



AGSOUTH FARM CREDIT

BIOSTAR LEARNING

Distressed Loan Servicing and Borrower Rights in the Farm Credit System

Bob Mikell, J.D., M.B.A.
General Counsel
AgSouth Farm Credit, ACA





DISCLAIMER

Not Legal Advice

This presentation is intended for educational purposes only and should not be construed as formal legal advice.

The information provided herein is meant to offer general insights into legal and title issues relevant to lenders.

For specific legal advice tailored to your situation, please consult with a qualified legal professional.

The views expressed are my own and not necessarily those of my employer AgSouth Farm Credit, ACA.

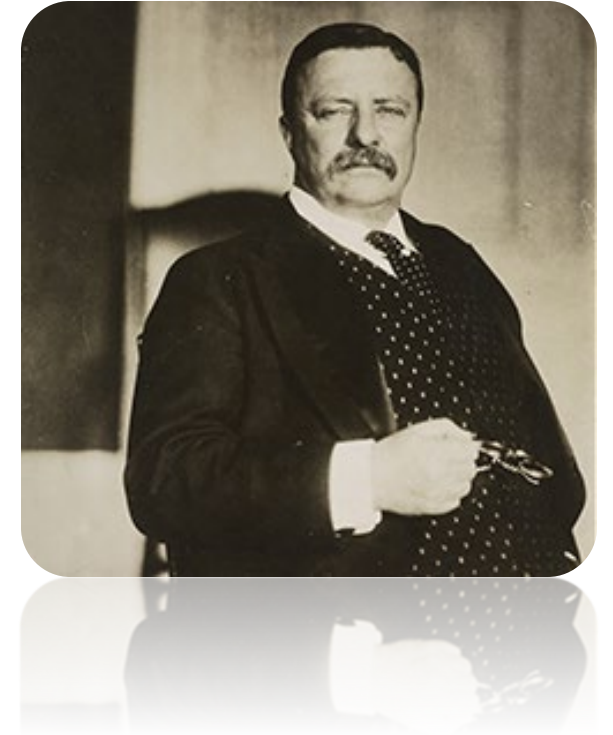
FARM CREDIT HISTORY



ORIGINS OF THE FARM CREDIT SYSTEM

Cooperative-Finance Model

- In the early 1900s, farmers had difficulty obtaining reliable credit at reasonable rates and terms.
- In 1908, President Theodore Roosevelt established the **Country Life Commission** to address the challenges faced by rural citizens. The Commission recommended a campaign for rural process and further fact-finding surveys.
- In 1912 a Committee appointed by President William Howard Taft examined the European rural credit systems including the German **Landschaften** banks which raised funds for farmers from sale of bonds to investors and the cooperative **Raiffeisenbanks**.
- In 1913, President Woodrow Wilson appointed a **Rural Credit Commission** which also traveled to Europe to study the cooperative land-mortgage banks and recommended a nationwide system of agricultural banks to meet credit needs of farmers.



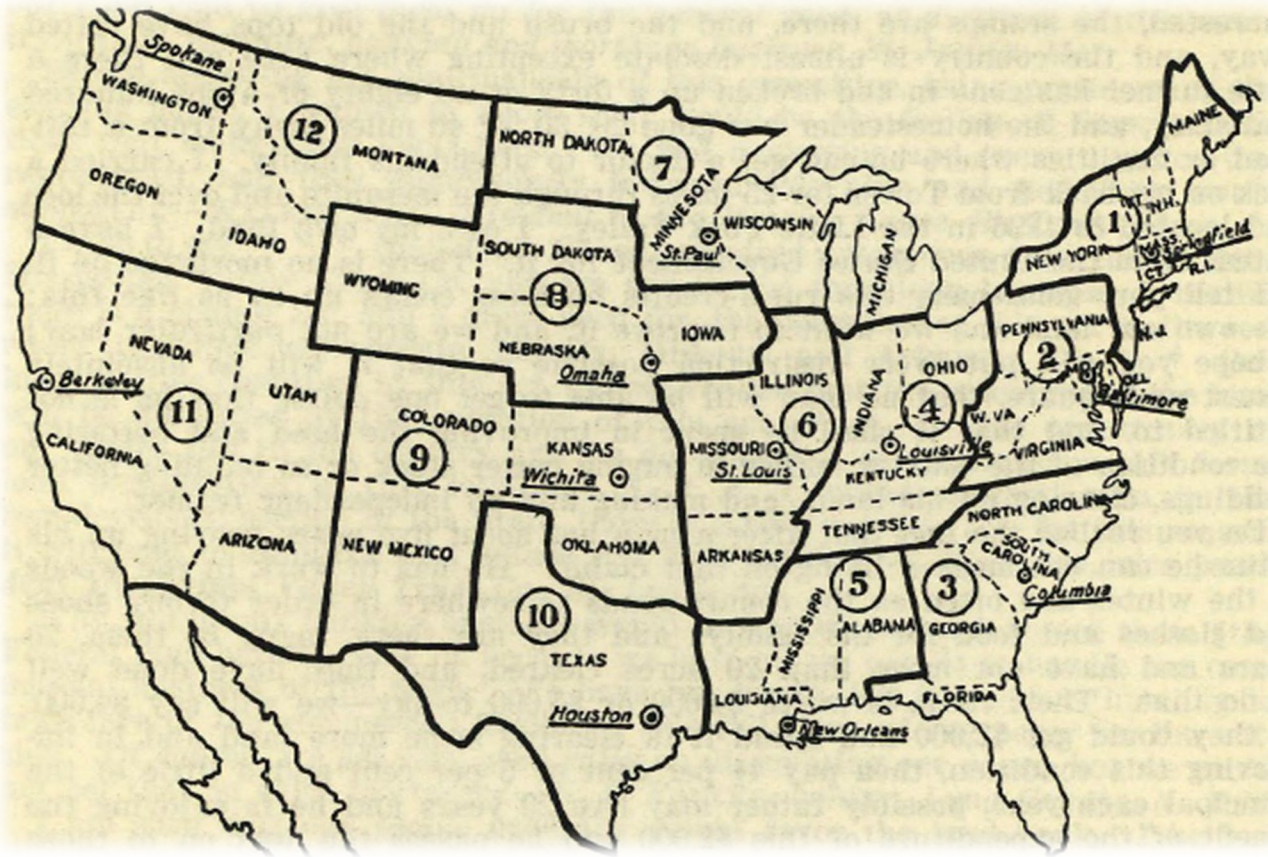


CREATION OF FARM CREDIT SYSTEM

Federal Farm Loan Act of 1916



- **July 17, 1916:** President Wilson signs the Federal Farm Loan Act creating the **Farm Land Bank system**.
- **Structure:** 12 **Federal Land Banks** along with member-owned **National Farm Loan Associations** made real estate loans to farmers and ranchers funded by the sale of tax-exempt bonds.
- **April 10, 1917:** A. L. Stockwell of Larned, KS. received the first long-term, low interest, amortized agricultural loan



FEDERAL INTERMEDIATE CREDIT BANKS

Agricultural Credit Act of 1923

- After WWI, demand for farm goods dropped and land values fell.
- U.S. farmers and ranchers struggled to raise productivity and required **short-term operating credit** to pay back their loans and to mechanize and modernize operations.
- To meet this need, Congress created 12 **Federal Intermediate Credit Banks (FICBs)** to purchase notes made by other lenders for short or intermediate term farm loans



GREAT DEPRESSION — CREATIONS OF PCAS

Farm Credit Act of 1933

- Existing Lenders did not make substantial use of the Federal Intermediate Credit Banks.
- The Farm Credit Act of 1933 created **Production Credit Associations** (PCAs) to make direct short-term loans timed to agricultural cycles.
- In some Districts, FLBAs and PCAs would share facilities and employees.
- The Act also created 1 Central and 12 Regional Banks for Cooperatives to lend to agricultural cooperatives.



