

# The Farm Credit System: Your One-Stop Shop for Rural Financing . . . and Legal Services?

By Ryan Conklin

## I. Introduction: The Curious Case of Fredric Cozad

Four hours west of Sioux Falls, SD, across a terrain rich with “amber waves”<sup>1</sup> of grain and herds of cattle, you will find a small, podunk town called Martin, SD,<sup>2</sup> the seat of Bennett County.<sup>3</sup> As of April 2013, there was not a working attorney within 120 miles of this Nebraska border town.<sup>4</sup> Martin’s predicament arose after the retirement of Mr. Fredric Cozad, an attorney who has serviced the Bennett County legal market for over 64 years,<sup>5</sup> with 50 of those years being spent as the Martin city attorney.<sup>6</sup> Mr. Cozad’s career is laden with stories of success and community service, making him the model of what a rural attorney should strive to be.<sup>7</sup> However, his absence leaves a substantial void in the Bennett County community, given Mr. Cozad’s vast involvement in the area.<sup>8</sup> Such a quandary is not limited to Martin, or to South Dakota for that matter.<sup>9</sup> Towns like Martin, which at one time boasted half a dozen lawyers,<sup>10</sup> now struggle to house enough attorneys to provide local legal services.

In the 1910s and 1930s, a similar issue confronted rural America regarding the availability of credit.<sup>11</sup> The response to this issue yielded the Farm Credit System (FCS), a nationwide network of lending cooperatives, credit associations, and banks designed to provide credit to rural America.<sup>12</sup> Fast forward almost 100 years, and the FCS has ballooned into one of the largest financial institutions in the U.S.<sup>13</sup> With its extensive network of branch offices across all fifty states, advanced infrastructure, and vast amounts of human and financial capital, could the FCS

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<sup>1</sup> Katharine Lee Bates, Pike’s Peak, *The Congregationalist*, Jul 4, 1895 (referencing a phrase from the poem that would eventually become the song “America the Beautiful”).

<sup>2</sup> [Driving directions from Sioux Falls, SD to Martin, SD](#), Google Maps (follow “Directions” hyperlink under the search bar; then enter “Sioux Falls, SD” for starting point; then enter “Martin, SD” for destination; then select “Enter”).

<sup>3</sup> [South Dakota Association of County Commissioners](#), (last visited Apr 20, 2014), under the entry for Bennett County.

<sup>4</sup> Ethan Bronner, [No Lawyer for Miles, So One Rural State Offers Pay](#), *N.Y. Times* (Apr 8, 2013).

<sup>5</sup> *Id.*

<sup>6</sup> [Past Success Stories](#), State Bar of South Dakota: Project Rural Practice (last visited Apr 20, 2014).

<sup>7</sup> *Id.*

<sup>8</sup> Bronner, *supra* note 4.

<sup>9</sup> Leslie A. Gordon, Green Achers, 95-Nov. A.B.A. J. 42, 43-47 (2009) (elaborating on the lawyer shortages in rural towns like Sedan, KS; Mezappa, MN; Waxahachie, TX; and West Milford, NJ).

<sup>10</sup> Bronner, *supra* note 4.

<sup>11</sup> [About FCS](#), America’s Farm Credit Archive (last visited Apr 20, 2014).

<sup>12</sup> *Id.*

<sup>13</sup> If the entire Farm Credit System were a bank, it would be the ninth largest bank in the country. American Bankers Association, [The Farm Credit System: America’s Least Known Government-Sponsored Enterprise](#), ABA Member E-Bulletin 1, 3 (Nov 6, 2013).

hold the key to filling the legal services vacancies left by attorneys like Mr. Cozad? This paper will delve into the severity of the rural legal services gap, the history and state of the FCS, the possibility that the FCS can rectify the problem, and the potential hurdles for this plan.

## II. Where Have All the Lawyers Gone?

In a time where a national glut of attorneys exists,<sup>14</sup> there are social groups and geographic areas that remain remarkably underrepresented. Among those underserved groups are rural Americans, and the extent of this underrepresentation has received substantial academic and media attention. Over time, these sources have acknowledged the existence of the problem, documented the exodus of attorneys, and have recognized a deficiency of new lawyers flocking to those areas in need.

### a. Definition of the Problem

In a 2012 report to the American Bar Association's House of Delegates, the State Bar of South Dakota posited, "[t]he [M]ain [S]treet attorney in rural America is an endangered species. The small number of rural lawyers in relation to the unmet need for legal services in rural areas is shocking."<sup>15</sup> The report continued by referencing Mr. Cozad and his impending retirement, saying that "the loyal clients he has served and the town of Martin are at risk because he does not have a successor. Because of these threats, this issue is not just a lawyer problem, it is a community problem."<sup>16</sup> No matter how it is phrased, the harsh truth is plain and simple: the legal needs of rural citizens are not being satisfied.<sup>17</sup>

Recognizing the severity of this problem and the potential consequences, legal scholars produced several manuscripts discussing this problem in different contexts.<sup>18</sup> Of particular interest and importance are articles examining the rural legal services gap and the implications under the Sixth Amendment's right to counsel clause<sup>19</sup> and the Fourteenth Amendment's Equal Protection Clause.<sup>20</sup> Being rights that are bestowed upon every citizen, persistent violations of either amendment constitute an issue of national importance.

