supra* note 41 at 51.

104. *See id.*

105. *Id.*

106. Farm Credit Amendments Act of 1985, Pub. L. No. 99-205, § 103, 99 Stat. 1678, 1680-87 (codified as amended at 12 U.S.C. §§ 2211, 2216, 1813, 2153 (2012)).

107. *See Organization of the FCS*, FARM CREDIT ADMIN., *supra* note 8; DALE L. AULTMAN, FCS BUILDING ASSOCIATION MANAGEMENT OPERATIONS POLICIES AND PRACTICES

Building Association is owned by the System Banks.<sup>108</sup>

## 2. *The Farm Credit Councils*

Following the 1980 Amendments to the Act, leaders within the System sought to create a better means for grass roots development and effective expression of positions and policies on federal legislative and regulatory issues affecting institutions of the System.<sup>109</sup> The result was the formation under state law of a federated nationwide trade association for System institutions that would exist alongside (but outside) of the System.<sup>110</sup> A “District Farm Credit Council” was created for each of the 12 Districts, with membership open to the Banks and Associations of that District.<sup>111</sup> In turn, the District Farm Credit Councils became members of the Washington, D.C.-based Farm Credit Council (“FCC”) as their federated national association.<sup>112</sup> Each District Council was staffed by a District Legislative Officer or “DLO” in coordination with the FCC.<sup>113</sup> Today, FCC staff operates under the direction of a board comprised of Bank and Association directors elected by their respective District Farm Credit Councils.<sup>114</sup>

### III. RESTRUCTURING OF THE SYSTEM UNDER THE AGRICULTURAL CREDIT ACT OF 1987

System structure and authorities changed little during the 1970s. But in 1985, Donald Wilkinson, the then Governor of the Farm Credit Administration, acknowledged publicly the System was under more financial stress than it could handle without assistance.<sup>115</sup> The problems Mr. Wilkinson described set off a chain of events which, three years later, would result in a major overhaul of the Act that fundamentally changed the System.<sup>116</sup>

The System had already voluntarily created a self-help assistance mechanism in the Capital Corporation, originally chartered as a service organization,

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1 (2011).

108. *See Organization of the FCS*, FARM CREDIT ADMIN., *supra* note 8.

109. *About the Council*, FARM CREDIT COUNCIL, <http://www.fccouncil.com/about-us/council.html> (last visited Sept. 9, 2015).

110. *See id.*

111. *See id.*

112. *See id.*

113. *See id.*

114. *Id.*

115. *See, e.g.*, Paul Houston, *Farm Credit System ‘Can’t Absorb Losses,’ Seeks Help*, L.A. TIMES, Sept. 5, 1985, [http://articles.latimes.com/print/1985-09-05/news/mn-24688\\_1\\_problems-loans](http://articles.latimes.com/print/1985-09-05/news/mn-24688_1_problems-loans).

116. *See id.*

and with the 1985 amendments to the Act, the Capital Corporation was converted to a statutory corporation, with its powers and authorities now specifically defined by the Act.<sup>117</sup> The principal and more permanent result of the 1985 amendments was to restructure the Farm Credit Administration with new enforcement powers very similar to those of the other federal banking regulators.<sup>118</sup>

Nevertheless, while some parts of the System remained financially healthy, other parts continued to experience worsening stress to the point that, in some Associations, borrower stock had become impaired (the book value was less than par).<sup>119</sup> These and various other factors ultimately led to the passage of the Agricultural Credit Act of 1987 which largely rewrote the Act and implemented a new financial assistance program as well as major changes to the structure of the System.<sup>120</sup>

#### A. *Structural Change under the 1987 Amendments*

##### 1. *The Formation of the Farm Credit Banks*

With one exception,<sup>121</sup> the Federal Land Bank and Federal Intermediate Credit Bank within each District were merged by operation of law to create a Farm Credit Bank for the District.<sup>122</sup> Like the predecessor Federal Land Bank and Federal Intermediate Credit Bank, the Farm Credit Bank remained tax-exempt.<sup>123</sup>

##### 2. *The Formation of Agricultural Credit Associations*

Each Federal Land Bank Association and Production Credit Association sharing substantially the same geographic territory was required to submit a pro-

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117. Farm Credit Amendments Act of 1985 § 103 Pub. L. No. 99-205, § 103, 99 Stat. 1678, 1680-87 (1985) (codified as amended at 12 U.S.C. §§ 2211, 2216, 1813, 2153 (2012)).