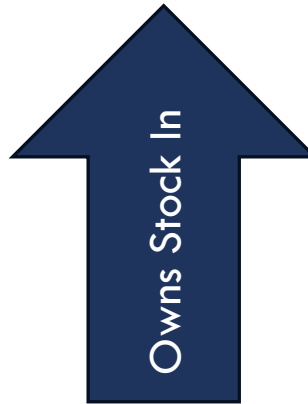


FARM CREDIT PRIOR TO 1980S FARM CRISIS

Farm Credit Act of 1971 - Modern Act

Long Term Loans

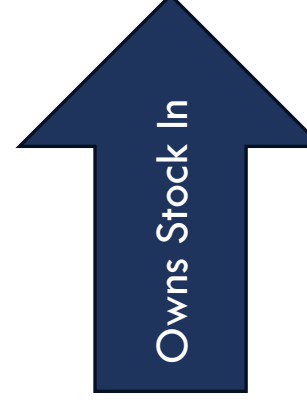
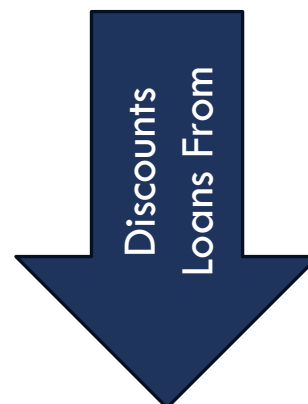
12 Federal Land Banks



500+ Federal Land Bank Association (FLBAs)
Agent Authority

Short Term Loans

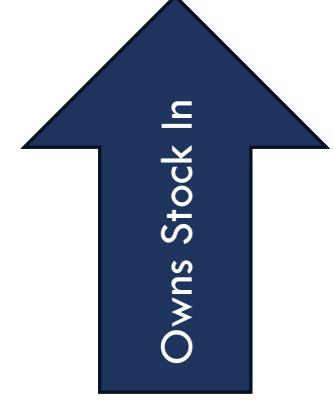
12 Federal Intermediate Credit Banks



400+ Production Credit Associations (PCAs)
Direct Lending Authority

Loans to Cooperatives

12 Regional Banks for Cooperatives
1 Central Bank for Cooperatives



Farmer-owned production cooperatives



1980S FARM CRISIS

Farm Credit Amendments Act of 1985

- The Farm Crisis of the 1980s was created by changing external factors that led to overproduction, high interest rates and plunging land values.
- **The Farm Credit Amendments Act of 1985** established the **Farm Credit Administration** (FCA) as a fully independent regulatory agency with a presidentially appointed three-member board.
- The Act established the Farm Credit System Capital Corporation to give technical and financial assistance to financially weak FCS institutions.
- **Created Certain New Borrower Rights**
 - Required institutions to **adopt a policy governing forbearance** and provide a copy of the policy at certain times required by the FCA
 - Provided borrower access to certain information
 - Created **Credit Review Committee** with stockholder representation to review denials
 - Written Interest rate disclosure



1980S FARM CRISIS

Agricultural Credit Act of 1987

- After continued stress, the Agricultural Credit Act of 1987 reorganized the Farm Credit System by merging the Federal Land Banks and Federal Intermediate Credit Banks to create one Farm Credit Bank for each District. The twelve Banks for Cooperatives were required to consider consolidating into one national bank.
- FLBs could transfer direct loan making authority to a FLBA
- PCA and FLBA were allowed to merge into an Agricultural Credit Association or ACA which would then become fully direct lenders for all types of agricultural loans.
- Created the Farm Credit System Insurance Corporation(FCSIC) to administrator an insurance fund to protect inventors by assessing and collecting premiums from System institutions.
- Provided up to 4 billion dollars in funds to improve the financial condition of System Institutions.
- **Strengthened Borrower Rights:**
 - Formal process to allow for and review a request for a distress loan Restructuring
 - Strengthened Credit Review Committees and provided rights to review a denial of a Restructuring request
 - Provided a Right of First Refusal on foreclosed land acquired by an institution

FARM CREDIT NOW



CURRENT STRUCTURE

4 Banks and 55 Associations



CoBank Agricultural Credit Bank
Greenwood Village, CO
16 Associations
Cooperatives National Wide



