AgCREDIT

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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:

Ag Credit, ACA – one of northern Ohio's largest lenders serving the needs of farmers, rural homeowners and agribusiness in an 18-county chartered territory with over 7,000 member-borrowers and a loan volume exceeding $2 billion -- appreciates the opportunity to comment on the Farm Credit Administration's ("FCA") Proposed Rule regarding Collateral Evaluation Requirements that was published in the May 20, 2021 *Federal Register* (the "Proposed Rule").

Ag Credit worked with internal team members to review the Proposed Rule and further worked with the Farm Credit Council, (the "Council") to review and assess the Proposed Rule. As part of that process the Council held virtual meetings with over 100 participants from Farm Credit System institutions, ("System institutions"). The Council further created a workgroup of System institutions to undertake a thorough review of the Proposed Rule and assess the impact of the Proposed Rule on System institutions.

Upon reviewing the Proposed Rule, Ag Credit hereby requests that the Proposed Rule be withdrawn. Ag Credit encourages FCA to engage the Council and System institutions in follow-up discussions to develop a better understanding of current collateral evaluation processes. We believe that such a collaborative approach would lead to the development of a proposed new rule that better reflects current processes and recognizes modern tools and the enhanced benefits they bring to the lending process System institutions utilize to provide service to their customers.

The Proposed Rule presents a number of challenges. These challenges not only fail to satisfy the goals and objectives identified by FCA but also present compliance issues for System institutions and their appraisers and chattel evaluators, impose costs and burdens on System customers and borrowers, and invite unnecessary confusion and inconsistency within FCA regulations and with related authorities.

Ag Credit, together with most other System institutions, worked with the Council during the last couple of months to develop a detailed comment letter from the Council, such comment letter representing the collective voice of System institutions. Ag Credit wholeheartedly supports and endorses the extensive comments of the Council and the comments of AgFirst Farm Credit Bank regarding the Proposed Rule. It is our sincere wish that you positively consider our input as well as the input from the Council and AgFirst, which include recommendations to withdraw the Proposed Rule.

Following the approach taken by the Farm Credit Council, Ag Credit will provide additional background to certain of the Specific Comments provided by the Council.

SPECIFIC COMMENTS

a. Required Appraisals or Evaluations 12 CFR § 614.4245

The Proposed Rule in 12 CFR § 614.4245(a) provides that: "System lenders must obtain appraisals or evaluations of all collateral used to secure an extension of credit (including leasing activities) or the purchased interest in credit extended by another lender. System lenders must maintain appraisals or evaluations reflecting current market conditions. At a minimum, every item of collateral must be appraised or evaluated both at the time a lien is obtained and when the System lender expects to liquidate its lienhold interest." Proposed Rule 12 CFR § 614.4245.

In our association collateral can be taken on a loan specific basis, however, under Ohio law the use of future advance and spreader clauses is standard practice and provides, as noted by the Council, not only potentially additional collateral, but also controls over the borrower and collateral. Our mortgages and security agreements, except for limited circumstances such as purchase money security interests contain the spreader clauses. Under the proposed rule we would need to either avoid the use of such clauses, potentially removing a valuable safety net or requiring considerable unnecessary resources to meet a regulatory requirement that is not imposed upon any of our competitors.

As noted by the Council, requiring all collateral taken as security to be valued does not take into consideration any *de minimis* values, which assets would need to be valued when valuing all items of personal property under a blanket lien relationship. If all collateral is required to be valued as contemplated under the Proposed Rule, then the accuracy, cost, and convenience associated with such appraisals or evaluations and the appraisal process would be sacrificed. Such costs and inconveniences would not be offset by improved accuracy or reduction in risk; but, instead, would be made at the expense of the System institution and the customer (*e.g.*, the time it would take to value such collateral and complete the required report(s) and the burden it would impose on the customer).

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.

In our association we have specific requirements with regard to the probability of default and loss given default that address collateral risk in the association. Requiring an evaluation in every instance would unnecessarily drive up the cost of borrowing with little benefit to our association or borrower.

Ag Credit has an in-house staff of licensed real estate appraisers. As part of our risk management our appraisal team completes a detailed analysis of real estate sales and trends on an annual basis, including in such information detailed information on current real estate transactions and trends. This information is tracked by our association through our risk management committee. Our belief is that these types of activities are far more beneficial in meeting the goals of our association than the blanket evaluation requirements and burdens that would be imposed by the Proposed Rule.

This provision represents an incredible and unnecessary cost and burden on the System without any precedent cited for same.

b. Content and Releasing Appraisals or Evaluations to Applicants and Borrowers.

The Proposed Rule in 12 CFR § 614.4245(e) provides guidance on releasing appraisals or evaluations to applicants and borrowers. The Proposed Rule in 12 CFR § 614.4245(b) further requires content beyond what would be required for a USPAP compliant appraisal. These provisions when taken in conjunction with the Proposed Rule at 12 CFR § 614.4245(a), the provision requiring that a System institution prepare an evaluation on all collateral, collectively create an incredible burden on System institutions.

As noted by the Council, revised section 12 CFR 4245(e) 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.