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<sup>14</sup> Joshua Wright, [The Job Market for Lawyers: Side Work on the Rise Amid Continuing Glut of New Grads](#), Forbes.com (Jan 10, 2014).

<sup>15</sup> Allen Smith, [Rural Lawyer Shortage May Drive Up Legal Costs](#), Society for Human Resource Management Federal Resources (Aug 14, 2012).

<sup>16</sup> *Id.*

<sup>17</sup> Bronner, *supra* note 4 (noting that 2% of small law practices are in rural areas, where 25% of the U.S. population resides).

<sup>18</sup> See, e.g., Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 Wis. L. Rev. 969, 970 (2005) (examining rural bankruptcies); Zachary Cloud, *The Problem of Low Crime: Constitutionally Inadequate Criminal Defense in Rural America*, 22 B.U. Pub. Int. L.J. 403 (2013) (examining how the rural legal construct results in criminal defense that violates the Sixth Amendment); and Debra L. Bassett, *Ruralism*, 88 Iowa L. Rev. 273 (2003) (presenting a comprehensive view of ruralism and the unique challenges facing rural communities).

<sup>19</sup> U.S. Const. amend. VI, cl. 7.

<sup>20</sup> U.S. Const. amend. XIV, § 1. See Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 Ariz. L. Rev. 219 (2010) (positing that some Arizona counties are at risk of violating the Sixth and Fourteenth Amendments); Cloud, *supra* note 18 (discussing rural criminal defense and possible Sixth Amendment violations); and Bassett, *supra* note 18 at 332 (examining equal protection as a remedy for rural issues).

## b. So, How Bad is it?

Country music artist Neal McCoy, in his 2006 single “Last of a Dying Breed,” sings of the slow death of the rural lifestyle.<sup>21</sup> Although a simple piece of music, Mr. McCoy’s lyrics accurately reflect a social phenomenon that is taking place today. Like livestock migrating from the pasture to a feeding trough, the U.S. population has steadily flocked from rural areas to urban and suburban areas for decades.<sup>22</sup> This migration has left rural communities<sup>23</sup> in dire need of working professionals, such as doctors and attorneys.<sup>24</sup>

Statistics speak volumes about the deficit of attorneys in the rural areas of different states. Down south, the Atlanta area houses 69% of all Georgia attorneys.<sup>25</sup> Boise, despite having only 13% of Idaho’s population, boasts 47% of the state’s attorneys.<sup>26</sup> In North Dakota, 21 of the state’s 53 counties have fewer than four attorneys, with eight of those 21 counties having only one attorney and four having no attorneys at all.<sup>27</sup> In South Dakota, 65% of the state’s attorneys are found in four urban areas.<sup>28</sup> 94% of all Arizona attorneys can be found in the state’s two most populous counties.<sup>29</sup> The 33 most sparsely populated counties in Iowa contain fewer than 4% of the state’s licensed attorneys.<sup>30</sup> In Texas, the metro areas of Dallas, Houston, San Antonio, and Austin boast 83% of the state’s attorneys.<sup>31</sup> Finally, in Mississippi, 48% of attorneys can be found in the Jackson area.<sup>32</sup> In this case, the numbers truly do not lie.

## c. Existing Responses to the Problem

In August 2012, the American Bar Association called upon federal, state, and local authorities to devise new, creative solutions to the rural legal services issue.<sup>33</sup> Currently, the party primarily responsible for delivering legal services to rural Americans is the legal service corporation (LSC) and their state subsidiaries.<sup>34</sup> However, national LSC figures suggest that these groups are only able to provide representation for half of the potential clients in need.<sup>35</sup> This inability to service

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<sup>21</sup> Neal McCoy, *Last of a Dying Breed*, on *That’s Life* (903 Music 2005).

<sup>22</sup> Porter, *supra* note 18 (submitting that 59 million rural Americans are now ghosts in the legal system).

<sup>23</sup> For a discussion regarding what constitutes “rural,” see Lisa R. Pruitt, *Rural Rhetoric*, 39 *Conn. L. Rev.* 159, 177 (2006) (outlining different ways to define “rural”).

<sup>24</sup> Bassett, *supra* note 18, at 316 (explaining the lack of access to healthcare in rural areas). See also [National Health Services Corps](#), Health Resources and Services Administration (last visited Apr 20, 2014) (describing program to recruit health professionals to rural areas).

<sup>25</sup> Peralte C. Paul, [Lawyers a Luxury in Rural Georgia](#), *Atlanta Journal-Constitution* (Apr 1, 2010).

<sup>26</sup> Audrey Dutton & Ethan Bronner, [Idaho’s Country Lawyers a Rare, and Busy, Breed](#), *Idaho Statesman*, May 8, 2013.

<sup>27</sup> Bruce Cameron, [Another Approach](#), *Rural Lawyer* (Dec 31, 2013).