AgriBank Farm Credit Bank
St. Paul, MN
11 Associations

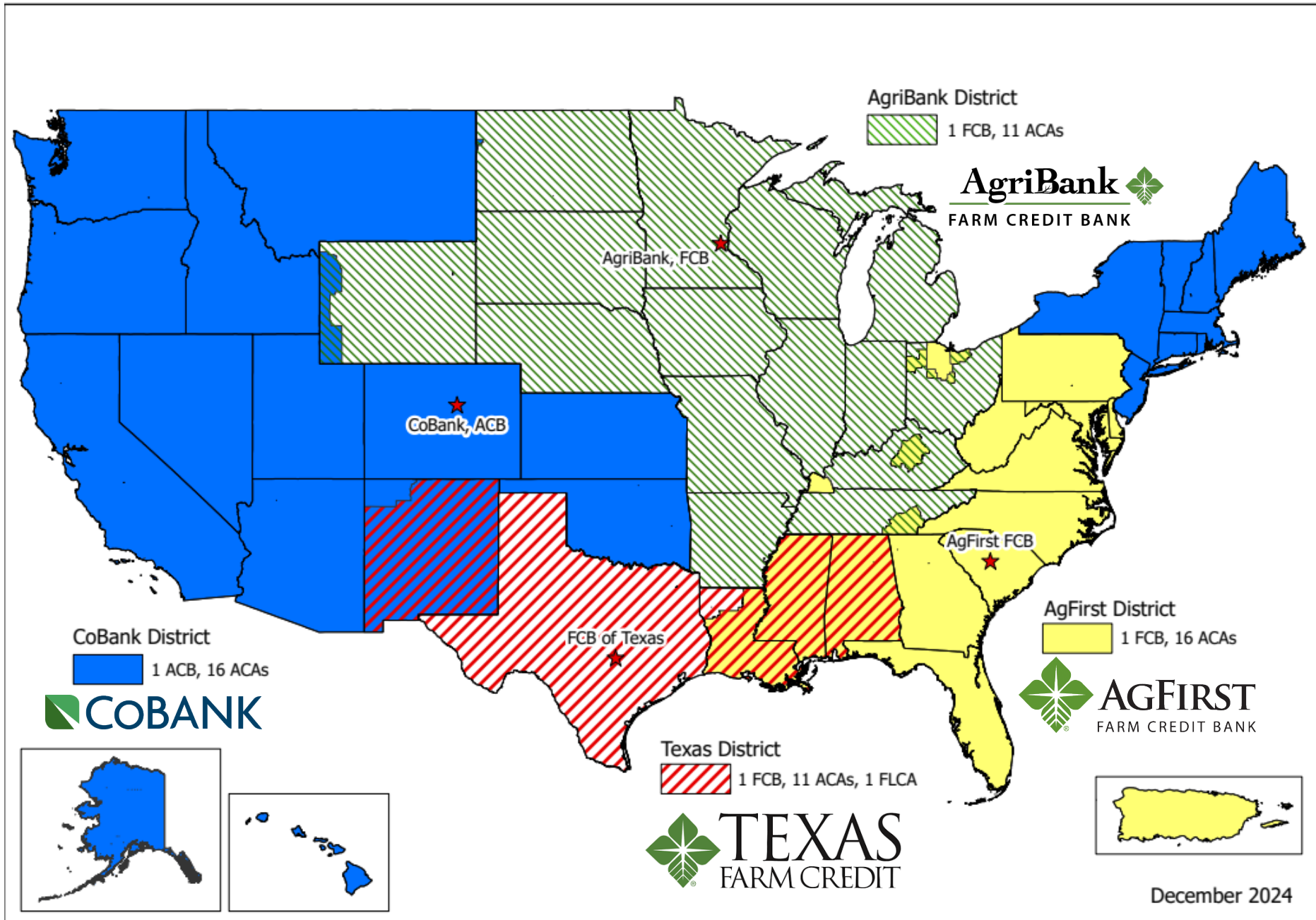


Farm Credit Bank of Texas
Austin, TX
12 Associations;

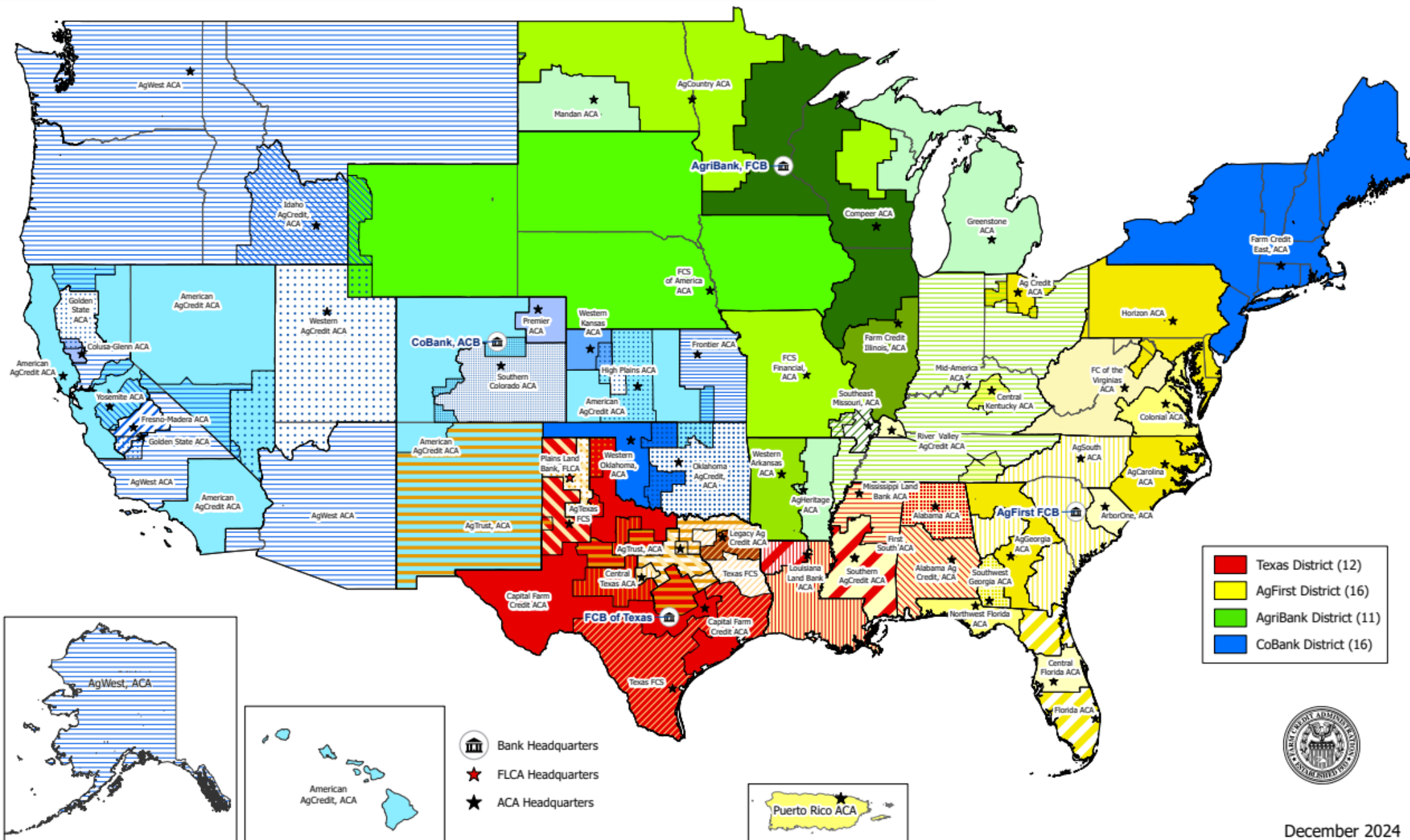


AgFirst Farm Credit Bank
Columbia, SC
16 Associations.