First, as noted above, our association employs highly trained licensed appraisers and the appraisals created by our team members are USPAP compliant. In the ordinary course of business and subject to criteria developed by our association, in certain circumstances, we use a document we refer to as a Restricted Report. The use of the Restricted Report allows our association to improve efficiency which results in faster turnaround times and lower costs. Under the provisions of the Proposed Rule we would no longer be able to utilize this USPAP compliant tool and we would be at a competitive disadvantage with no discernable benefit to the borrower or our association.

Again, as noted by the Council, the proposed turnaround time on releasing valuation documentation (*i.e.*, seven days) also 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)). The time necessary to provide an appraisal to the borrower within the arbitrary deadline of seven days again imposes additional burdens and risks on System institutions while not providing any tangible benefit to the borrower or our association.

In the commentary to 12 CFR 4245 (b) FCA has indicated that the appraisal should be presented in a manner that "is easily understood" by the borrower. The Proposed Rule provides

language that suggests the report must contain "(ii) Information that will enable the reader to ascertain the reasonableness of the estimated market value". While at a high level such standards would appear reasonable, the adage of "beauty is in the eye of the beholder" comes to mind. Our membership is diverse and each member brings a separate and unique skill set with them to our association. Information that may be meaningful to one borrower may not be meaningful to another borrower. As well, USPAP sets the standards for uniform and meaningful information and data to be provided in an appraisal. Setting a new subjective standard, applicable only to System institutions, places System institutions at a distinct disadvantage to our competitors.

The inconsistencies and burdens created by these proposed provisions exceed any incremental benefit that might be gained. Further, as mentioned above, these requirements when considered with the requirement to prepare an evaluation on all collateral results in a cumulative affect that unnecessarily burdens System institutions.

c. Proposed 12 CFR § 614.4270 Appraisal and Evaluation Tools.

The Proposed Rule in 12 CFR § 614.4270 relates to appraisal and evaluation tools. Consistent with the commentary provided by FCA and the comments of the Council regarding AVM's, Ag Credit recognizes that we will need to develop "controls addressing the accuracy and integrity of the inspections" when "considering how and in what manner to conduct property inspections." The development of these controls is part of our review and assessment of any proposed AVM.

Ag Credit recently signed an agreement with a provider of an AVM to assist us with our personal property valuations. We have devoted significant resources for the review, development and implementation of this AVM. We believe that the end product will be a very robust and cost effective solution that will allow us to better manage our collateral and risk in an effective yet cost efficient manner. However, we believe that the Proposed Rule may prohibit or limit our use of this AVM and that the Proposed Rule is too broad in its prohibitions and goes well beyond that which is necessary to provide safe and sound guidance.

The Proposed Rule commentary for AVM's to be used only as an assist tool fails to recognize the rigorous model testing, validation, and documentation requirements which are mandated in the regulatory framework and directly contradicts certain aspects of 12 CFR § 614.4270. Placing an expectation that an AVM may only be used as an appraiser or evaluator assist tool limits the benefits that our association would receive from the use of the AVM. Such limitation further seems to be a blanket determination that an AVM is not reliable despite any amount of testing and development. Without the ability to effectively utilize AVM's, cost increases could be significant and well in excess of the potential benefit of physically verifying assets, especially in smaller-sized or lower-risk transactions. Additionally, the lending process will be slower, non-competitive, and financially burdensome to the borrower and our association. The use of AVM's, under the direction of a qualified appraiser or evaluator, will provide a reliable value conclusion in a format and level of detail consistent with the property type and, when appropriate, would be USPAP compliant.

In addition, the Proposed Rule has the potential to stifle young, beginning, and small farmer and rancher lending activity at a time when System institutions are looking for ways to expand lending in this area in a cost-effective manner that is founded on a risk-based approach. This can be better accomplished in many respects through the use of tools and technologies in accordance with good practices and clear guidance, which are subject to examination for safety and soundness.

Finally, the proposed definition of AVM introduces a lack of clarity on whether an appraiser or evaluator may rely upon an AVM as the basis for an appraisal or evaluation if the appraiser or evaluator believes the output to be credible for use as allowed by USPAP (*e.g.*, Advisory Opinion 37 of USPAP). The Proposed Rule also does not utilize the term or concept of an AVM consistently or appropriately in all respects. The concept of an AVM should be reflective of what it is, define it appropriately, and distinguish the role of an appraiser and evaluator, on the one hand, and the use of an AVM, as a tool, on the other. The term AVM should be re-defined and/or the commentary in this regard should be removed.

In short, the limits set forth in the Proposed Rule on who can use an AVM or how it can be used are not reflective of what an AVM is and are not consistent with other published guidance.

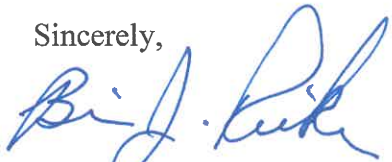
CONCLUSION

Ag Credit urges FCA to consider the aggregate impact of the Proposed Rule on System institutions. The Proposed Rule will burden System institutions with requirements which are unnecessary, do not meet the stated goals of the regulations and do not exist for our competitors in the marketplace. System institutions and our members will be burdened with these regulations and the attendant costs.

We appreciate the opportunity to comment on the Proposed Rule and to present our concerns to FCA for its consideration. For the reasons stated herein, within the Council's comments and within the AgFirst comments, we are respectfully requesting that FCA withdraw the Proposed Rule. This includes a request for Farm Credit System representatives and industry experts to meet with FCA to see if improvements can 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.

Sincerely,



Brian J. Ricker
CEO/President