AGFIRST
FARM CREDIT BANK

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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:

AgFirst Farm Credit Bank ("AgFirst") 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").

Farm Credit System institutions ("System institution(s)") have a vested interest on behalf of their stockholders to maintain high standards regarding collateral evaluations and AgFirst fully supports the stated objectives of the Proposed Rule. However, the Proposed Rule:

- Creates a number of challenges that fail to satisfy objectives identified by FCA, presents compliance issues for System institutions and their appraisers and chattel evaluator;
- Imposes costs and administrative burdens on System institutions, customers and borrowers; and
- Disadvantages System institutions with inconsistencies between the Proposed Rule and related authorities with which competitors of System institutions must comply.

AgFirst supports the Farm Credit Council's ("FCC") comments on the Proposed Rule. Based on the review performed by FCC and AgFirst, AgFirst respectfully requests that the Proposed Rule be withdrawn and that FCA agree to engage with System institutions in a practical and thorough discussion on current collateral evaluation practices and requirements to find an alternative that better aligns with the stated objectives of the Proposed Rule and supports Farm Credit's ability to serve its customers and fulfill its mission in a safe and sound manner.

Comments

1. Blanket Liens

Critically and without any justification, the Proposed Rule requires a System institution to assign a value to all collateral, even collateral taken on a blanket lien basis.[1] Blanket liens are immensely important and valuable to a System institution (let alone any lender), are commonly obtained whenever possible, and are expressly authorized and permitted by law. By receiving a blanket lien, a System institution is allowed to take a priority lien on all available personal property (and fixture) collateral. This allows, among other things, for maximum collateralization of a System loan.

Blanket liens allow for better security of specific debts (as well as all debts); for collateral to be taken for different purposes and at different points in time (*e.g.*, loan modifications, distressed loan restructuring plans, cross-collateralization); and for collateral to be taken to secure the entire operation, which encourages securing a broader relationship, all without assigning a value on all of same. Blanket liens also permit collateral to be substituted or replaced in the ordinary course of business and otherwise (with appropriate language in the security instrument to reflect those substitutions and replacements) without being required to place a value on same, which is impossible at the outset and is impossible to cost effectively monitor, update, and maintain over time.

It is an important reminder that state law requires a creditor to identify collateral with reasonable specificity and to identify all collateral being taken. *See, e.g.*, UCC § 9-108. If a System institution is unable to take a blanket lien on collateral and required to identify collateral with greater specificity than a blanket a lien, then the System institution will be unable to replace collateral, such as crops or cattle, in the ordinary course of business and must as a result assign a value as to each piece of collateral initially taken and then obtain additional appraisals or evaluations each time pledged collateral is sold, substituted, or replaced in the ordinary course of business. Such a burden would then force System institutions to prepare and rely upon multiple security instruments over a period of time, forego taking all collateral being offered, run afoul of the Proposed Rule's requirements on valuing all collateral, or lose priority or the security interest by failing to specify the collateral as required. In other words, a System institution would be forced to choose between compliance with the Proposed Rule, on the one hand, and maximizing its collateral security and reduce risk by being able to take a security interest in, or being able to place a lien on, as much property (*i.e.*, collateral) as possible, on the other hand.

2. Inconsistent *de Minimis* Exception for Appraisals or Evaluations

The proposed changes contained in 12 CFR § 614.4265 of the Proposed Rule exceed the regulatory requirements imposed on any other regulated lending institution without any explanation or benefit associated with such limitations. Each and every additional burden being prescribed, such as being required to obtain an appraisal or evaluation where non-System institutions are not, reflects an additional cost or loss for the System institution, making it more difficult to provide agricultural financing at a relatively low cost to eligible borrowers and others who are served by the Farm Credit mission.

For example, the Proposed Rule proposes to continue the current *de minimis* levels of $250,000.00 established in the 1990s with regard to consumer loans, while other banking

[1] A blanket lien is generally described as a security interest in, or a lien on, all of the debtor's assets.

regulations have moved the *de minimis* amount to $400,000.00 for consumer loans and $500,000.00 for commercial real estate loans. Maintaining a reduced *de minimis* level of $250,000.00 on consumer loans as compared to other lending institutions places System institutions at a comparative disadvantage from a cost and administrative perspective by requiring System institutions to either absorb or pass on the costs of appraisals or evaluations non-System institutions are not required to obtain, especially given the burdens and costs associated with other regulatory changes being proposed. At the very least, the $250,000.00 threshold for real estate transactions that require an appraisal should be increased to $400,000.00 for residential real estate transactions and $500,000.00 for commercial real estate transactions to be in line with the thresholds established by other regulated lending institutions for the same or similar loans. This would place System institutions in line with non-System institutions regarding when costly appraisals or evaluations must be obtained and the costs of which must either be absorbed by the lender or passed on to the customer.

AgFirst believes that this change would provide a meaningful burden relief from existing appraisal requirements without posing a threat to the safety and soundness of System institutions.

3. Appraiser and Evaluator Qualifications and Independence

The Proposed Rule in 12 CFR § 614.4255 relates to appraiser and evaluator qualifications and independence. While appraisers and evaluators should be qualified and independent, the Proposed Rule imposes burdens beyond those under existing regulations without any support for why such proposed changes are needed.