118. Farm Credit Amendments Act of 1985 § 201.

119. See, e.g., Julie Andersen Hill, *Bailouts and Credit Cycles: Fannie, Freddie, and the Farm Credit System*, 2010 WIS. L. REV. 1 (2010) (noting a general discussion of System stress in the 1980s, from their inception, the Federal Land Bank Associations, Production Credit Associations and BCs required their member/borrowers to purchase stock in the institution. At some Associations, the required stock investment at the time ranged as high as 10% of the loan).

120. See Agricultural Credit Act of 1987, Pub. L. No. 100-233, § 401, 101 Stat. 1568, 1629-30 (1988) (codified as amended at 12 U.S.C. § 2071).

121. See *infra* Section III.B.

122. Agricultural Credit Act of 1987 § 410(a); see also *infra* notes 147 - 149 and accompanying text.

123. 12 U.S.C. § 2023.

posal to its stockholders for the merger of the Federal Land Bank Association and Production Credit Association.<sup>124</sup> If approved (and most were), the resulting hybrid entity, dubbed an Agricultural Credit Association,<sup>125</sup> would have not only the combined powers of an Federal Land Bank Association and a Production Credit Association, but would also assume direct or “retail” lending authority for long-term real estate loans from the Farm Credit Bank.<sup>126</sup> Thus the Agricultural Credit Association became a direct lender for all types of loans to farmers and no longer simply an agent of the Bank. This left the Farm Credit Banks as more or less pure financial intermediaries rather than direct lenders. While not required by law, the Farm Credit Banks for the most part then assigned all of their existing portfolios of long-term real estate loans to their affiliated direct-lender Agricultural Credit Associations.<sup>127</sup>

In that an Agricultural Credit Association represented a hybrid of a tax-exempt entity and a taxable entity, the question arose as to whether the tax-exempt status that had been enjoyed by the Federal Land Bank Association constituent would continue in the Agricultural Credit Association in any fashion. This became the subject of inconsistent determinations.<sup>128</sup> The issue has since been largely resolved by further restructuring.<sup>129</sup>

### 3. *Remaining Unmerged Associations*

In circumstances where Federal Land Bank Association/Production Credit Association mergers were not approved, or merger votes were not required in the first place, the authorities of remaining stand-alone Federal Land Bank Associations and Production Credit Associations were unaffected. A stand-alone Federal Land Bank Association could, however, with the approval of stockholders of both the Federal Land Bank Association and its affiliated Farm Credit Bank, become a direct lender for the long-term real estate loans.<sup>130</sup> Such a Federal Land Bank Association became known as a Federal Land Credit Association, although

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124. Agricultural Credit Act of 1987 § 411a.

125. See Farm Credit Banks and Associations Safety and Soundness Act of 1992, Pub. L. No. 102-552, § 401, 106 Stat. 4102, 4126 (codified as amended at 12 U.S.C. §§ 2001-2279cc) (the Agricultural Credit Act of 1987 did not recognize the name “Agricultural Credit Association.” However, the 1992 amendments to the Act added a new subsection (e) to the uncodified § 410 of Pub. L. No. 100-233 that recognized the name at subsection (e)(2)(K)(i)); see, e.g., 12 C.F.R. § 614.4050 (2015) (the name is also recognized in FCA regulations).

126. Agricultural Credit Act of 1987 § 411(c).

127. AGCHOICE FARM CREDIT, 2013 ANNUAL REPORT 16, 38 (2013).

128. See Neil E. Harl, *History and Unique Features of the Farm Credit System*, CHOICES (2005), available at <http://www.choicesmagazine.org/2005-1/lending/2005-1-03.htm>.

