

July 19, 2021

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

RE: Proposed Rule – Collateral Evaluation Requirements – RIN 3052-AC94/ Federal Register
Vol. 86, No. 96 (May 20, 2021)

Dear Mr. Kramp,

CoBank, ACB (CoBank) appreciates the opportunity to comment on the Farm Credit Administration's (FCA) Proposed Rulemaking published in the May 20, 2021 Federal Register (Proposed Rule) addressing Collateral Evaluation Requirements. We coordinated with a Farm Credit System (System) workgroup assembled by the Farm Credit Council (FCC) to evaluate the Proposed Rule and have discussed the FCC's comment letter with our affiliated associations who did not express any concerns with the comments being shared on behalf of the System. However, some associations may separately submit a comment letter on the Proposed Rule.

CoBank endorses the conclusions addressed in the FCC's comment letter. The Proposed Rule is overly prescriptive and includes provisions which would lead to increased risk in lending practices and/or significantly greater operating expenses and inefficiencies. These factors would put the System at a competitive disadvantage with other lenders and impact our ability to fully serve our mission. The extra costs and risk would have to be passed on to our borrowers through higher interest rates or lower patronage. Young, Beginning, and Small farmers and ranchers would be disproportionately impacted as they have the smallest amount of borrowings for absorbing these higher fixed costs. As a result, we join with the FCC in asking for FCA to significantly rework the Proposed Rule and resubmit it for comment, or rescind the Proposed Rule and work with the System in addressing needed updates to the rules.

Contrary to achieving the stated objectives of the Proposed Rule, the amendments proposed are a significant step backward rather than modernizing the appraisal rules and creating a level playing field with the System's competitors. As proposed, the additional requirements would make the System less competitive by placing unnecessary and undue regulatory burdens on System institutions that are not required by the other Federal regulators for their regulated institutions.

The Proposed Rule imposes requirements which should be better considered in the credit decision. Specifically, the Proposed Regulation, Section 614.4245 requires institutions to complete a formal appraisal or evaluation on all collateral used to secure an extension of credit. This requirement would not be workable in loans where blanket liens are taken. It would be unreasonable and cost prohibitive to establish a value on all assets of a borrower. For collateral with *de minimis* value, it would be cost prohibitive to complete collateral evaluations. Accordingly, the decision on collateral taken to support a loan extension is a credit decision and should be determined by the institution depending on many factors including its size, capital level, risk appetite, portfolio composition and economic conditions. Also, when collateral is taken in an abundance of caution the institution may want to use the book or reported value of the collateral as a conservative estimate of collateral coverage, knowing the actual value may be significantly higher. The value of completing a collateral evaluation in those cases would be minimal in relation to the cost.

The Proposed Rule also does not recognize the competitive factors faced by Farm Credit Institutions by non-Farm Credit lenders and that some debts are FSA/USDA-guaranteed, which carry their own collateral evaluation requirements. The Proposed Rule is more stringent or exceeds the requirements under which other lenders or persons must operate, which places Farm Credit Associations in a difficult competitive position. The Proposed rule is also inconsistent with Article 9 (UCC §§ 9-102 & 9-109) and state law concerning asset classification and the definition of personal property. Such inconsistencies create compliance issues and confusion for regulated financial institutions.

The following sections provide a section by section summary of concerns with the Proposed Rule:

§ 614.4245 General (a) *Required appraisals and evaluations. 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.*

The Proposed Rule requires System lenders to obtain appraisals or evaluations on all collateral used to secure an extension of credit. This standard creates unnecessary burden and ultimately will create additional expenses for borrowers or increased credit risk. Collateral is routinely taken as a credit control where the value of the collateral is not a determining factor. Specifically, the System often takes blanket liens as a sound credit practice, but if appraisals/evaluations are required then that credit practice would become excessively expensive. In all likelihood, this credit control would have to be eliminated, thus potentially increasing credit risk. In addition, collateral taken out of an abundance of caution is by definition not being taken to rely on the value of the property, but to establish a sound credit control. For example, that property could not be pledged as collateral on another loan without notifying the System institution.

As proposed, an appraisal or evaluation is required when the System institution removes a lien, which serves no purpose in accordance with safety and soundness. When the lien is removed, the account is typically paid in full.

For those reasons we believe the decision on whether to complete an appraisal or evaluation should be a part of the overall credit decision and left to the System institution to manage, unless the appraisal is required by statute. The prescriptive requirements in this section do not add value to the credit decision and would likely increase credit risk as the use of blanket liens would be discontinued. We are not aware of any undue risks being taken by a System institution when the current flexibility is allowed.