<sup>28</sup> Bronner, *supra* note 4.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Smith, *supra* note 15.

<sup>33</sup> Bronner, *supra* note 4.

<sup>34</sup> Larry R. Spain, *The Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities*, 28 *Wm. Mitchell L. Rev.* 367, 370 (2001).

<sup>35</sup> Legal Services Corporation, [Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans](#), Legal Service Corporation 1, 12 (Sep 2009).

all possible clients is an unfortunate casualty of federal and state budget cuts that have crippled LSCs.<sup>36</sup> With the ability of LSCs limited, state governments and bar associations have been forced to forge fresh, unique solutions to the rural legal services gap.

South Dakota has arguably fashioned the most aggressive solutions to date. In March 2013, South Dakota became the first state to adopt legislation that incentivizes attorneys working in rural areas.<sup>37</sup> The program would place up to 16 aspiring attorneys in rural communities.<sup>38</sup> In return, these individuals would receive a \$12,000 per year subsidy towards tuition at the South Dakota University School of Law, on top of any earnings they net while practicing.<sup>39</sup> Furthermore, the State Bar of South Dakota has continued to fund its Project Rural Practice initiative, a 2011 effort that will serve as an excellent complement to the new legislation<sup>40</sup>

A 1994 study by the Maine Commission on Legal Needs found that citizens living more than 25 miles from a civil legal services were six times less likely to receive legal services and twice as likely to be unaware of service offerings.<sup>41</sup> In recent years, the Maine School of Law and Maine State Bar Association have amplified efforts to place students in legal services jobs statewide.<sup>42</sup> Such efforts have included bringing in judges from rural Maine to meet with law students, field trips to rural Maine communities, and multiple bar membership benefits.<sup>43</sup>

In Washington, legal aid attorneys identified the rural areas in dire need of representation, and then, using a mapping system, determined the best sites to establish new LSC offices.<sup>44</sup> Once these new offices had been identified, the Washington legal community collaborated with the state legislature to secure additional funding for the creation of these offices.<sup>45</sup> In the end, four offices were created in order ensure that the bare minimum amount of civil legal services could be provided to every part of the state.<sup>46</sup>

In 2012, the Iowa State Bar Association launched a clerkship program that placed eight law students in rural firms or solo practitioner offices for summer work.<sup>47</sup> The Nebraska State Bar Association has implemented spring break bus trips for students to the central part of the state, where they met with rural community leaders and attorneys for the purpose of gaining summer or full-time employment.<sup>48</sup> In spite of these extensive efforts by several states, there is no

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<sup>36</sup> *Id.* at 6.

<sup>37</sup> Karen Sloan, *South Dakota Offers Subsidies to Lure lawyers to its Small Towns; A Cure to Rural Flight: Subsidies*, Nat'l L. J., Apr 1, 2013. Available through LexisNexis.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Marilyn Hotch, Beth Gallie & Michael W. Mullane, *Rural Access-An Innovative Program in Western Maine*, 9 Me. B.J. 186, 186 (1994).

<sup>42</sup> Douglas Rooks, [Rural Maine Holds Opportunity for Law Graduates Facing Tough Job Market](#), *Bangor Daily News* (Dec 1, 2013).

<sup>43</sup> *Id.*

<sup>44</sup> Tim Kerrigan, *No Money? No Problem: Legal Aid Lawyers Find Innovative Ways to Serve the Rural Poor*, 13 Pub. Int. L. Rep. 133, 135 (2008) (noting a tactic used by Washington legal aid to expand services).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Ashby Jones, [New Lawyers, Seeking Jobs, are Advised to Think Small](#), *Wall St. J.* (Jun 25, 2012).

<sup>48</sup> Debra C. Weiss, [Lawyer Shortage in Rural Nebraska is Target of State Bar Initiative](#), *A.B.A. J.* (Oct 1, 2013).

empirical data to suggest the situation is improving. With the rural legal services gap expanding, the time may have come for a different type of solution.

### III. The History and State of the Farm Credit System

Recall the Great Depression, the worst economic period in U.S. history.<sup>49</sup> Not immune to the effects of this global crisis, the U.S. agriculture industry sustained a brutal punch during this tragic event.<sup>50</sup> The harshest consequences inflicted upon American farmers resulted from a disruption of credit.<sup>51</sup> Farm foreclosures were as common as dust in a dust storm, another Great Depression era tragedy.<sup>52</sup> In the horror of the Great Depression, President Franklin Roosevelt, with the assistance of Congress, attempted to reboot the flow of cash to rural areas.<sup>53</sup> The result of their toils was the contemporary Farm Credit System.

