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July 19, 2021

Submitted to: reg-comm@fca.gov

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

RE: Collateral Evaluation Requirements, RIN 3052-AC94, Federal Register, Vol. 86, May 20, 2021, Pages 27308 – 27323

Dear Mr. Kramp:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to provide comments to the Farm Credit Administration (FCA) regarding FCA's proposed regulation on appraisal and evaluation requirements for property serving as collateral for loans made by Farm Credit System (System) lending institutions.

FCA states its purpose is to "improve the organization and readability of FCA appraisal and evaluation regulations; clarify expectations for internal controls in appraisal and evaluation practices; expand authorities on using various sources of appraisers and evaluators as well as specifically authorizing use of automated valuation tools; and update existing terminology and make other grammatical changes." However, FCA's proposal appears to also relax FCS appraisal standards in certain key areas as noted below.

¹ *The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, over \$4.4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets, neighborhoods and farms and ranches they serve.*

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Background

The prevailing body of law for conducting collateral appraisals and evaluations in financial transactions is Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). As FCA explains, “Congress exempted the System from Title XI of FIRREA, including following Uniform Standards of Professional Appraisal Practice or USPAP.” The FCA’s proposal states FCA’s present collateral evaluation rules are generally similar, although not identical to FIRREA requirements.

ICBA Comments

In general, ICBA believes that FCA’s regulations controlling the appraisal and evaluation requirements of FCS lenders should ensure FCS lenders must follow at least as strict of requirements as commercial banking institutions for similar types of loans. We do not believe, for example, that FCS lenders should be able to use in-house appraisers or evaluators for loans under \$1 million in value if commercial banks, in reality, can only use in-house appraisers on loans of \$400,000 or less. Bankers also state, for example, that FDIC guidelines allow for in-house appraisals of 1-4 family residences below a certain value, any purchase or restructure financing which exceeds the previous loan amount requires a certified licensed appraisal.

Also, ICBA disagrees with FCA’s statement that both regulatory terms “appraisal” and “evaluation” represent the appropriate interpretation of how the single term “appraisal” is used in the Act. An evaluation does not represent the full scope of the term appraisal.

FCS lenders should also charge fees for appraisals and evaluations that are consistent with the fees that are considered standard in the marketplace. FCS lenders should not be allowed to leverage their tax-free funding status on real estate loans to offer these services for free when heavily taxed institutions, such as community banks, must pay market rates to provide such services. The FCS was not granted tax-free status on real estate and mortgage lending as a way to undercut other market participants but rather was granted these privileges as a way to ensure FCS serves remote rural markets. Engaging in below market pricing activities allows FCS to distort the marketplace, contrary to Congressional intent. When other federal agencies or GSEs introduce or offer products in a market, they seek to ensure they are not undercutting private sector lenders offering similar products.

ICBA opposes requiring Farm Credit lenders to address within their collateral appraisal and evaluation policies compliance by ‘Other Financial Institutions’ (OFIs). OFIs that are aligned with commercial banks should be able to follow their regulator’s requirements, rather than FCS requirements. Otherwise OFIs could be subject to two sets of regulations, which could eliminate desirability of being an OFI. FCA regulations should not result in unnecessarily harming those OFIs who have been able to jump through various requirements in their efforts to establish OFI relationships with FCS institutions. This would be contrary to the intent of Congress in establishing the OFI provisions in the Farm Credit Act.

ICBA agrees that FCA regulations should be updated to reflect the increased importance internal reviews and controls.

ICBA believes FCA’s proposal to allow one person to perform the valuation and credit function is misguided even if a secondary review is later required as such review could be delayed until after the credit has been approved. This practice would not allow the proper independence necessary for FCS lenders to achieve adequate safety and soundness.

FCA must ensure there is always adequate separation enforced at Farm Credit institutions between their real estate appraising staff and lending staff. Banks typically require an evaluation to also be reviewed by one other person not associated with the processing or approval of the loan.

For comparison of appraiser qualifications with the banking sector, banks often require substantial expertise, with over five years’ experience and training in the valuing of agricultural real estate; staff must be well removed from the loan approval; must not be in any kind of sales role at the bank and should report up through the credit department to the Board and/or Chief Executive Officer (CEO).

FCA proposes to relax the current requirement that a “business loan” cannot be dependent on income from the “sale or cash rental” of real estate as the primary source of repayment if using an exception that allows for an evaluation in lieu of an appraisal. Instead, FCA proposes allowing business loan transactions at or below \$1 million to use evaluations when repayment of the loan is from rental income derived from agricultural sources.