For example, the Proposed Rule requires 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 review requirement would represent an additional burden if the appraisal or evaluation was performed outside of the appraisal or evaluation team by imposing additional costs, such as hiring employees in other business units who are qualified to perform appraisals or reviews, and administrative burdens, such as establishing a redundant review process and revision the System Institution's appraisal or evaluation process. Such an approach fails to take into account the size of the System institution, the availability of resources, standards of conduct, vendor management, or the ability to demonstrate independence and competence in ways other than those prescribed in the Proposed Rule. In short, such a single lane approach places an unreasonable burden on System institutions of various sizes and in various locations, making compliance more difficult without any commensurate benefit being obtained or demonstrated.

4. Loss of Flexibility Regarding Policies and Procedures

There is a certain amount of flexibility needed in the regulations with regard to appraisals and collateral evaluations to allow lending institutions to accomplish the goals of the regulations through policies and procedures that support safe and sound practices but that are also based on their size and makeup. These goals include ensuring appraisal and evaluation reports on collateral values accurately reflect the current market value of the collateral at the time of a credit decision and ensuring the safety and soundness of the System institution The Proposed Rule minimizes, if not removes, the reasonable flexibility found in the existing regulations and published guidance,

including interagency guidance, by substantially exceeding the requirements imposed by any other regulator on appraisals and collateral evaluations and by limiting the areas in which policies and procedures can supplement the regulatory requirements to accomplish the objectives of good valuation practices.

For example, in the Interagency Appraisal and Evaluation Guidelines made available through www.fdic.gov, the guidance recognizes that some separation between the lending and collateral functions may not always be possible due to an institution's size. In such circumstances, the lending institution "should be able to demonstrate clearly that it has prudent safeguards to isolate its collateral valuation program from influence or interference from the loan production process" and ensure that those who are involved in the appraisal process are not involved in the lending approval process. *See, e.g.,* Interagency Appraisal and Evaluation Guidelines, 5000 – Statements of Policy, Art. V., Independence of the Appraisal and Evaluation Program; *see also id.*, Art. IV., Appraisal and Evaluation Program. If such flexibility were not possible, then regulators would be able to effectively eliminate an entire population of available lenders from the marketplace – *i.e.*, the smaller lending institution. Such guidance also recognizes that appraisals or evaluations may not always be needed in all circumstances and that the same regulatory risks do not exist when collateral is not required to be taken (*e.g.*, when collateral is taken as supplemental collateral or when taken out of an abundance of caution). *See, e.g., id.*, Appendix A – Appraisal Exemptions; *see also* 12 CFR § 614.4245 (existing regulation). The Proposed Rule does not recognize (or seem to allow for) such instances, which imposes costs and administrative burdens on System institutions for which no commensurate benefit is achieved. For these and other reasons, the Proposed Rule threatens the viability and competitiveness of certain System institutions unnecessarily and beyond the scope needed for safety and soundness.

5. Risk Tolerance and Other Credit and Lending Factors

Lending is based on the five C's of credit, which includes collateral appraisals and evaluations. The Proposed Rule, however, does not seem to take the other considerations into account or appreciate the interrelationship between these factors when making lending decisions or allow for any proper and reasonable delineation of transactional risk and size for System institutions. The Proposed Rule also imposes many requirements on the collateral appraisal and evaluation process that should be credit considerations rather than collateral considerations. Each System institution has its own unique risk appetite depending on many different factors, including its size, capital, and portfolio diversity, and each System institution is required to establish and maintain procedures that satisfy existing FCA regulations and the five C's of credit and reflect appropriate risk tolerance, as well as assure a return to shareholders. A risk-based approach allows for System institutions to meet the Farm Credit mission of improving the lives of farmers and ranchers across the nation, regardless of size and location.

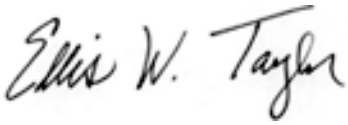
Conclusion

AgFirst appreciates the opportunity to comment on the Proposed Rule and to present some of its concerns to FCA for its consideration. In short, with the changes proposed in this provision of the Proposed Rule, System institution are faced with burdensome compliance requirements that make lending more costly and inefficient and therefore makes the System institution less competitive. In the context of appraisals and collateral evaluations, the System would be better

served by continuing to operate under existing FCA guidance or comply with regulations and guidance (*e.g.*, USPAP) applicable to other lending institutions with whom the System competes (or who guarantees System loans) to better ensure consistency, flexibility, and safety and soundness, without placing the System at a competitive disadvantage. As such, we respectfully ask that the FCA consider FCC's and our comments to withdraw the Proposed Rule so that System institutions are not hindered in the advancement of the mission of the Farm Credit System to provide financing to our rural and agricultural communities. As noted above, we also request that FCA engage with System institutions in a thoughtful and thorough discussion to agree upon collateral evaluation requirements that aligns with the stated objectives of the Proposed Rule and that support Farm Credit's ability to serve its customers and fulfill its mission in a safe and sound manner. Again, we sincerely thank you for the opportunity to constructively comment on the Proposed Rule.

Respectfully submitted,

AgFirst Farm Credit Bank



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