#### a. A History of the Farm Credit System

The origins of the Farm Credit System (FCS) can actually be traced back to Theodore Roosevelt's presidency.<sup>54</sup> In 1908, President Roosevelt created the Commission on Country Life with the sole purpose of exploring ways to increase the attractiveness of rural life.<sup>55</sup> In 1909, in its report titled *Report of the Country Life Commission*, the Commission brought the cash drain issue in rural America into the public eye.<sup>56</sup> The Commission's proposed solution was a cooperative rural credit system, an idea that would soon gain traction with policymakers.<sup>57</sup>

The next major action came in 1916 with the passage of the Federal Farm Loan Act (FFLA).<sup>58</sup> The FFLA crafted a system of twelve Federal Land Bank (FLB) districts.<sup>59</sup> Also approved in the FFLA were capital injections for the newly minted FLBs for the exclusive use of aiding in the creation of cooperative agricultural lending agencies.<sup>60</sup> In 1923, in an effort to provide the FLB districts with a mechanism to offer short-term credit to farmers, President Warren Harding signed the Agricultural Credits Act.<sup>61</sup> This act created Federal Intermediate Credit Banks (FICBs), whose objective was to provide discount credit to agricultural cooperatives, commercial banks, and other lending firms.<sup>62</sup> However, despite the success of the new rural credit system, it would be unable to weather the storm that arose in late 1929.

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<sup>49</sup> Sarah Carroll, [Causes of the Great Depression](#), OK Economics (last visited Apr 20, 2014).

<sup>50</sup> Sam Moore, [U.S. Farmers During the Great Depression](#), Farm Collector (Nov 2011).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> [Our History: The Early Years](#), Farm Credit, (last visited Apr 20, 2014).

<sup>54</sup> [Teddy Roosevelt's Country Life Commission](#), The Bill Lane Center for the American West, Stanford University (last visited Apr 20, 2014).

<sup>55</sup> *Id.*

<sup>56</sup> Scott J. Peters and Paul A. Morgan, The Country Life Commission: Reconsidering a Milestone in American Agricultural History, 78 *Agric. Hist.* 3, 23 (2004).

<sup>57</sup> *Id.*

<sup>58</sup> [Chronology](#), America's Farm Credit Archive (last visited Apr 20, 2014).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> [Legislative Timeline](#), America's Farm Credit Archive (last visited Apr 20, 2014).

<sup>62</sup> *Id.*

The causes of the Great Depression can be attributed to a host of economic and social factors.<sup>63</sup> However, one thing is certain, the effects of the Great Depression were universal and absolute, especially in rural America. Farmers received next to nothing for their crops, were plagued by foreclosures, and could not access cash to fund their operations.<sup>64</sup> Government actions to restart the flow of credit were extensive. First, in March 1933, President Franklin Roosevelt signed Executive Order 6084, which consolidated all of the federal agricultural credit agencies under one umbrella, the Farm Credit Administration (FCA).<sup>65</sup> Next, President Roosevelt signed the Emergency Farm Mortgage Act of 1933, which sought to save farmers who were delinquent on mortgage payments and provide a tool that the FCA could use to refinance farm mortgages.<sup>66</sup> Finally, on June 16, 1933, the Farm Credit Act was signed into law.<sup>67</sup> This Act created the system of Production Credit Associations (PCAs) that still exist today, it provided much needed financial assistance to the FICBs, and it spawned twelve banks for cooperatives.<sup>68</sup>

The FLBs, PCAs, and the FCA formed the basis for what would eventually become the FCS we know today. The next major revision of the FCS came in the 1980s, but there were two key modifications that took place before then.<sup>69</sup> First, the Farm Credit Act of 1953 detached the FCA from Department of Agriculture control, laying the groundwork for full ownership of the FCS by its farmer-borrowers.<sup>70</sup> Second, the Farm Credit Act of 1971 expanded the range of parties eligible to borrow from the FCS, it expanded lending limits, and it created new services that lending institutions could offer to their borrowers.<sup>71</sup>

The recession of the 1980s hit the FCS extremely hard.<sup>72</sup> Relief from the federal government came in two forms. An initial overhaul came in 1985 with the passage of yet another Farm Credit Act.<sup>73</sup> This version conferred some governing muscle upon the FCA by separating the FCA from the system as a whole and making them an arm-length regulator modeled after similar federal financial regulatory agencies.<sup>74</sup> The FCA then adopted an inspection scheme where each lending association would be inspected annually to ensure sound credit practices.<sup>75</sup> The second revamp was the Agricultural Credit Act of 1987.<sup>76</sup> The act provided \$4 billion in funds to troubled FCS lenders that were still reeling from the recession in the earlier part of the

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<sup>63</sup> Carroll, *supra* note 49.

<sup>64</sup> Moore, *supra* note 50. In fact, corn was so inexpensive that some farmers would use it as fire fuel.

<sup>65</sup> Julie A. Hill, *Bailouts and Credit Cycles: Fannie, Freddie, and the Farm Credit System*, 2010 Wis. L. Rev. 1, 16 (2010) (explaining the origins of the Great Depression era Farm Credit policies).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 17.

<sup>69</sup> Although not a modification to the System, it is worth noting that the FCS repaid its government bonds in 1968. *Id.* at 25.

<sup>70</sup> America's Farm Credit Archive, *supra* note 58.

<sup>71</sup> [Our History: Farm Credit Act of 1971](#), Farm Credit (last visited Apr 20, 2014). See also 12 U.S.C. § 2001 *et al.* for the statutory text that governs the modern FCS.