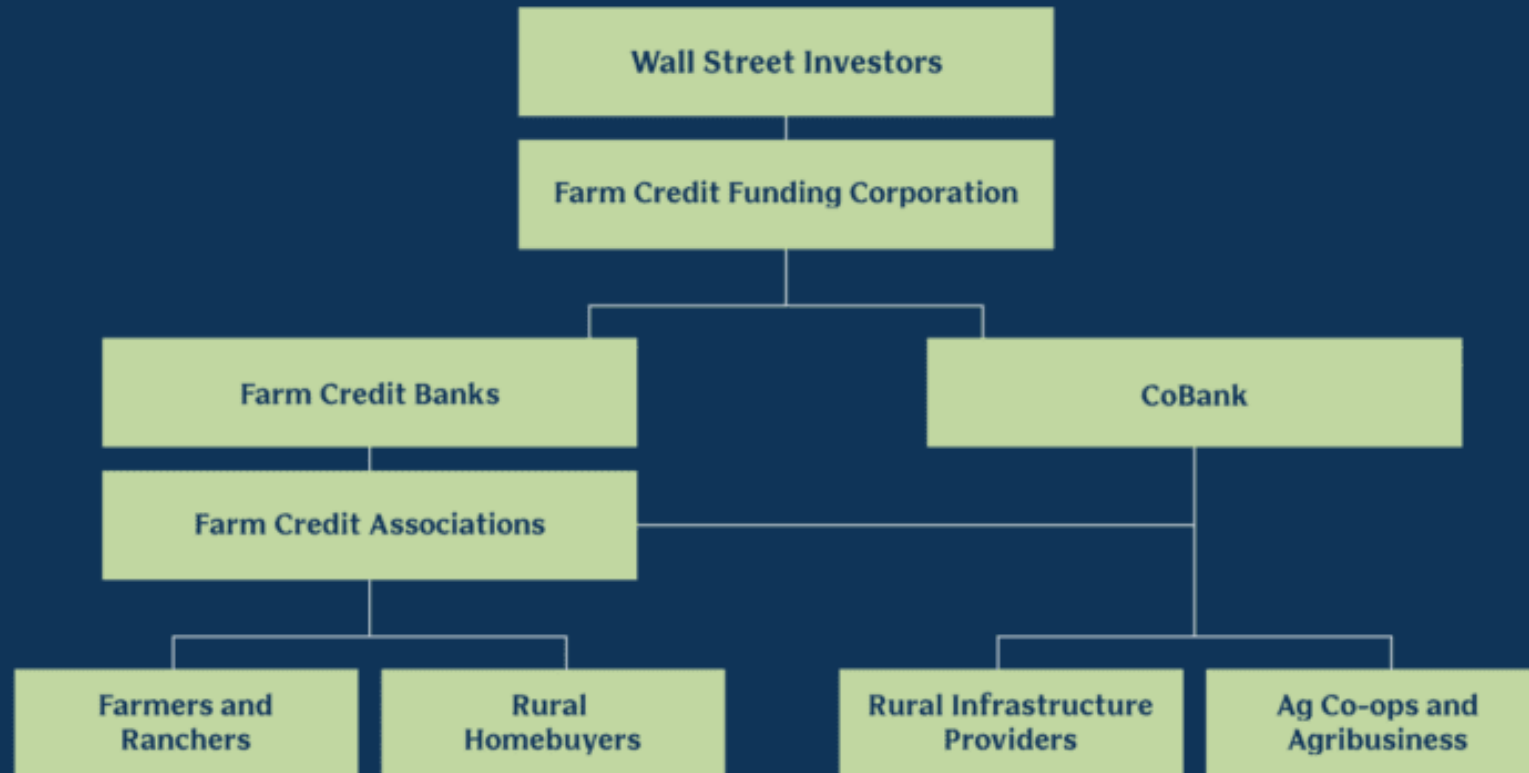




December 2024

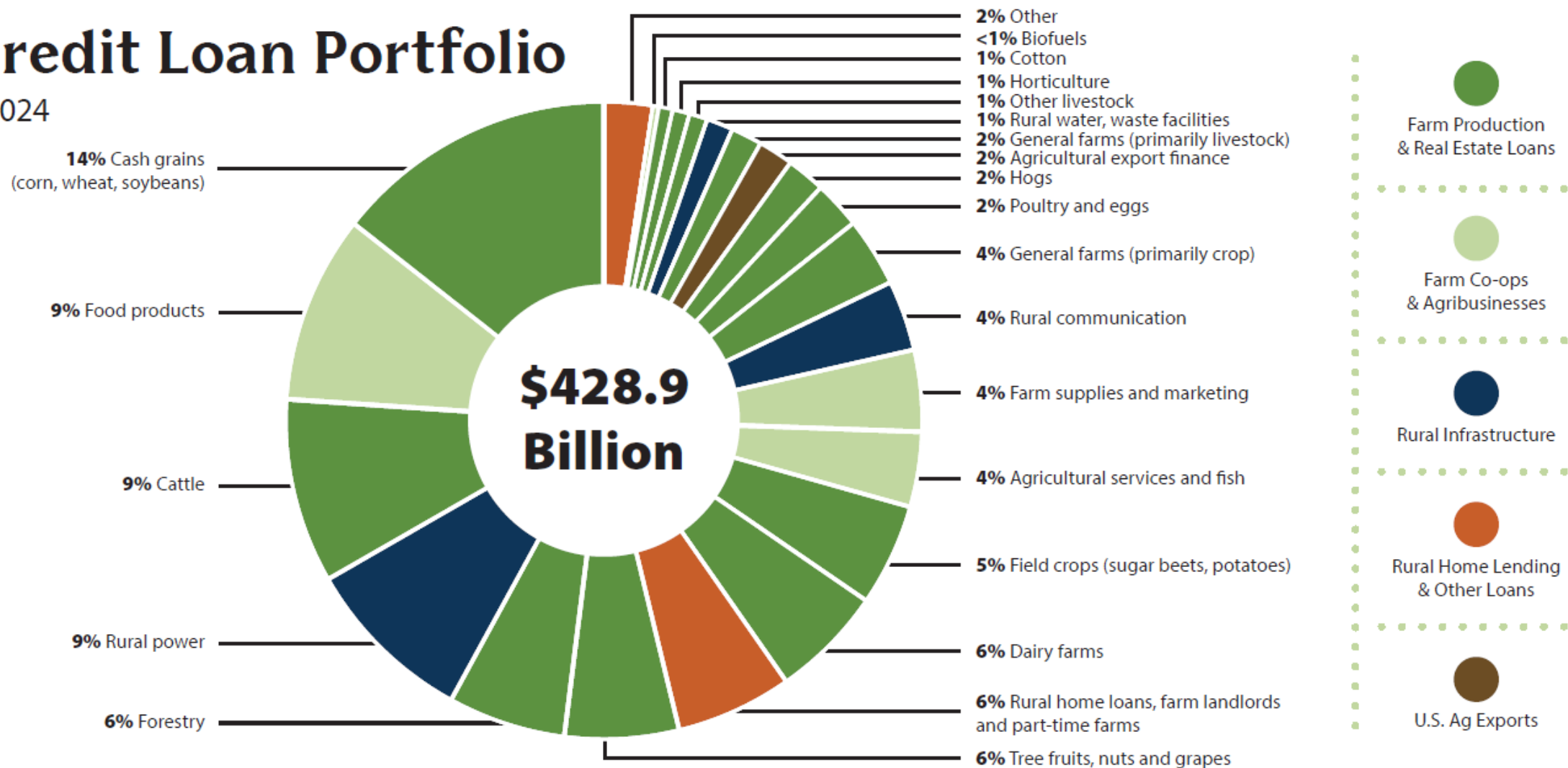


From Wall Street to Rural Investors



Farm Credit Loan Portfolio

As of Dec. 31, 2024



- Farm Production & Real Estate Loans
- Farm Co-ops & Agribusinesses
- Rural Infrastructure
- Rural Home Lending & Other Loans
- U.S. Ag Exports