129. See *infra* notes 186-188 and accompanying text.

130. 12 U.S.C. § 2279b(a).



that name was never actually recognized in the Act until 2008.<sup>131</sup> Furthermore, a Federal Land Credit Association is, as a statutory matter, a special type of Federal Land Bank Association, and therefore, its tax-exempt status remained untouched.<sup>132</sup>

#### 4. *Merger of Banks for Cooperatives*

A special committee was formed to prepare a proposal for the voluntary merger of all thirteen Banks for Cooperatives for submission to their stockholders for approval.<sup>133</sup> If approved by fewer than eight Banks for Cooperatives, the resulting Bank for Cooperatives would be a "United Bank for Cooperatives," and if approved by eight or more Banks for Cooperatives, the resulting Bank would be a "National Bank for Cooperatives."<sup>134</sup>

Initially, nine Banks for Cooperatives, including the Central Bank for Cooperatives, approved the merger, with the Springfield, Jackson, St. Paul, and Spokane Banks for Cooperatives voting against.<sup>135</sup> But Jackson and Spokane quickly held reconsideration votes and approved the merger.<sup>136</sup> Thus, eleven Banks for Cooperatives merged in 1989, with only Springfield and St. Paul holding out.<sup>137</sup> The resulting National Bank for Cooperatives established its headquarters in Greenwood Village, (then Englewood) Colorado, at what had been the Central Bank for Cooperative's headquarters office and adopted the trade name "CoBank."<sup>138</sup>

Under the 1987 amendments, all Banks for Cooperatives (including the two hold-outs) at that point received national charters and were no longer constrained by District lines.<sup>139</sup> The Springfield Bank for Cooperatives remained under joint management with the Farm Credit Bank of Springfield.<sup>140</sup> The St. Paul Bank for Cooperatives, while continuing to share jointly-owned office facilities with the Farm Credit Bank of St. Paul, became separately managed with its own employ-

131. 12 U.S.C. § 2279c(a)(1)(B).

132. *See* 12 U.S.C. § 2098.

133. Agricultural Credit Act of 1987, Pub. L. No. 100-233, § 413, 101 Stat. 1568, 1639 (1988) (codified as amended at 12 U.S.C. § 2121).

134. Agricultural Credit Act of 1987 § 413(b)(4)-(b)(5).

135. Bill Sallquist, *Co-op Bank Rejects Merger*, SPOKANE CHRON., July 6, 1988, at A9.

136. *See* JAMES J. WADSWORTH, COOPERATIVE UNIFICATION: HIGHLIGHTS FROM 1989 TO EARLY 1999 11 (1999), available at <http://www.rd.usda.gov/files/rr174.pdf>.

137. *See id.*

138. *About CoBank*, COBANK, *supra* note 7.

139. Agricultural Credit Act of 1987 §§ 413(b)(4)(B), 413(b)(6)(A)(i).

140. *See* FARM CREDIT SYSTEM: POTENTIAL IMPACTS OF FCB MERGERS ON FARMER AND RANCHER BORROWERS, *supra* note 41, at 17, 19.

ees.<sup>141</sup>

##### 5. *Bank Governance*

The District Boards were dissolved.<sup>142</sup> Now each Farm Credit Bank and Bank for Cooperatives had its own board of directors, with greater flexibility to establish its own governance structure through the adoption of bylaws. This also gave Associations more autonomy. While references to Bank “supervision” of Associations remained in the Act,<sup>143</sup> and the Farm Credit Bank still retained the authority to approve salary scales of officers and employees of affiliated Associations,<sup>144</sup> the Farm Credit Bank boards did not retain the same sweeping powers to establish District-wide policy and rules for Associations that had been held by the District Boards. In fact, as an indication of Congress’ concern about excessive Bank control over Associations, a new section was added to the Act that prohibited a Bank or its board from removing any director or officer of an Association.

<sup>145</sup>

With the dissolution of the District Boards, the relationship between the Farm Credit Banks and their affiliated Associations (most having become direct lender Agricultural Credit Associations) evolved into more of a pure debtor/creditor relationship governed by contract through a General Financing Agreement.<sup>146</sup> There has been considerable debate over the years as to whether the lingering reference to Bank “supervision” of Associations has any real vitality today. But whatever it might mean, it is no longer the active supervision of day-to-day business operations that it once was.