<sup>72</sup> In 1985, the FCS recorded a \$2.7 billion loss and held \$69.8 billion in outstanding loans. The \$2.7 billion loss is the largest by any financial institution in U.S. history. America's Farm Credit Archive, *supra* note 58.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* (observing that for the first time in its history, the FCA had oversight and enforcement powers).

<sup>75</sup> Hill, *supra* note 65, at 38.

<sup>76</sup> *Id.* at 42.

decade.<sup>77</sup> In addition to this bond purchase, the act strengthened the rights of borrowers, merged the FICBs and FLBs, and yielded the Farm Credit System Insurance Corporation.<sup>78</sup>

## **b. The Farm Credit System Today**

Two years from now, the FCS will celebrate its 100<sup>th</sup> anniversary.<sup>79</sup> On the eve of this centennial celebration, the FCS now boasts \$260 billion in assets, 500,000 member-borrowers, 13,000 employees, and coverage every American county.<sup>80</sup> In the early 1980s, 37 banks and over 1,000 local lending associations comprised the FCS.<sup>81</sup> Today, those figures have dwindled to 4 and 78, respectively.<sup>82</sup> In 2005, the FCS once again paid off its government loans and became entirely farmer-owned.<sup>83</sup>

As the FCS has grown through the years, so has its list of skeptics and enemies.<sup>84</sup> The FCS, as a result of being a government-sponsored enterprise, receives enormous benefits that private lenders and insurance companies do not.<sup>85</sup> For example, the FCS enjoys cheaper access to funds than their competitors.<sup>86</sup> Also, because of its access to cheaper funds, the System is able to provide farm mortgages and short-term loans at rates that other firms cannot match.<sup>87</sup> Finally, the income yielded by the System is also exempt from federal taxation.<sup>88</sup> Furthermore, some private organizations have expressed disdain over the government's clear willingness to bailout troubled FCS institutions as it has done in the past.<sup>89</sup>

Unlike other sectors of the U.S. financial economy that foundered in 2008, the FCS managed to navigate the sub-prime mortgage crisis without major blemishes.<sup>90</sup> Even though bankers have warned that the "farm bubble" might be the next bubble to burst,<sup>91</sup> it appears that the System is continuing to prosper, a sign that the FCS may have learned its lesson from the troubles in

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<sup>77</sup> *Id.*

<sup>78</sup> America's Farm Credit Archive, *supra* note 61. View more information about the [Farm Credit System Insurance Corporation](#).

<sup>79</sup> [Overview](#), Farm Credit (last visited Apr 20, 2014).

<sup>80</sup> *Id.*

<sup>81</sup> [Our History: Financial Stress in the 1980s](#), Farm Credit (last visited Apr 20, 2014).

<sup>82</sup> *Id.*

<sup>83</sup> America's Farm Credit Archives, *supra* note 48. Also, on March 21, 2014, the financial stability and investment risk of the FCS received high marks from Fitch Ratings. See Fitch Ratings, [Fitch Affirms Farm Credit System and Farm Credit System Banks Ratings; Outlook Stable](#), Reuters.com (Mar 21, 2014).

<sup>84</sup> Hill, *supra* note 65, at 26-27. See also American Banking Association, *supra* note 16.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 27. See, e.g., David A. Lins & Peter J. Barry, Agency Status for the Cooperative Farm Credit System, 66 Am. J. Agric. Econ. 601, 601 (1984) (noting that the "public perception of government backing" leads to lower borrowing costs); and [FAQs](#), Federal Farm Credit Banks Funding Corporation (last visited Apr 20, 2014) (outlining how the Farm Credit banks and associations receive their funds).

<sup>87</sup> American Bankers Association, *supra* note 13, at 2-6.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> See Ted Shelsby, [Farm Bank Thrives Amid Crisis](#), *Baltimore Sun* (Dec 21, 2008) (comparing the performance of MidAtlantic Farm Credit to the performance of other lenders during the crisis).

<sup>91</sup> See, e.g., Associated Press, [Amid Strong Farm Economy, Some Dire Signs](#), NBCNews.com (May 9, 2008); and Joshua Zumburn & Craig Torres, [Bankers Warn Fed of Farm, Student Loan Bubbles Echoing Subprime](#), Bloomberg.com (May 7, 2013).

previous decades. With the FCS on seemingly stable footing, could the time be ripe to turn our attention to another problem plaguing rural America? Could the FCS be the solution to the modern day legal services gap, the same way that it was the solution to the rural credit issue almost a century ago?

#### **IV. Farm Credit to the Rescue**

So, how is a national lending cooperative going to provide legal services to rural America? There are several questions that must be addressed to provide an answer to this query.

##### **a. What Would the End Product Look Like?**

Adoption of this proposal would allow for the creation of a new entity within each lending association of the FCS. The sole purpose of this new entity would be the delivery of legal services to rural Americans through the use of the existing FCS and association infrastructure. For those associations that chose to implement this program, the new entity would be a subsidiary of parent lending association.