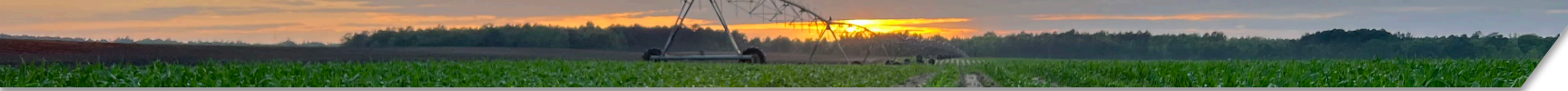
WHO CAN BORROW FROM FARM CREDIT



SCOPE AND ELIGIBILITY TO BORROW

Bona Fide Farmers and Ranchers

- **Eligible Borrowers:** Bona Fide Farmers or Ranchers, or Producers or Harvesters of Aquatic Products for any agricultural or aquatic purpose and for other credit needs.
- **Bona Fide Farmer:** Person owning agricultural land or engaged in the production of agricultural products, including aquatic products under controlled conditions
- **Agricultural Land:** Land improved or unimproved which is devoted to or available for the production of crops and other products such as but not limited to fruits and timber or for the raising of livestock.
- **Eligible Persons Include Individuals and Entities:** “Person” defined to include: A legal entity (including a partnership, corporation, LLC, estate, trust, or other legal entity that is established pursuant to the laws of the United States, any state thereof, the Commonwealth of Puerto Rico, the District of Columbia or any tribal authority AND is legally authorized to conduct a business.



SCOPE AND ELIGIBILITY TO BORROW

Loans from ACAs

<p>Full-Time Farmer One whose primary business and vocation is farming, ranching, or producing or harvesting aquatic products</p>	<p>Full credit, to the extent of creditworthiness</p>
<p>Part-Time Farmer One who needs to seek off-farm employment to supplement farm income or who desires to supplement off-farm income by living in a rural area and is carrying on a valid agricultural operation</p>	<p>Agricultural purposes and other credit needs, albeit more conservative overall and restrictive on other credit needs</p>
<p>One Whose Business is Essentially Other than Farming</p>	<p>Agricultural needs only</p>
<p>Limitation</p>	<p>Credit shall not be extended where investment in agricultural assets for speculative appreciation is a primary factor</p>



ADDITIONAL SCOPE AND ELIGIBILITY TO BORROW

Loans from ACAs

- **Agricultural Processing or Marketing Operations:** if certain thresholds of throughput is produced by bona fide farmer ownership or is an outgrowth of a bona fide farmer's operation and operates in an integrated and coordinated manner.
- **Financing for Farm-Related Service Businesses:** Necessary capital structures, equipment, and initial working capital for business that provide farm-related services to farmers and ranchers that are directly related to their agricultural production.
- **Rural Home Financing:** a single-family moderately priced dwelling located in a rural area that will be owned and occupied as the rural homeowner's principal residence. Limited to 15 percent of the total of outstanding loans.

BORROWER RIGHTS

PRIMARY BORROWER RIGHTS

Keep the Farmer on the Farm

- **Notice of Adverse Credit Decisions - 12 U.S.C. 2201**
- **Collateral Evaluation Disclosure Obligations - 12 U.S.C. 2200**
- **Distress Loan Servicing including Restructure Rights - 12 U.S.C. 2202a**
- **Credit Review Hearing - 12 U.S.C. 2202**
- **Right of First Refusal - 12 U.S.C. 2219a**



APPLICABLE BORROWERS

Who is Entitled to Distressed Loan Borrower Rights?

- **Applies:** Applications and loans to farmers, ranchers, and producers or harvesters of aquatic products.
- **Does Not Apply:**
 - Rural Home Loans
 - Farm-Related Business Loans
- **Guarantors:** Guarantors, or individuals pledging security, do not receive most borrower rights (adverse credit decisions or distressed loan servicing). They may be eligible for the right of first refusal if they are the previous owner(s) of the acquired property.



EXCEPTION TO BORROWER RIGHTS

Secondary Market and LTSPC Loans

- **Secondary Market Loans:**
 - Loans designated for sale into the secondary market are exempt from borrower rights for 180-day period from date of designation (generally occurs when loan is made)
 - Borrower rights then apply from the 181st day until the loan is actually sold into a secondary market when the loan is again exempt from borrower rights.
- **Long Term Standby Purchase Commitment (LTSPC):**
 - Loan covered by LTSPCs are exempt from borrower rights for 180 period from designation
 - Borrower rights then apply from the 181st day until the commitment to purchase the loans is “activated” when the commitment to purchase is executed and when title to or possession of the loans is exchanged.



WAIVERS OF BORROWER RIGHTS

Generally Not Permitted in Advance

- **Future Waiver Not Permitted:** Lenders may not ask for, or accept, a waiver of future borrower rights as part of a Restructuring decision.
- **Permitted Waivers:**
 - loan guaranteed by the SBA
 - certain loan sales, and
 - certain loan syndications

NOTICE OF ADVERSE CREDIT DECISION



NOTICE OF ADVERSE CREDIT DECISION

Right to Denial Letter

Adverse Credit Decisions: The following actions require a written denial letter as quickly as possible:

- 1) Loan application (or request for an assumption) denied
- 2) Loan Application approved for less than the amount requested
- 3) Request for Restructuring Denied.

Contents of Letter:

- Specific reasons for the decision including critical assumptions used and any other information that would enable an informed decision on whether to seek a review
- Statement that applicant may request a review and that a written request for review must be made within 30 days after receipt of notice for application and 7 days for Restructure
- Brief explanation of the process for seeking review, including the independent collateral evaluation review process, whom to contact for access to information, and the applicant's right to appear in person before the credit review committee (CRC).



COLLATERAL EVALUATIONS

COLLATERAL EVALUATIONS

Renewals

- **Right to Request Copy:** On the request of the borrower, we must provide copies of all collateral evaluations of the borrower's assets.
- **Cost:** At least one copy must be provided free of charge then reasonable copying charges for any additional copies or if the request is made where the application for credit was withdrawn before the lender provided notice of its decision.
- **Permitted Redactions:** May withhold confidential third-party information that would disclose identifying characteristics of the third party or his or her property

DISTRESS LOAN SERVICING

DISTRESSED LOANS

Identification of Distressed Loans

Distressed Loan: Loan where the borrower does not have the financial capacity to pay according to its terms and exhibits one or more of the following:

1. Adverse financial and repayment trends
2. Delinquency
3. One or both of the factors above together with inadequate collateral presenting high probability of loss.



Examples of financial adversity: crop failure, loss sales contract, dramatic changes in the source or amount of funds available for repayment (e.g., unanticipated fluctuations in crop, dairy, or livestock prices), or rapid increases in input costs.

DETERMINATION OF DISTRESS

Obligation of the Lender and Case by Case



Factual Determination: Lender should analyze each loan and the circumstances surrounding the delinquency before considering it distressed on a case-by-case basis and a delinquency is a factor but not dispositive

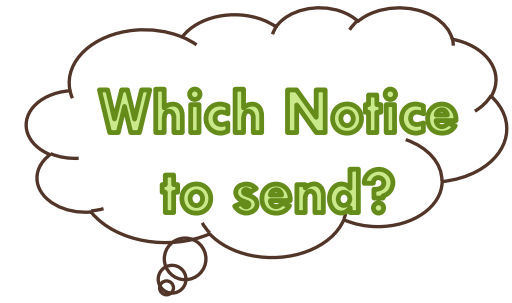
- 30-day delinquency by itself may not necessarily indicate the loan is distressed.
- Repeated 30-day delinquency, coupled with a declining financial condition, could be sufficient reason

Delinquency Not Required: While most loans will be delinquent when they are identified as distressed, delinquency is not required.