§ 614.4245(d) Using appraisals of another lender *An appraisal ordered by another financial institution on assets of a loan applicant may be transferred to a System lender when: (1) The System lender will complete the credit transaction instead of the other financial institution; (2) The other financial institution and the applicant agree in writing to transfer the report; (3) The other financial institution is either subject to Title XI of FIRREA or a System lender; and (4) The System lender receiving and using the appraisal assumes full responsibility for the integrity, accuracy and thoroughness of the appraisal, including the methods used by the other financial institution to establish collateral values.*

The obligation to obtain an agreement to transfer an appraisal performed by another lender goes beyond the requirements of any other Federal financial regulator, putting System institutions at a distinct competitive disadvantage. If the other lender is another System institution then the steps required seem excessive and burdensome. If the other lender is not a System institution, then the requirements of its regulator will dictate their actions and requirements. The rules for sharing appraisals should be consistent with the other Federal financial regulators' requirements.

614.4240 Definitions *Automated Valuation Model or AVM means a computer program that estimates a property's market value based on market, economic, and demographic factors using a quantitative method, system, or approach applying statistical, economic, financial, or mathematical theories, techniques, and assumptions. Hedonic models generally use property characteristics (such as square footage and room count) and methodologies to process information, often based on statistical regression. Index models generally use geographic repeat sales data over time rather than property characteristic data. Blended or hybrid models use elements of both hedonic and index models.*

The proposed definition of Automated Valuation Model or AVM is outdated and lacks necessary specificity. This definition does not recognize the difference between appraiser/evaluator-assisted valuation tools (like Maven) and true AVM's that lack significant user interaction and transparency. AVMs may use regression, adaptive estimation, neural network, expert reasoning, and artificial intelligence programs. However, the Proposed Rule does not utilize the term of 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 the use of an AVM. The limits 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.

614.4265 Valuing real property *(1) Non-business loan transactions. An evaluation of real estate may be used instead of an appraisal for a nonbusiness loan with a transaction value at or below \$250,000.*

The Proposed Rule leaves the current *de minimis* levels at \$250,000 for consumer loans and commercial property, while other Federal financial regulators have moved this to \$400,000 and \$500,000, respectively for their regulated institutions. This difference is especially problematic to residential consumer transactions whereby retaining a \$250,000 *de minimis* as compared to other regulatory agencies residential *de minimis* at \$400,000 places System institutions at a competitive disadvantage. Accordingly, we *recommend* aligning FCA regulations with the other Federal financial institution regulators, including, but not limited to commercial real estate transactions, transactions involving an extension of credit and transactions that are wholly or partially insured by other GSEs.

§ 614.4270 Appraisal and evaluation tools *A System lender may use a variety of analytical methods and technological tools in developing an appraisal or evaluation, provided the lender can demonstrate that the method(s) used is consistent with safe and sound lending practices and contains sufficient information and analysis to support the resulting market value conclusion. The tools by themselves do not constitute either an appraisal or evaluation.* Preamble comment on this section: As proposed, analysis tools may not be used as a standalone appraisal or evaluation because these tools are intended for use in assisting appraisers and evaluators in the collateral evaluation process, not replacing them.

The Proposed Rule commentary for AVM's to be used as an assist tool fails to recognize the rigorous model testing, validation, and documentation requirements required in the regulatory framework and directly contradicts the statements in 614.4270. Further, placing an expectation that it may only be used as an appraiser or evaluator assist tool limits and discounts continued data and technology developments that continue to improve these tools and models. Collateral risk is a credit risk consideration and the decision on whether and how to use an AVM or a full appraisal should be based on a credit risk evaluation and not dictated by regulation. Finally, the proposed definition of AVM's 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 (USPAP, AP-37). We propose removing the expectation for AVM's to be used only as an appraiser or evaluator assist tool.

Overall, we believe the Proposed Rule needs substantial changes. We and others in the System would be open to working with FCA to develop a rule which provides the needed modernization to the appraisal rules, is appropriate for the System's business and consistent with other relevant authorities and puts the System on a level playing field with our competition. We thank the FCA for the opportunity to provide comments on the proposed rule and for considering our concerns and related requests.

Sincerely,

CoBank, ACB

By:  _____

M. Mashenka Lundberg
Chief Legal Officer and General Counsel