FCA states their belief that renting land for agricultural purposes should not prevent use of an exception from an appraisal as farmers or ranchers who receive cash rents from production on agricultural land should not have to bear the cost of an appraisal solely because the repayment of their loan is from cash rents off that land. However, not all loans below \$1 million have the same risk characteristics and all loans under \$1 million should not be treated equally when risks are higher since granting an automatic exception for an appraisal seems to increase risks due to potentially incomplete assessments of valuations and risk characteristics. Further, not all individuals receiving rents from agricultural land will be farmers, as many may be distant landowners.

By contrast, the Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions (Affected by the Coronavirus) released on April 14, 2020, discusses exemptions to an appraisal and states, “The transaction is a business loan that has a transaction value of \$1 million or less **where the loan does not depend on the sale of, or rental income derived from, real estate as the primary source of repayment** (emphasis added).” Thus, FCA’s proposed relaxation noted above appears inconsistent with that of all other financial regulators and is troubling when considering that community banks will make many of the same types of loans as FCS lenders.

Existing Exceptions in Appraisal Regulations

For reference, the appraisal regulations referenced above and issued by the OCC, FRB, and FDIC provide exceptions to the requirement for an appraisal by a certified or licensed appraiser, including:

- Transaction is a residential real estate with a transaction value of \$400,000 or less;
- Transaction is commercial real estate with a transaction value of \$500,000 or less;
- Transaction is a business loan that has a transaction value of \$1 million or less where the loan does not depend on the sale of, or rental income derived from, real estate as the primary source of repayment;
- Transaction involves an existing extension of credit at the lending institution, provided that:
 - There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution’s real estate collateral protection after the transaction, even with the advancement of new monies;or

- There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

FCA regulations should not provide FCS lenders with greater exemptions than noted above unless there is an explainable reason for doing so.

If FCA wants to be helpful to farmers and ranchers while ensuring appraisal and valuation regulations are equitable between FCS and community bank lenders, then FCA should not allow FCS lenders to retain valuable water or mineral rights when a producer sells their land whether under normal or distressed situations. FCS lenders have historically claimed these valuable rights from farmers and ranchers while community banks have not done so. This practice by FCS looks unfair to farmers, depriving them of additional income when they sell their land, particularly when such land is located near oil producing areas or has access to water supplies, for example. FCA should ensure that these water and mineral rights “travel” with the land to the new owners as part of sales transactions.

The FCA also proposes adding the term “automated valuation model” or AVM to its regulations to explain certain sub-set models used for particular assets. While FCA proposes adding language recognizing that an evaluation's format presentation will depend on the type of asset being valued and the tools and data sources used to set the value, FCA should stress that the use of an AVM should only be as a complementary source of information. Further, the AVM models must be flexible in the information or data the model yields to ensure the AVM model is supportive and not controlling or limited, for example, by a lack of comparables in the information collected in an appraisal or evaluation.

Other Considerations

There is no discussion in the proposal of appraisal and valuation standards for loans sold to the secondary market (Farmer Mac). This appears to be a significant gap in FCA’s proposal. Even if FCA intends to issue a separate proposed rule at a later time, this erratic, piece-meal approach will lead to confusion among lenders and potential discrepancies as FCS lenders operate under a vague appraisal and valuation regulatory umbrella while loan purchases by Farmer Mac may operate within more stringent requirements. It would be best for FCA to withdraw this proposal and reissue it when it is ready to propose appraisal guidelines for Farmer Mac loan purchases.

ICBA strongly urges FCA to emphasize that all FCS loans should be primarily agricultural in nature, particularly those that include credit for financing “other credit needs.” FCS lenders should be reminded they were granted privileges as government sponsored enterprises (GSEs) and as such these lenders are intended to be *agricultural* lenders and not general purpose, tax-exempt financial institutions.

Finally, if commercial bank regulators in the future tighten current appraisal and evaluation standards due to the ending of the pandemic or other development(s), the FCA regulations should provide for an immediate and equal tightening of appraisal and evaluation standards upon FCS lenders.

Conclusion

ICBA appreciates the opportunity to comment on FCA’s proposed regulation to bring greater clarity to its appraisal and evaluation standards. ICBA believes FCA’s standards should not be more relaxed than those imposed by other financial regulators since other lenders, including community banks, are making many similar loans as FCS lenders. ICBA also believes FCA should not seek to impose new regulatory compliance requirements on OFIs which will likely result in significantly increasing regulatory burdens on existing OFIs and discourage future use of this program or partnership with the FCS. FCA should either withdraw or halt this regulation until it has also released any planned regulations regarding Farmer Mac loan appraisal standards in an effort to not cause confusion among lenders and secondary market participants. We urge FCA to adopt the recommendations made in our letter.

Please feel free to contact Mark Scanlan (mark.scanlan@icba.org) to discuss this letter.

Sincerely,

/s/

Mark Scanlan
Sr. V.P., Agriculture and Rural Finance