The type of business entity that will be created and how that entity will be governed has yet to be decided. This determination will be difficult to make because of multiple issues. First, although the entities will be wholly separate, the success of the legal services organization depends heavily upon the utilization of FCS resources, a notion that is discussed further on the next page. Next, for liability and professional insurance purposes, it is essential that these entities remain separate. Third, although the legal services entity will be owned by and closely intertwined with the credit operation, the attorneys of legal entity should have operational control because it would be the equivalent of operating a law firm. Finally, the legal services entity must have a mechanism that will allow it to funnel revenue back into their parent associations.

In this proposal, it is crucial to maintain the distinction between attorneys who work as in-house counsel for the association and attorneys who will work in this new entity. Associations who have preexisting legal departments will be expected to retain the department and keep it separate from the new entity. The purpose here is that in-house counselors must continue to represent their client, the association and its agents. In the new entity, attorneys will be solely responsible for providing legal counsel to rural citizens in the field. There are ethical and practical considerations for this requirement that will be discussed later.

Each Farm Credit association will have to complete a legal needs assessment within its respective territory to determine whether it should implement the proposal. An unintended consequence of this proposal could be the departure of existing “Main Street” attorneys in small towns because of the competition with Farm Credit attorneys. This negative outcome is extremely undesired, which is why each association must determine if its territory’s legal needs are already being satisfied.

##### **b. How Can the FCS Help in This Endeavor?**

The American Bar Association, on its Rural Pro Bono Project webpage, posits that “rural clients also face greater challenges accessing legal services due to scarce resources, transportation problems, and a general lack of information about legal help.”<sup>92</sup> Due to these issues, the most vital element of this proposal is the use of the FCS infrastructure and resources.

The use of FCS branch offices is an integral part of this proposal. The branch offices would become meeting places for attorneys and their clients, which may reduce travel time and expenses for either party.<sup>93</sup> However, even if the attorney could not attend the meeting in person, the client could use videoconference equipment that has been installed in each branch office to meet with an off-site attorney. This brings up another key part of the proposal: the role of technology. Access to high-speed internet connection is not a nationwide luxury at this point, especially in rural America.<sup>94</sup> However, because high-speed internet access would be an integral part of a functional 21st century lending operation, both the attorney and the client could take advantage of this access in order to have remote meetings.

In addition to having access to FCS branch offices and technological capabilities, attorneys would receive a host of financial benefits. As solo practitioners or in small firm practice, attorneys would be strapped with costs such as transportation, legal research, promotion, technology, and office supplies. Under this proposal, the new entities would have direct access to these resources or receive funding from their parent associations to cover these costs initially and possibly long term. As a result, these expenses would be spread out over an entire company, as oppose to imposed upon a single or small group of practicing attorneys.

Other resources that FCS associations can funnel into these new entities include client relationship management software, market research and promotion capabilities, and, most importantly, the trust that comes with the Farm Credit name. Farm Credit associations and branch offices are held in high regard system-wide, and the trust that accompanies such high forms of revelry will be an invaluable asset for the attorneys seeking to work in these areas.

### **c. What Type of Legal Services Will be Provided, and How Much Will it Cost?**

In providing legal services to rural communities, FCS attorneys would be limited to resolving civil matters. Possible practice areas include estate, succession, and business planning,<sup>95</sup> property disputes, family disputes, contract issues, tort claims, alternative dispute resolution, administrative agency disputes, and bankruptcy. Criminal matters have been excluded because legal aid options are already available for these clients, they would likely be extremely burdensome on an attorney’s workload, and civil matter competence is in high demand.<sup>96</sup>

Regarding the assessment of fees, it is important to remember that the objective of this proposal is to provide a vehicle for the delivery of legal services to rural America. That being

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<sup>92</sup> [Rural Pro Bono Project](#), American Bar Association (last visited Apr 20, 2014).

<sup>93</sup> [Map of the FCS branch office locations](#).

<sup>94</sup> FCC, Connecting America: The National Broadband Plan (2010).

<sup>95</sup> Three current popular areas of practice in agricultural law. See [Farm Journal Legacy Project](#), AgWeb.com (last visited Apr 20, 2014).

<sup>96</sup> See Legal Services Corporation, *supra* note 35, for a summary of the legal needs of rural America.

said, the objective of this proposal is not to provide a way to inflate the wallets of Farm Credit lending associations or these new entities. In order to encourage rural citizens to take advantage of these services, the fees must be enticing. Ideally, Farm Credit attorneys would offer their services on all matters for a flat fee that would fluctuate based on the issue presented and the estimated time requirement. These billing practices would also align with the mission of the financial operations, which is to provide affordable credit to rural America.