##### *B. Special Circumstances in the Jackson District*

In May of 1988, before the 1987 amendments’ financial assistance mechanisms had been implemented, the Federal Land Bank of Jackson (formerly headquartered in New Orleans) was put into receivership.<sup>147</sup> This left the Federal Intermediate Credit Bank of Jackson with no partner with which to merger in the mandatory Federal Land Bank/Federal Intermediate Credit Bank merger. The ultimate solution to this problem, as well as the reconciliation of the lending authorities in the former Jackson District, is a long and complicated story that

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141. *See id.* at 17.

142. Agricultural Credit Act of 1987 § 410(d).

143. 12 U.S.C. §§ 2073, 2093.

144. 12 U.S.C. § 2013(13).

145. 12 U.S.C. § 2274.

146. *See* 12 C.F.R. § 614.4125 (2015).

147. Appointment of Receiver, 53 Fed. Reg. 18812 (May 24, 1988).

played out over many years and involved both litigation<sup>148</sup> and subsequent amendments to the Act.<sup>149</sup> It is not addressed further here.

### *C. Structural Flexibility; Residual Authorities of Banks*

1. *Authority to Merge:* Going forward, the Act gave System institutions greater structural flexibility. Now, both like and unlike Banks could voluntarily merge,<sup>150</sup> as could like and unlike Associations.<sup>151</sup> But Banks could still not merge with Associations (and still cannot today).<sup>152</sup>

2. *Residual Authorities of the Farm Credit Banks:* After the “downstreaming” of direct long-term real estate lending authorities to the Agricultural Credit Associations and Federal Land Credit Associations as described above, the Farm Credit Banks’ primary authority was to serve as intermediate or “wholesale” sources of funding to their affiliated Associations and Other Financing Institutions. They did, however, retain various “residual” authorities as determined by the Farm Credit Administration through regulations.<sup>153</sup> These residual authorities included direct long-term real estate lending authority in any part of the District not served by an Agricultural Credit Association or Federal Land Credit Association,<sup>154</sup> and loan participation and purchase authorities.<sup>155</sup>

### *D. Financial Assistance and Capitalization*

A new financial assistance mechanism was created, and the short-lived Capital Corporation was dissolved.<sup>156</sup> Assistance was provided at the direction of a newly-established Financial Assistance Board consisting of three members (one appointed by the Secretary of the Treasury, one by the Secretary of Agriculture, and one by the President with the advice and consent of the Senate) and implemented through the Financial Assistance Corporation.<sup>157</sup> The Financial Assis-

148. *See* First S. Prod. Credit Ass’n v. Farm Credit Admin., 729 F. Supp. 1559 (E.D. Va. 1990).

149. *See, e.g.*, Farm Credit Banks and Associations Safety and Soundness Act of 1992, Pub. L. No. 102-552, § 401, 106 Stat. 4102, 4126 (1992) (codified as amended at 12 U.S.C. §§ 2001-2279cc).

150. 12 U.S.C. § 2279a.

151. 12 U.S.C. § 2279c-1.

152. 12 U.S.C. § 2279a.

153. 12 U.S.C. § 2279b(c).

154. *See* 12 C.F.R. § 614.4000(f)(3) (2015).

155. 12 C.F.R. § 614.4000(f)(1)-(2).

156. Agricultural Credit Act of 1987, Pub. L. No. 100-233, § 201, 101 Stat. 1568, 1585 (1988) (codified as amended at 12 U.S.C. §§ 2001-2279cc).

157. *Id.*

tance Corporation was authorized to issue up to \$4 billion in debt, guaranteed by the Treasury, in order to provide the needed assistance.<sup>158</sup> Outstanding impaired borrower stock of Associations was protected such that it would be retired at par.<sup>159</sup> All newly issued stock would be “at risk,” with no assurance that it would be retired at par, and System institutions were required to disclose the at-risk nature of stock to all new borrowers.<sup>160</sup> Ultimately, \$1.26 billion of debt was issued to fund the assistance, the last of which was repaid with interest in 2005.<sup>161</sup> Both the Financial Assistance Board and the Financial Assistance Corporation have since been dissolved under their applicable “sunset” clauses,<sup>162</sup> but their statutory provisions remain in the Act today as historical artifacts.

