



Central Kentucky Agricultural Credit Association

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July 19, 2021

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

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

Dear Mr. Kramp:

Thank you for the opportunity to comment on FCA's recent proposed rule regarding Collateral Evaluation Requirements.

The comments below focus on the impact of the Proposed Rule on our Association, with particular focus on the impact to small institutions. However, our Association also supports the comments submitted by AgFirst Farm Credit Bank and the Farm Credit Council regarding other important concerns not addressed in this letter.

- Business Chattel

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 asset class could conflict or run counter to existing definitions of personal property as set forth in state law. This could possibly create adverse outcomes for System institutions in the event of bankruptcy or any other litigation or mediation that could take place.

- Blanket Liens

The Proposed Rule requires System institutions to assign a value to all collateral, even collateral taken on a blanket lien basis. Blanket liens are routinely taken out of an abundance of caution, to control lien priority, or to limit future financing options as in the case of an FSA Guarantee. These blanket liens are quite often used as a tool to place certain controls on a credit and not necessarily for actual collateral/security purposes; and therefore, no value is typically assigned. This Proposed Rule would place undo costs and hardships on System institutions (specifically smaller institutions) by creating additional unnecessary requirements to assign values to collateral that is not a critical consideration for the credit. By receiving a blanket lien, a System institution is allowed to tie up all available personal property (and fixture) collateral and take a priority lien on same.

- Appraiser and Evaluator Qualifications and Independence

The Proposed Rule in 12 CFR § 614.4255 would impose requirements beyond existing regulations. It stipulates that there shall be a robust secondary review process of staff who are not completely independent of the credit decision either before credit approval or soon after closing. Such a requirement would represent an additional burden (especially to smaller System institutions) to “robustly” review if the appraisal or evaluation was performed outside of the normal appraisal channels. This could potentially adversely affect the streamlined timing goals for smaller credits.

- Appraisals Completed for Other Financial Institutions

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: (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.” Proposed Rule 12 CFR § 614.4245(d).

This Proposed Rule would seem to run counter to USPAP which is clear that possession of the report does not imply you are the client nor an intended user unless explicitly noted in the report. There are certain certifications and legal obligations placed on the appraiser at the time of original engagement and completion of the assignment that would not be enforceable and would not be covered under their E/O insurance. Further, this would in essence by-pass the original author of the report without any consideration of compensation.

Additionally, the Proposed Rule contains following statement:

V. Regulatory Flexibility Act and Congressional Review Act Conclusions

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, ***considered together with its affiliated associations***, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act. (emphasis added)

As a System institution with approximately \$630 million in assets, our regulatory compliance is largely considered independent of our funding farm credit bank and its affiliated associations. We are not permitted to upstream compliance to our funding bank or defer to any "affiliate." So, we do not understand why the Proposed Rule claims exemption from the key requirement of the Regulatory Flexibility Act ("RFA"): to analyze the impact of their regulatory actions on small entities and, where the regulatory impact is likely to be "significant", affecting a "substantial number" of these small entities, seek less burdensome alternatives for them.

The implementation, monitoring and reporting requirements associated with the proposed collateral evaluation rule would seem to be a situation where the impact of regulatory actions could be significant to smaller Farm Credit institutions. Small financial institutions, including Farm Credit institutions, are disappearing each year. Regulatory burden is often cited as one of the main reasons for this trend and concern over that very result appears to be the reason the RFA was enacted in the first place.

In summary, Central Kentucky Agricultural Credit Association respectfully requests that the FCA withdraw the Proposed Rule and engage with System institutions in a discussion to agree upon collateral evaluation requirements that align with the stated objectives of the Proposed Rule and that support Farm Credit's ability to serve its customers and fulfill its mission. Furthermore, we urge reconsideration of the exemption to the RFA as the rationale stated is not consistent with the actual practice. Again, we appreciate your consideration of our constructive comments on the Proposed Rule.

Thank you for your consideration.

Sincerely,



Jim Caldwell
President and
Chief Executive Officer