#### **d. Who Will be Served?**

Three options exist for this issue. One route would allow the legal services entity to provide counsel to all rural citizens. This would maximize the delivery of civil legal assistance in these areas; however, it would create concerns about the workload of the attorneys, the ability to provide competent counsel to all clients, and the ability to collect payment in some instances. Another option is to limit the offerings to existing borrower-owners of the FCS. This would allow for a more manageable workload and it would encourage Farm Credit ownership, but it would exclude large swaths of the rural population who still require legal counsel. The final choice is to provide services to existing borrower-owners of the FCS, and to allow potential clients who are not borrower-owners to join the system for the regular membership fee without having to borrow from the association. This would provide a screening tool for clients who might have payment troubles, and it would provide additional revenue for the Farm Credit association.

Due to the affordable nature of the legal services provided, non-farm and non-rural clients may seek to take advantage of what the new system has to offer. The same issue plagues the financial operations, which regularly must determine whether an applicant qualifies for a Farm Credit loan based on a connection to an agricultural activity or rural status. Similarly, the legal operation should require that a potential client have some ties to an agricultural activity or rural area in order to qualify for legal representation.

#### **e. Will the Differences of Each Association Impact the Program?**

The employment and utilization of attorneys is bound to differ from association-to-association. Each Farm Credit association varies by loan volume managed, territory covered, and current use of legal staff. For example, Farm Credit Mid-America (FCMA) covers the states of Ohio, Indiana, Kentucky, and Tennessee and manages a loan volume of \$19 billion.<sup>97</sup> Also, FCMA currently retains in-house legal counsel to assist in daily operations. Comparatively, Ag Credit services a territory of 18 counties in Ohio, has a loan volume of approximately \$1.4 billion, and has not hired in-house counsel.<sup>98</sup>

If this proposal were adopted, the methods of implementation for these two distinct associations would contrast. FCMA, with a four-state territory to consider, might hire two or three attorneys per state in order to handle the client demand. On the other hand, Ag Credit might hire one or two attorneys to service its entire territory. Both methods of implementation accomplish the same objective, yet their methods are distinct.

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<sup>97</sup> [About Farm Credit](#), Farm Credit Mid-America (last visited Apr 20, 2014).

<sup>98</sup> Ag Credit, [Annual Report](#), Ag Credit 2, 3 (2013).

Once again, it is important to remember that the attorneys servicing rural citizens will work for an entirely different entity. Therefore, small associations could not hire legal counsel that can serve as counsel to the association and as the attorney for rural clients.

#### **f. Why Would Attorneys Want to do This?**

For attorneys, this proposal is virtually a win on all counts. Attorneys could live in desirable urban areas, service their rural clients, and not have to worry about excessive transportation expenses due to the use of an association fleet vehicle. As outlined above, many of the expenses that attorneys must cover on their dollar in private practice, are now being absorbed by and distributed throughout a lending institution. Also, attorneys would have access to the retirement and benefit packages that are afforded to other Farm Credit employees. Under this proposal, attorneys would be paid on a salary basis. This would provide more income stability versus a billable hours system, however it might lead to attorney satisfaction issues if some believe they are not receiving adequate compensation proportional to their volume of work. Most importantly, in a dire job climate, this proposal creates jobs for attorneys nationwide.

However, despite all of the fresh ideas presented above, no proposal is without its flaws and obstacles.

### **V. Likely Challenges Down the Road**

A system-wide modification of this size and magnitude will be full of obstacles and hiccups. At the onset, there are several major challenges to consider.

#### **a. Congress, Could You Please Pass This Law?**

Regardless of whether this proposal is pitched as an alteration to the existing FCS, or if it is pitched as an entirely new program, Congressional action will likely be required. In addition to being the most unpopular Congress in history, the 113th Congress has also cemented its title of being the least productive Congress in history.<sup>99</sup> Given the historically poor performance of this Congress, how do you rally enough bipartisan support to this proposal?

There are several positive aspects of this bill that may make it more appealing to legislators. First, the proposal creates jobs in the legal field at little or no direct expense to the American taxpayer. Second, when conducting a simple cost-benefit analysis, it becomes clear that the benefits of this proposal far outweigh the costs. This proposal strives to solve a serious problem in rural America and, at worst, may require miniscule appropriations from Congress. Finally, the bill would provide a tangible benefit to constituents that they take advantage of themselves. For these reasons, representatives who come from largely rural districts may be inclined to participate in the passage of this proposal in order to develop positive political capital.

#### **b. Gaining Association Buy-In**

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<sup>99</sup> Rebecca Kaplan, [Unpopular Congress was also Very Unproductive in 2013](#), CBSNews.com (Dec 24, 2013) (citing Congress' low approval ratings and its abysmal record of passing legislation).

The previous section featured a discussion of how this proposal would impact large associations and small associations. Providing funds to the legal entity to hire attorneys, purchase company cars, purchase computers, and pay for other needs is an expensive upfront investment. These costs will fall harder upon smaller associations, assuming that these associations adopt the program in the first place. Also, if the associations do not embrace the program at the onset, some regulatory influence may be required in order to foster adoption.

Over time, the legal entity in some associations may become self-sustaining or may actually funnel money back into the association itself. The long-term financial solvency of a legal entity will be important to the survival of the entire program. If the entity is continuously insolvent, then the lending associations will have to continue to float the entity. This would cut into the dividends paid to borrower-owners, or cut into the reduced cost of borrowing that some associations offer their customers. Either result could cause support from the boards of directors for these associations to erode.