Impact of Bankruptcy: Bankruptcies are usually an indication of distress but not always if there are other borrowers who might retain the financial capacity to repay the loan

TYPES OF DISTRESSED LOAN NOTICE

Must Be Sent When Distress Identified



1. **Nonforeclosure Notice** – States loan has been identified as distressed and that borrower has the **right to request a Restructure**. Called “soft notice”, generally used for loans that are not delinquent and workout is probable.
2. **45-day Notice** – States loan has been identified as distressed, that borrower has the **right to request a Restructure**, and that the alternative to Restructuring may be foreclosure. Must be provided no later than 45 days prior to the beginning of foreclosure proceedings.
3. **Modified Unsecured 45-day Notice**: Lenders should send a modified version of the 45-day notice for unsecured loans and replace the term "foreclosure" with another appropriate term, such as a deficiency judgment, with an intention to pursue legal proceeding

NOTICE WHEN BORROWER IS IN BANKRUPTCY

Must be Sent to Distressed Loans

Still Required: Notice should be provided at time of bankruptcy filing to allow the borrower to make decisions on his or her bankruptcy filing (amending plans, etc.) with knowledge of restructure rights.

Not A Stay Violation: a distressed loan notice is a notice of rights and not a collection effort

May Modify to Comply With Court Rules: After conferring with its legal counsel, lender may modify a notice to the extent necessary to remain in compliance with the local bankruptcy court's automatic stay. FCA examination staff will give proper consideration to the legal guidance a lender obtained—if this legal guidance is properly documented in a loan file—when reviewing for compliance with distressed loan notice rules.





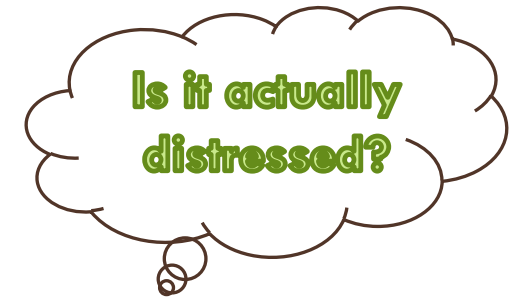
CANNOT BE USED AS COLLECTION LETTER

Not a Warning

A distressed loan notice is not a collection notice and sending a distressed loan notice obligates the lender to follow borrower rights requirements until the distress to the loan is cured or the loan is foreclosed upon.

DETERMINATION MADE NO LONGER DISTRESSED

Changed Determination



Contact Borrower: If the lender decides the loan is not distressed after sending a notice, the lender may contact the borrower to clarify the situation and document for the files that the distress was resolved.

Application Submitted: If the Borrower submitted a Restructure application before the lender alters the distress determination, the lender must process the application and **may not ask the borrower to withdraw a request** submitted in response to the distressed loan notice.

→ Borrower has the option of withdrawing their Restructure application or changing the application into a request for standard (nondistressed) servicing or refinancing consideration.

Future Cases: After an erroneous determination, any future distress is entitled to new notice and full distressed loan servicing rights, even if the 45-day notice was sent.

MULTIPLE LOANS

Distress in One Loan Crossed with Others



- **Distress In One Loan:** Notice would normally be limited to those loans actually identified as distressed; However, a determination of distress is often debt-wide and not loan specific.
- **Crossed Loans:** When a borrower's loans are cross-collateralized and have contractual ties in case of default (for example, the notes say that if one loan is in default, then all loans are in default), it may be more appropriate to send a notice for all interrelated loans because of the reliance on the same financial condition, performance, and source of funds for all loans.
 - **Independent Determination:** Lender must verify the interrelationship before proceeding and may not act under a blanket policy.
- Because of the interrelation of current and distressed loans in these situations, the lender should consider restructuring the debt on its own, whether or not an application was submitted.

ESTATES

Not Eligible For Distress Loan Servicing



- **Estates Not Eligible:** Estates of the Borrower are not eligible for distressed loan servicing. Estates as primary Borrowers are eligible.
- **Voluntary Notice and Waiting Period:** Lenders are encouraged to voluntarily provide the Personal Representative with both notice and a 45-day waiting period before pursuing foreclosure.
- **Additional Notice:** If Notice and a Waiting Period are not provided, the lender should send the Personal Representative a letter explaining that (1) the borrower was sent a notice that the loan was distressed, (2) the borrower had the opportunity to submit a Restructure application, (3) no Restructure application was received, and (4) the lender is instituting foreclosure proceedings.

PROTECTION OF COLLATERAL

Lender May Act

- **Collateral At Risk:** When there is a reasonable basis for believing collateral is at risk, a lender does not have to send a distressed loan notice before taking legal action to protect the collateral for a loan.
- **Notice Required:** Lender must still send a distressed loan notice at the same time, or immediately after, it acts to protect the collateral.
- **Notice Not Required:** When the entire debt must be foreclosed upon to protect the collateral.

Is Collateral
At Risk?



RESTRUCTURE APPLICATIONS

Completeness and Lender Assistance



- **Completed Application:** A Restructure application is a written request from a borrower to Restructure submitted on appropriate forms and supported by financial information and repayment projections to “*support a sound credit decision,*” but lenders are expected to provide additional data, such as available loan terms and conditions.
- **Assistance:** The Lender is expected to negotiate with (help) the borrower to develop the best plan possible, using sound credit standards and realistic projections.
- **Lender Proposed Plan:** The lender may propose, on its own, a Restructuring plan
- **Accepted Application After Deadline:** If a lender accepts a Restructuring application offered in response to a distressed loan notice after the date in the notice, lender must process the application in accordance with borrower rights



MEETING WITH BORROWER

Restructure Application Assistance

- **Required Language In Distressed Notice:** Statement that the borrower may meet with the lender to (1) review the status of the loan(s), the financial condition of the borrower, and/or the suitability of the loan(s) for restructuring; and (2) develop a plan of restructure if the loan is in nonaccrual status.
- **Application Not Required:** There is no requirement that, prior to this meeting, the borrower submit an application to restructure the loan(s).
- **Waiting Period Prior to Approaching:** Lenders should wait a reasonable length of time after sending a distressed loan notice before approaching borrowers to discuss restructuring opportunities.

HOW TO EVALUATE RESTRUCTURE APPLICATION

What Does Lender Consider



- **Process to Evaluate:** Development of the Restructuring plan resembles the process used to evaluate loan requests. Lender will negotiate any projections or inputs to come up with the final plan. If the borrower and lender do not agree on financial projections, lender may use the operation's production averages or other reasonable sources for financial projections and operational inputs.
- **Management Skills:** The lender may consider whether the borrower has the management skills necessary to protect collateral from diversion or other risks.
- **Bankruptcy Plan:** A Lender may treat a borrower's plan of reorganization (submitted in a bankruptcy proceeding) to serve as the application for restructuring if the bankruptcy paperwork contains all the information for a restructure.