As part of the financial assistance package, the 1987 amendments implemented new, stricter capitalization requirements and gave the Farm Credit Administration broad authorities to establish and enforce capital standards.<sup>163</sup> System institutions were required to adopt stockholder-approved capitalization bylaws, including a provision establishing the minimum stock investment that borrowers would be required to make, subject to a statutory minimum of the lesser of \$1000 or 2% of the loan amount.<sup>164</sup>

#### *E. Borrower Rights*

The 1987 amendments implemented a number of new borrower rights applicable to loans made by direct lender Associations and, to the extent still relevant, direct loans made by the Farm Credit Banks (referred to as “qualified lenders”).<sup>165</sup> Those rights include certain rights relative to interest rate disclosures, access to loan documents, notice of action on application, restructuring of distressed loans, review of restructuring denials, and protection of borrowers who meet all loan obligations.<sup>166</sup> They also include a right of first refusal that applies when a Farm Credit Bank or Association forecloses on property and buys it at the foreclosure sale.<sup>167</sup> In those circumstances, the borrower has a right of first re-

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158. *Id.*

159. *Id.* § 101.

160. *See* 12 C.F.R. § 615.5250.

161. *See* Hill, *supra* note 119 (for a more complete discussion of financial assistance under the 1987 amendments).

162. *See* 12 U.S.C. §§ 2278a-12, 2278b-11 (2012).

163. Agricultural Credit Act of 1987 § 301.

164. 12 U.S.C. § 2154a(c)(1)(E).

165. Agricultural Credit Act of 1987 § 102.

166. *See id.*

167. 12 U.S.C. § 2219(a).

fusal when the property is subsequently remarketed.<sup>168</sup> Borrower rights do not apply to loans made by a Bank for Cooperatives, as a Bank for Cooperatives is not within the definition of “qualified lender.”<sup>169</sup> Where borrower rights would otherwise apply, Farm Credit Administration regulations now allow the qualified lender to seek a waiver of borrower rights in limited circumstances.<sup>170</sup>

#### *F. Other Significant Changes*

1. The Farm Credit System Insurance Corporation was created to insure System debt securities through premiums paid by System Banks.<sup>171</sup> The Farm Credit Administration Board serves as the board of Farm Credit System Corporation.<sup>172</sup>

2. The Funding Corporation became a statutory corporation.<sup>173</sup>

3. The Federal Agricultural Mortgage Corporation, known as “Farmer Mac,” was established to create a secondary market for farm mortgage loans.<sup>174</sup>

4. Banks and Associations were given the ability to terminate their System status by reorganizing as state-chartered financial institutions.<sup>175</sup> The Act provides for a substantial “exit fee” that provides a powerful disincentive for termination.<sup>176</sup>

### IV. MORE RECENT EVENTS IN STRUCTURE AND AUTHORITIES

#### *A. Bank Mergers*

In the years following the 1987 Amendments, several mergers of Farm Credit Banks have occurred, resulting in fewer and larger Farm Credit Bank Districts.<sup>177</sup> In addition, in 1994, both the Farm Credit Bank of Springfield and the Springfield Bank for Cooperatives merged into the National Bank for Cooperatives to create the System’s only hybrid Bank (dubbed an “Agricultural Credit Bank”), with the authorities of both a District Farm Credit Bank and a nationwide

168. *Id.*

169. *Id.* § 2202a(a)(6).

170. 12 C.F.R. § 617.7010 (2015).

171. Agricultural Credit Act of 1987 § 302.

172. 12 U.S.C. § 2277a-2.

173. *See* Agricultural Credit Act of 1987 § 204.

174. *Id.* § 702.

175. *Id.* § 416.

176. *Id.*

177. *See* FARM CREDIT SYSTEM: POTENTIAL IMPACT OF FCB MERGERS ON FARMER AND RANCHER BORROWERS, *supra* note 41, at 4.