### **c. Ethical Issues**

Among the most complicated challenges posed by this proposal are the ethical issues that attorneys may confront in the field. First, it is important to remember that the attorneys working in the legal entities will only be representing rural citizens, and will not be counseling the associations or their agents. That being said, because counselors will be working so closely with the lending associations while representing their clients, the attorneys should be viewed as owing a fiduciary duty to both parties. This fiduciary duty may apply to both parties when it comes to confidential information.<sup>100</sup> For example, an attorney should be barred from sharing confidential information about the association with the client, lest the client use the information in a business decision involving the association. Similarly, an attorney should also be barred from relaying confidential information about the client to the associations, lest the association use the information as part of a loan eligibility determination regarding the client.

Another tricky ethical area involves conflicts of interest.<sup>101</sup> In the event that a current client becomes involved in litigation against a lending association, the attorney would likely have to withdraw representation due to ethical concerns.<sup>102</sup> Also, in the event that two clients, such as a husband and wife, become entangled in a legal dispute, the attorney would likely be unable to represent either client due to ethical constraints.<sup>103</sup>

These examples represent a small sampling of the ethical issues that could arise under this system. In order for the Farm Credit attorneys to stay on sound ethical footing, ethics training upon hiring and consistent ethics monitoring may be required. Furthermore, in an effort to protect an attorney's clients, well crafted, conspicuous disclosure statements may be required when the attorney-client relationship is consummated.

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<sup>100</sup> For more information about the rules governing attorney confidentiality, see Model Rules of Prof'l Conduct R. 1.6 (2013). See also Model Rules of Prof'l Conduct R. 1.8(b) (2013).

<sup>101</sup> For additional guidance regarding conflicts of interest, see Model Rules of Prof'l Conduct R. 1.7 (2013).

<sup>102</sup> Of particular concern is rule 1.7, comment 9, which governs the lawyer's duty to third party fiduciaries. Model Rules of Prof'l Conduct R. 1.7 cmt. 9 (2013).

<sup>103</sup> Model Rules of Prof'l Conduct R. 1.7 (2013).

#### **d. Collecting Payment**

Depending on the range of clients being serviced by these firms, the collection of fees may present an issue. For example, if a client were already a borrower-owner of the association, should he/she be able to tack his/her legal fees on top of existing debt? If a client elects this payment option, should the association be able to acquire additional collateral due to the increase in loan amount? Also, if a client defaults on his/her legal debt, will those obligations be pursued the same way as a financial obligation? How will the new entity handle retainers? Will the entity accept contingency fees? These are all issues that could be pre-decided for the associations, or they could be settled on an association-by-association basis. This issue may prove difficult to resolve because the entities must balance the goals of the program with the need to remain financially sound.

#### **e. The Role of the Farm Credit Administration**

Assuming that a distinct regulatory agency is not created to monitor the activity of the newly created legal services entities, Congress may have to tinker with the FCA to give it regulatory power over these entities. One idea would involve the creation of a new office within the FCA that would regulate the legal entities and their activities.<sup>104</sup> This new office would be modeled after the FCA Office of Inspector General, who is under the supervision of the FCA Board, but has independent personnel, contracting authority, and budgeting.<sup>105</sup> Much like the issue at the association level, a difficult decision will have to be made regarding how the FCA will govern these new entities, and whether the entities will have a voice in the governance of the FCA and the system as a whole.

These five issues have been identified as major obstacles to this proposal. However, other challenges, such as inter-association counseling, interstate counseling for convenience purposes, tax issues, and liability concerns, must also be addressed in time.

### **VI. Conclusions**

Does the retirement of rural attorneys like Fredric Cozad signal that the rural legal services gap is only going to get worse? Or will it signal an opportunity for federal, state, and local authorities to aid towns like Martin, SD in their time of need? It seems that the latter scenario is already taking place. South Dakota Supreme Court Chief Justice David Gilbertson has previously analogized that “[a] hospital will not last long with no doctors, and a courthouse and judicial system with no lawyers faces the same grim future.”<sup>106</sup> Fearing this outcome, states like South Dakota and Nebraska have taken steps to rectify this issue,<sup>107</sup> but many other states are still in need of effective, long-term solutions. Through the implementation of the proposal outlined

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<sup>104</sup> According to the FCA, it already regulates and examines FCS-related entities. See [FCA in Brief](#), Farm Credit Administration (last visited Apr. 21, 2014).

<sup>105</sup> [Office of Inspector General](#), Farm Credit Administration (last visited Apr. 21, 2014). The purpose and goals of the Office of Inspector would fit nicely into a similar office for the regulation of legal entities.

<sup>106</sup> Bronner, *supra* note 4.

<sup>107</sup> See, e.g., Sloan, *supra* note 37; and Weiss, *supra* note 48.

above, the Farm Credit System could provide the answers that these states so desperately seek. Being just in proposal form, this idea must now be communicated to stakeholders who can provide feedback and eventually help move the proposal forward.