LEAST-COST ANALYSIS

Cost of Restructure vs Cost of Foreclosure

- **Required Analysis:** When a plan of Restructure has been prepared (even together), the lender must prepare a least-cost analysis that determines the point where the lender may encounter financial harm by providing the Restructure.
- **Restructure Required:** If it costs the lender the same or less to offer Restructuring than it costs to foreclose on the property, then the lender is required by law to restructure the loan(s). A gain at foreclosure is a zero “cost.”
- **More Than One Plan:** If there is more than one Restructure Plan and if one cost less than the cost of foreclosure, the lender must use the plan that results in the lowest cost to the lender.
- **Not Required:** If no plan of restructure was prepared—as in the case of a borrower who does not respond to the 45-day notice and the lender does not prepare a plan on its own—then the least-cost analysis is not required.

LEAST-COST CALCULATION

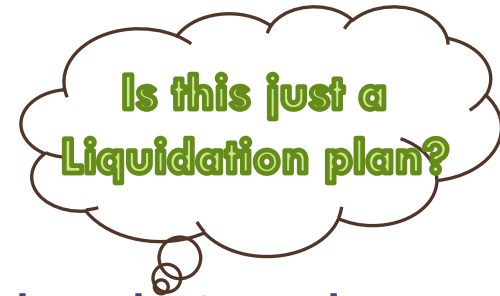
What to Consider as “Costs”



- **Required Measurable Criteria:** Assign a cost to (1) the present value of foregone interest and principal (2) the administrative expense of processing the Restructure and (3) any extraordinary efforts such as additional staff hours or lost/delayed interest income resulting when the Restructure plan does not show a likelihood of scheduled debt repayment. These are those considered to be beyond what is normally extended.
- **Nonmonetary Criteria:** Must develop measurable criteria for nonmonetary considerations and assign costs as subsets of the criteria addressing the likelihood of debt repayment. Examples include a borrower’s managerial ability or ability to work out of existing financial difficulties is directly related to whether the debt is likely to be paid as scheduled. It is also reasonable to include the assessment of whether or not the plan calls for applying all income—over and above necessary and reasonable living and operating expenses—to the payment of primary obligations into the criteria on debt repayment.
- **Recovery From Guarantors:** The potential recovery from the guarantor(s) may be a restructure cost criterion. Similarly, the potential recovery from guarantors may be included in the foreclosure cost criteria as a mitigation of liquidation values and/or as part of the overall liquidation costs
- **All Costs Not Used In Every Analysis:** Lenders would use only those cost criteria that are appropriate to a particular plan of restructure.

FORBEARANCE OR LIQUIDATION AGREEMENTS

Not Formal Restructure Plans



- **Forbearance Agreement Not Restructure:** An agreement designed to bring the borrower current by either postponing or reducing loan payments is not a Restructure plan if it does not increase the probability that the borrower's operation will continue and it does not enable the borrower to maintain the lending relationship.
- **Liquidation Plan Not Restructure:** A plan calling for full or partial liquidation that is intended to stop the borrower's operation or end the lending relationship is not a Restructure plan. If a borrower responds to a distress notice with a request for a plan of liquidation the lender should make clear to borrowers that by responding in that manner, the borrower has declined to apply to Restructure the loan and will not receive the right to a review by the Credit Review Committee.

NOTIFICATION OF DECISION

Timeline to Submit Notification



- **15 Day Notice Decision on Restructure:** Within 15 days of the conclusion of negotiation must provide adverse credit decision notice or acceptance.
- **Negotiations:** a cooperative effort to develop the best Restructure plan possible.
- **When Timeline Begins:** When (1) lender has obtained information sufficient to make a safe and sound credit restructuring decision and (2) lender has attempted to address any deficiency in the information provided by the borrower.
- **Borrower Rejects Offer from Lender:** If a Restructuring offer is made and the borrower declines the offer, then a lender may issue an adverse decision letter with the reason being the borrower declined the Restructuring as offered. The decision letter should explain whether the restructuring offer is based on the plan submitted with the borrower's application or whether any changes were made to the plan, and why those changes were made. For example, explaining that benchmarks were used because the borrower and lender were not able to agree on supportable or realistic financial projections.

CURING DISTRESS

When is Notice Required Again



Curing Distress: Once the distress to a loan is cured, the borrower rights process is concluded.

Distressed Reoccurs: If the loan is later identified as again being distressed, the process begins anew.

Payment Cure: For example, if the distress to the loan was delinquency on loan payments and the borrower “cures” the delinquency by making all accrued payments, including any penalties, the lender is prohibited from initiating foreclosure on the loan.

Failure to Perform Restructure Plan: If borrower fails to perform under the Restructure plan, no additional distressed loan notice required before foreclosure action. However, the borrower must still be provided notice of the foreclosure action pursuant to State law requirements.



PERFORMANCE OF PLAN

Late and Interest Only Payments

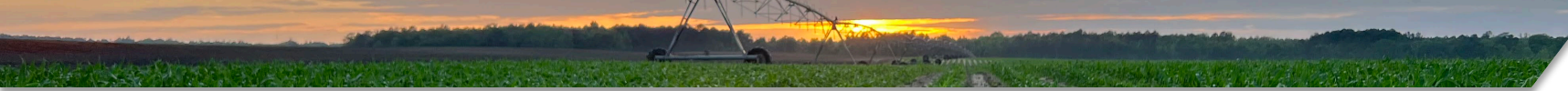
- **Late Payments:** Lenders should rely on their established policies and procedures for late loan payments and not treat Restructured borrowers differently. For example, if a lender routinely gives a 10-day grace, that same grace period would apply.
- Thus, if during the “performance” period of a restructured distressed loan, payments are late but within the grace period, those late payments would not be used to find the borrower has not “performed” under the restructuring.
- **Interest Only Payments:** If interest only payments are considered required payments under the lender’s repayment policies, then they are also considered payment to determine “performance.”

CREDIT REVIEW COMMITTEE

CREDIT REVIEW COMMITTEE

Purpose and Formation

- **Purpose:** To review denials on applications and Restructuring requests and collateral evaluations used in denials.
- **Final Authority:** CRC has the final decision-making authority on the matter under review
- **Composition:** Lender can decide, but at least one farmer-board member must serve and the loan officer/decision maker may not serve.
- **Level of Committee:** If the direct lender must obtain its supervising bank's approval on a credit decision, the committee may be formed **at either the direct lender level or the approval level** (supervising bank). If at the approval level, then the committee must, at a minimum, include a member who is a supervising bank director from the direct lender where the loan application originated. If there is no such director, then one member must be a farmer board member from the direct lender.



CRC TIMELINES

Deadlines

- **Loan Applicants:** 30 days to request CRC
- **Loan Restructuring:** 7 days to request CRC
- **Required Notice:** Lenders must provide 15-day notice of the date of a CRC meeting
- **Lender Reschedule:** If the lender needs to reschedule a previously planned meeting, must provide a new 15-day notice.
- **Borrower Reschedule:** If the meeting is rescheduled at the request of the applicant or borrower, no additional 15-day notice is required—as long as the meeting date is within the timeframe requested by the applicant or borrower.