Bank For Cooperatives.<sup>178</sup> In 1995, the name of the merged Bank was officially changed to CoBank, ACB.<sup>179</sup> In 1999, the St. Paul Bank for Cooperatives merged into CoBank, ACB, thereby consolidating all of the thirteen original Bank for Cooperatives charters into CoBank, ACB.<sup>180</sup> Finally, through a merger process in 2012, CoBank, ACB, became the parent company of one of the remaining Farm Credit Banks.<sup>181</sup>

To summarize the current status, the remaining Banks are as follows:

1. AgFirst Farm Credit Bank, representing the combined original Baltimore and Columbia Districts, plus territory in the original Jackson District (overchartered with the Farm Credit Bank of Texas), plus, by reaffiliation of certain Associations, portions of Ohio, Kentucky, and Tennessee.<sup>182</sup>

2. AgriBank, FCB, representing the combined original St. Paul, St. Louis, Louisville, and Omaha Districts (with certain excepted counties).<sup>183</sup>

3. Farm Credit Bank of Texas, representing the original Texas District plus over chartered territory in the original Jackson District (overchartered with Ag-First) and by re-affiliation of certain Associations, portions of New Mexico.<sup>184</sup>

4. CoBank, ACB, is a unique hybrid charter consisting of a nationwide Bank for Cooperatives component and a District Farm Credit Bank component, together with its wholesale subsidiary, CoBank, FCB. CoBank's wholesale lending District now includes the original Springfield, Wichita, Sacramento and (by re-affiliation of Northwest Farm Credit Services) Spokane Districts, with certain exceptions.<sup>185</sup>

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178. FARM CREDIT SYSTEM: POTENTIAL IMPACT OF FCB MERGERS ON FARMER AND RANCHER BORROWERS, *supra* note 41, at 19.

179. *About CoBank History*, CO BANK, *supra* note 61.

180. *Id.*

181. *Id.*

182. *FCS Directory and Map*, FARM CREDIT ADMIN., <http://www.fca.gov/info/directory.html> (last updated Jan. 14, 2015).

183. *See id.*; FARM CREDIT SYSTEM: POTENTIAL IMPACTS OF FCB MERGERS ON FARMER AND RANCHER BORROWERS, *supra* note 41, at 17.

184. *See* FARM CREDIT SYSTEM: POTENTIAL IMPACTS OF FCB MERGERS ON FARMER AND RANCHER BORROWERS, *supra* note 41, at 17; *FCS Directory and Map*, FARM CREDIT ADMIN., *supra* note 182.

185. *About CoBank History*, CO BANK, *supra* note 61; *see* FARM CREDIT SYSTEM: POTENTIAL IMPACTS OF FCB MERGERS ON FARMER AND RANCHER BORROWERS, *supra* note 41, at 19; *FCS Directory and Map*, FARM CREDIT ADMIN., *supra* note 182.

### *B. Association Restructuring*

As noted above, one of the issues revolving around the Federal Land Bank Associations and Production Credit Associations merging to form Agricultural Credit Associations was whether the tax-exempt status of the Federal Land Bank Associations carried through to the Agricultural Credit Associations.<sup>186</sup> To avoid the issue, most Agricultural Credit Associations have since formed holding company structures under which the Agricultural Credit Association is the holding company of Federal Land Credit Association and Production Credit Association operating subsidiaries. Under this structure:

1. The Federal Land Credit Association serves as the direct long-term real estate lender, making loans authorized by the Act for Federal Land Credit Associations. This protects the tax-exempt status of that portfolio in that a Federal Land Credit Association is simply a type of Federal Land Bank Association, and therefore, remains tax-exempt under the Act.<sup>187</sup>

2. The Production Credit Association serves as the direct short and intermediate-term production lender, making loans authorized by the Act for Production Credit Associations. In a few instances, however, this type of lending is still done by the Agricultural Credit Association, with no particular tax disadvantage. In such cases, the Production Credit Association is effectively a “dormant” subsidiary.

3. In any case, the Association borrowers become stockholders of the Agricultural Credit Association and elect its board of directors. The Agricultural Credit Association board also serves as the board of its subsidiary Federal Land Credit Association and Production Credit Association.<sup>188</sup>

This structure has been very successful and now represents the predominant Association structure around the country.

### *C. Newer Service Organizations and Non-System Affiliates*

1. Farm Credit Financial Partners, Inc. – Headquartered in Agawam, MA,

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186. See 12 C.F.R. § 614.4050 (2015); see also Farm Credit Banks and Associations Safety and Soundness Act of 1992, Pub. L. No. 102-552, § 401, 106 Stat. 4102, 4126 (codified as amended at 12 U.S.C. §§ 2001-2279cc).

