FARM CREDIT BANK OF TEXAS

July 15, 2021

Mr. Kevin J. Kramp
Director, Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Re: Proposed Rule – 12 CFR Part 614 – RIN 3052-AC94; *Collateral Evaluation Requirements*; 86 Federal Register 27308-27323

Dear Mr. Kramp:

The Farm Credit Bank of Texas appreciates the opportunity to comment on the Farm Credit Administration's (FCA) Proposed Rule regarding Collateral Evaluation Requirements that was published on May 20, 2021 (the "Proposed Rule").

We fully support the comments made by the Farm Credit Council (FCC) on behalf of the System in response to the Proposed Rule. While we agree with many of the goals and objectives stated by the FCA for the Proposed Rule, for the reasons more fully explained in the FCC's comment letter, we do not believe that the Proposed Rule as currently presented satisfies these goals and objectives and that the Proposed Rule presents a number of compliance issues for Farm Credit System institutions ("System") and their appraisers and chattel evaluators, imposes costs and burdens on System customers and borrowers, and causes unnecessary confusion and inconsistency within FCA regulations and related authorities.

Although Farm Credit Bank of Texas fully supports all comments made by the FCC in its letter, we wish to emphasize the following concerns with the Proposed Rule which are of elevated concern to Farm Credit Bank of Texas:

1. <u>Proposed 12 CFR §614.4240 Definitions.</u>

a. The Proposed Rule causes confusion by creating a new category of personal property not defined in the Uniform Commercial Code (UCC).

The Proposed Rule creates a new category of collateral, "*Business Chattel*" not found defined in the UCC. The Proposed Rule defines "*Business Chattel*" as "livestock" (*e.g.* any creature not in the wild which is regarded as an asset such as those to produce food, wool, skins, fur or similar purposes) and crops (growing, harvested, or

in storage) kept for production or use in the farming of land or the carrying on of any agricultural activity. The term also encompasses equipment used in business operations, including agricultural equipment." Proposed Rule 12 CFR § 614.4240.

The creation of this new category causes confusion. For example, the definition is specific to "carrying on of any agricultural activity, such as production or use in the farming of land." However, such a definition does not recognize that some loans (*e.g.*, agribusiness loans) include other forms of chattel business assets within processing and marketing and other agribusiness operations. It is difficult to discern whether these would be considered business chattel assets or personal property. This confusion is further compounded by the Proposed Rule's definition of "personal property," which excludes "real property and its fixtures or business chattel." Proposed Rule 12 CFR § 614.4240. Under existing law, the term "personal property" refers to "any asset other than real estate," whether such assets secure business or non-business loans, which is consistent with Article 9 and other applicable laws. *See, e.g.,* UCC §§ 9-102 & 9-109.

2. <u>Proposed 12 CFR §614.4245</u>

a. The Proposed Rule requiring all collateral to be valued is not conducive to blanket liens.

The Proposed Rule in 12 CFR §614.4245(a) requires a System institution to appraise or value all collateral, including collateral taken under a blanket lien, to secure a loan. Valuing each piece of collateral creates several challenges, especially when, blanket liens include assets that change and evolve over time or do not exist at the time a blanket lien is pledged or taken. In these instances, it is impossible to value each piece of collateral when a loan is originated. Additionally, to the extent a lender can identify each piece of collateral under a blanket lien, to value each piece of collateral would be overly burdensome, inefficient, and unreasonably expensive and would impede Farm Credit's mission to provide affordable credit in rural America.

The Proposed Rule also fails to take into consideration *de minimis* values, which are important when valuing collateral under blanket liens. A System institution will exclude property of *de minimis* value if that property requires incremental effort to create a security interest. In other words, a System institution will be deterred from taking a lien on a piece of property where the time and cost to appraise, evaluate and secure the lien outweighs the value of that property. A blanket lien provides a cost-efficient means to a System institution to take property as collateral that would otherwise be of *de minimis* value while ensuring collateralization of a loan is maximized. If all collateral taken under a blanket lien is required to be valued, then

the cost saving, security and convenience associated with blanket liens over property of *de minimis* value would be lost.

For these reasons, any proposed rule requiring a System institution to assign a value to each piece of collateral under a blanket lien is not conducive to taking blanket liens and would impede the safety and soundness of System lending.

b. Requiring written permission to use an appraisal report addressed to a bank is burdensome and not cost effective for borrowers, which in turn impedes a System institution's competitiveness with other banks.

The Proposed Rule in 12 CFR § 614.4245(d) provides that: "An appraisal ordered by another financial institution on assets of a loan applicant may be transferred to a System lender when (among other things): "…. (2) The other financial institution and the applicant agree in writing to transfer the report; …".

The obligation to obtain an agreement to transfer an appraisal goes beyond the requirements of any other Federal Financial Institution Regulatory Agency, putting the System institution at a distinct competitive disadvantage. For many reasons, including business and legal reasons, the likelihood that another lending or financial institution (*e.g.*, commercial or community bank) would agree in writing to transfer an appraisal report is very remote and would run afoul of Uniform Standards of Professional Appraisal Practice (USPAP). The consequence of this requirement will be increased costs to the borrower for an additional appraisal and extending the time within which a loan may be closed.

c. The Proposed Rule places an impossible burden on an appraiser to write a report that satisfies any reader.