WHAT IS CONSIDERED

Information in Support of Application

- **Information Considered:** Applicants and borrowers may submit evidence to support information in their request and may obtain an independent collateral evaluation. No “new” information may be considered, but the committee may consider information in support of a previous submissions.
- **Valuation Information:** While applicants and borrowers should first raise issues on chattel values, crop prices, etc. during the planning stage and not at the meeting, if the lender refused to use information the applicant or borrower offered, that same information may then be provided, along with support for its veracity, to the committee.
- **Change to Application:** A lender may agree to consider changes to the plan of Restructuring that was the basis of the adverse decision.
 - **Before CRC:** Decision is effectively withdrawn. If no restructuring is achieved then a new adverse decision letter notifying the borrower(s) of the right to a review by the CRC would be issued.
 - **After CRC:** It is considered a new plan Restructuring, to which the committee’s decision on the original adverse credit decision does not apply.



APPERANCE

Formation

- **Presence Required:** If, when requesting a review, the borrower states the intention of attending the meeting, the lender should try to schedule the meeting at a mutually convenient date to enable the borrower to attend. That does not mean the borrower can delay the meeting by claiming unavailability for an extended period of time.
- **Attorney:** Borrowers may be accompanied by counsel or other representatives.
- **Videoconferencing:** If the applicant or borrower agrees, alternative meeting formats may be used. The lender would need to address how documents supplied by and to the participants would be distributed before using alternative meeting formats. In addition, the Credit Review Committee meeting minutes would need to document how participants attended the meeting (e.g., videoconference, online meeting space, or in person).

RIGHT OF FIRST REFUSAL

RIGHT OF FIRST REFUSAL

What Is The Right?

- **Right of First Refusal:** Right to be offered the first opportunity to buy real estate at appraised value acquired through foreclosure or voluntary conveyance
- **Who Has the Right:** Previous record owner(s) and it is not assignable
- **Condition:** The right only exists when the institution determines the property was acquired because the borrower did not have the financial resources to avoid a foreclosure action.



WHICH PROPERTY HAS THE RIGHT

Property Foreclosed By the Institution

- **Bankruptcy**: Property foreclosed after is a relief from stay is subject to the right
- **Foreclosure sale of another lien holder**: property acquired through a foreclosure sale initiated by another lien holder is subject to the right
- **Controlled Entity**: Property acquired at foreclosure by LLC or other business entity formed to hold and manage acquired property is subject to the right
- **Deficiency Judgment**: Property acquired as a result of collection under a deficiency judgment would **not be subject** to the right of first refusal

RIGHT OF FIRST REFUSAL NOTICE

How to Handle Notices and Offers

- **Required Notice of Right of First Refusal:**
 - Within 15 days of the decision to sell must provide notice by certified mail, of the property's appraised fair market value and of the previous owner's right to:
 - (i) Buy the property at the appraised fair market value, or
 - (ii) Offer to buy the property at a price less than the appraised value.
- **Deadline to Accept:** Any offer must be received within 30 days of receipt of the notice.
- **Deadline to Respond to Offer:** Within 15 days after the receipt of the offer to buy at the appraised value, the System institution must accept the offer and sell the property to the previous owner
 - **Actual Time to Close:** the actual closing date of the sale or effective date of a lease does not have to occur within that same 15 days. The parties may agree, as part of the terms, to a date when possession of the property (either the closing date or date the lease begins) would occur, even if it would be later than 15 days from the previous owner's offer.



CONTENTS OF NOTICE

How to Handle Notices and Offers

- **Lender Offer Below Appraised Value:** a System institution is permitted in the initial notice to express a willingness to accept below-market offer.
- **Sale Terms:** The sale terms and conditions used in the initial right of first refusal notice may not be overly burdensome, diminish a previous owner's first refusal rights, nor be substantially different from those that would be applied to all potential purchasers.
- **Financing:** The institution does not have to offer financing with this right.



MORE THAN ONE OWNER

How to Handle Notices and Offers

- **Who Receives Notice:** System institutions send the right-of-first-refusal notice to all previous owners of record.
- **Multiple Owners:** If there are multiple former owners of a single parcel, the right is offered to all.
 - If there are multiple parcels with the same former owners on all parcels, the right-of-first-refusal letter should indicate that the former owners may buy any or all of the parcels—it is not an “all-or-nothing” deal.
 - If there are multiple parcels with different former owners, then the right is only offered to the former owner(s) on those parcels to which the individual(s) was the prior record owner—not on all of the parcels securing the debt.
- **Multiple Offers:** If one of the prior owners of a parcel responds “first,” the institution will still have to wait the full 30 days (15 days for leasing opportunities) before accepting/rejecting any offer.
- Because of the 15-day response time, in multiple-owner situations the System institution may respond to the “first” offer with an indication of whether the offer is acceptable or not but also advising the offeror that the other prior owners still have XX days to make an offer on the property. If no other previous owner makes an offer within the remaining time, the System institution may proceed with processing the offer received.

OFFERS OTHER THAN APPRAISAL VALUE

Less than Value

- **Offer for Less than Appraised Value:** A System institution may either accept or reject an offer for less than the appraised value
 - **Accepts:** If the System institution accepts this offer, it must notify the previous owner of the decision and sell the acquired agricultural real estate to the previous owner within 15 days of receiving the offer
 - **Rejects:** If the System institution rejects this offer, it must notify the previous owner of the decision within 15 days of receiving the offer. The previous owner has 15 days from receipt of the notice to submit an offer to buy at such price or under such terms and conditions.
- **Reoffer:** While a System institution does not have to accept a below-market appraisal offer from a previous owner(s), the institution may not later sell the property to a third party for below-market value at a rate equal to or less than that offered by the previous owner or on different terms and conditions than those that were extended to the previous owner without first informing the previous owner by certified mail and providing an opportunity to lease the property at such rate or under such terms and conditions.
- **Impact of No Response:** If the previous owner expressed no interest in purchasing the property, the institution is not required to send a second notice.



RIGHT OF FIRST REFUSAL PERIOD

30 Day Period

- **Declines Offer:** Even if the previous owner declines the offer before time has expired, he or she has the remaining time to change his or her mind.
- **Listing Property:** Listing the property for general sale or lease after the right of first refusal notice is sent but before the period has expired is permitted.
- **Negotiating Sale:** Institutions may not negotiate or enter any sale with a third party before the former owner has had the opportunity to exercise his or her initial right of first refusal.

PUBLIC AUCTION

No Right of First Refusal Notice Required

- **Public Auction**: Institutions only have to give the previous owner(s) notice of the public auction before, or at the same time as, public notice of the auction is made.
- **Contents of Notice**: The notice has to contain all relevant information, such as the time, place, and opening bid for the auction, to enable the previous owner(s) to decide if he or she wants to participate.
- **Accept Bid**: The institution must accept the previous owner's bid when it is the **highest bid** or it **ties with the highest bid**.