187. See 12 C.F.R. § 614.4050; see also Farm Credit Banks and Associations Safety and Soundness Act of 1992 § 401.

188. See, e.g., *Financial Highlights*, FARM CREDIT EAST, <https://www.farmcrediteast.com/About-Us/Inside-Farm-Credit-East/Financial-Highlights.aspx>. (last visited Sept. 9, 2015) (noting the structure is described in footnotes to publicly-available financial statements of various Associations).

Farm Credit Financial Partners, Inc., was chartered as a service organization in 1995 when the Springfield Farm Credit Bank merged into CoBank.<sup>189</sup> The original purpose of Farm Credit Partners, Inc., was to provide services to the original Springfield District Associations that had previously been provided by the Farm Credit Bank. Today, its services extend to Associations in other parts of the country.<sup>190</sup>

2. AgVantis – Headquartered in Wichita, Kansas, AgVantis is owned primarily by several Associations. It provides technology and other operational services to its owners.<sup>191</sup>

3. Farm Credit Council Services - Farm Credit Council Services, headquartered in Greenwood Village, Colorado, administers System insurance policies and provides training and other services. Farm Credit Council Services is chartered in Delaware as a subsidiary of the national Farm Credit Council.<sup>192</sup>

#### D. New authorities

1. “Similar entity” participation authority came into the statute in the 1992 amendments as a Bank for Cooperatives authority that authorized Banks for Cooperatives to participate in loans made by non-System lenders to entities not directly eligible for Bank for Cooperatives financing, but functionally similar to directly-eligible entities.<sup>193</sup> In 1994, comparable authority was given to Farm Credit Banks and direct lender Associations, and the authority as a whole was broadened to include a wider range of multi-lender structures.<sup>194</sup>

2. What is often referred to as “joint venture” authority was given to Banks for Cooperatives in 1994 allowing them to finance non-coop entities that are partially owned by eligible cooperatives and certain other eligible entities.<sup>195</sup> Such an entity that is fifty percent or more owned by eligible entities is itself fully eligible.<sup>196</sup> If that ownership interest is less than fifty percent, loans are limited to a

189. *About CoBank History*, CO BANK, *supra* note 61.

190. *See Organization of the FCS*, FARM CREDIT ADMIN., *supra* note 8.

191. *See id.*; *Where We've Been*, AGVANTIS, <https://www.agvantis.com/about-where.htm> (last visited Sept. 9, 2015).

192. *See generally, Careers*, FCC SERVICES, <http://www.fccservices.com/about/careers> (last visited Sept. 9, 2015).

193. Farm Credit Banks and Associations Safety and Soundness Act of 1992, Pub. L. No. 102-552, § 502, 106 Stat. 4102, 4129 (codified as amended at 12 U.S.C. §§ 2001-2279cc (2012)).

194. Farm Credit System Agricultural Export and Risk Management Act, Pub. L. No. 103-376, § 5, 108 Stat. 3497, 3508 (1994) (codified at 12 U.S.C. § 2206a).

195. *Id.* at § 3.

196. *Id.*



dollar amount equal to the entity's total assets multiplied by the percentage of eligible ownership.<sup>197</sup> LLCs represent a common type of business structure financed under this authority.

#### V. CONCLUSION

The institutions of the Farm Credit System comprise extremely vital parts of the American rural economy, with consolidated assets of over \$260 billion. Understanding their authorities, their current organizational structure and that of the System overall, however, is daunting, especially to an outsider attempting to do research within the Act. The challenge is compounded by the fact that the Act still outwardly reflects the twelve-District, thirty-seven-Bank structure that was in place at the time of the last major rewriting of the Act in 1987. Subsequent mergers, creation of hybrid and holding company structures, transfers of direct lending authorities, as well other structural and organizational changes have since resulted in a System structure that is very difficult to reconcile to the provisions of the Act without a basic understanding in the historical events that created that structure. Hopefully this article will provide that basic understanding.

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197. 12 U.S.C. § 2128(b)(2)(A)(ii).