The Proposed Rule also ventures beyond USPAP's requirements and imposes an obligation that the report satisfy any "reader" of the report, including any future, unknown reader. This simply places an impossible burden on an appraiser without any commensurate benefit. There is no way for an appraiser to ascertain the knowledge and sophistication of any "reader" beyond the System institution, as the intended user. Exceeding the requirements of USPAP in this regard could limit the pool of available qualified and reputable appraisers who can provide a report to satisfy this requirement (let alone be willing to do so) which in turn is likely to result in additional costs to borrowers and impede a System institution's competitive advantage.

d. The requirement to release valuation documentation within seven days is too burdensome.

The Proposed Rule in 12 CFR § 614.4245(e) provides guidance on releasing appraisals or evaluations to applicants and borrowers. Notwithstanding, this provision is unnecessary and conflicts with the guidance contained in 12 CFR § 618.8325(b), which sufficiently (and consistently) addresses the circumstances under which collateral evaluations must be provided to the borrower, the provision imposes a turnaround time on releasing valuation documentation within seven (7) days. This requirement places an increased burden on System institution processes and conflicts with other regulations that provide for the qualified lender to provide the requested evaluation "as soon as practicable" (under 12 CFR § 618.8325(b)), which can vary depending upon the facts and circumstances associated with the request, or "promptly upon completion [or within three business days prior to consummation or the transaction], whichever is earlier" (under 12 CFR § 1002.14(a)). *See* 12 CFR § 618.8325(b); 12 CFR § 1002.14(a). The burden of this requirement exceeds any benefit to be gained.

e. Requiring collateral to be appraised when released does not make sense.

The Proposed Rule in 12 CFR § 614.4245(a) provides that (among other things) System lenders must obtain appraisals or evaluations of all collateral used to secure an extension of credit at the time a lien is obtained and when the System lender expects to liquidate its lienhold interest.

There is a cost associated with each appraisal or evaluation. As the nature of certain types of collateral evolve or as they are added, modified, substituted, replaced, or sold, a cost would be imposed on the System institution and/or the customer, which adds to the overall cost of lending and creates a disincentive to utilizing Farm Credit. This is especially true if a System institution were required to obtain an appraisal or valuation when it releases a lien, which is often when the account is paid down, if not paid in full. Safety and soundness are not furthered in such instances, at least not in proportion to the burdens and costs imposed.

f. Use of prior appraisals for a credit decision should not require a current market value if the value has not deteriorated since the prior appraisal and remains sufficient to meet LTV/LGD requirements.

The Proposed Rule in 12 CFR § 614.4245(c) provides that: "It is the responsibility of the System lender to monitor market conditions and trends, loan risk, and collateral conditions to appropriately determine the frequency for performing new or updated

collateral appraisals or evaluations in keeping with regulatory requirements. When making credit decisions or approving new or additional funds, the System lender may use existing collateral appraisals or evaluations reports only if the appraisals or evaluations reflect current market conditions at the time of use." Proposed Rule 12 CFR § 614.4245(c).

The Proposed Rule appears to recognize, in some respects, that the System institution should have procedures for determining when and whether appraisals and evaluations may be required to be made with regard to certain credits; however, the balance of this provision of the Proposed Rule limits such discretion or the ability to rely on existing appraisals or evaluations by adding in the "only if" requirement at the end.

In many (if not most) instances, it may only be important to determine that the current value is no less than when the transaction was originated. Given the acceptable credit risk at the time of origination, it may be unusual for agricultural property values in certain market conditions to significantly deteriorate ahead of loan paydowns, depending upon the terms and conditions of the loan. And, with many agribusiness and more complex loans, the terms and conditions of the loan are adjusted to reflect the risk in the loan, including any special use collateral (where loan-to-value requirements or debt coverage ratios may be imposed), collateral subject to fluctuations in price, number, or type (where margin requirements might be required), pricing or payment terms that may adjust (*e.g.*, variable rates, payment frequency, annual renewals, balloon feature), and events of default classifications. In short, the existing regulations allow for System institutions to determine the frequency of appraisals or collateral evaluations in many respects, and System institutions may account for risk through any number of appropriate ways, including loan terms and conditions and the ability to inspect, appraise, or value the collateral when needed or otherwise appropriate, with appropriate guidance supporting the same based on the type of collateral, the amount at issue, and USPAP-compliance, among other things.

We appreciate the FCA's review of the existing collateral evaluation regulations for opportunities to improve the organization and readability of the regulations, as well as to expand authorities on using various sources of appraisers and evaluators and automated valuation tools, however for the reasons set forth in the FCC comment letter, and as outlined herein, we do not support the Proposed Rule as currently presented.

Accordingly, we respectfully request that the FCA withdraw the Proposed Rule, or alternatively, we request an opportunity for System representatives and industry experts to meet with FCA to explore possible improvements that could be made to existing guidance to

accomplish the stated objectives of the Proposed Rule and/or to further safety and soundness with regard to appraisals and collateral evaluations in another way.

Thank you again for the opportunity to comment on the Proposed Rule, and we hope that our comments herein, as well as those submitted by the FCC and other System institutions, will assist the FCA in reevaluating the Proposed Rule.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Nanci Tucker
SVP Corporate Affairs & General Counsel