



FARM CREDIT EAST

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July 16, 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-AC94/86 Federal Register 27308-27323;
*Collateral Evaluation Requirements***

Dear Mr. Kramp,

Please accept this letter as Farm Credit East, ACA's ("FCE") support of the Farm Credit Council's ("FCC") comment letter concerning the Farm Credit Administration's ("FCA") Proposed Rule regarding Collateral Evaluation Requirements published in the May 20, 2021 *Federal Register* (the "Proposed Rule"). FCE endorses the conclusions set forth in the FCC's comment letter and appreciates the opportunity to further supplement the comments on the Proposed Rule. As a result of the overly prescriptive nature and burdensome consequences of the Proposed Rule, especially on the young, beginning, and small farmers in our portfolio of which FCE has an exceptionally large number, FCE joins with the FCC in requesting withdrawal of the Proposed Rule or, in the alternative, amendments to the Proposed Rule after collaboration with Farm Credit System ("System") entities on its content.

In its current form, the Proposed Rule would put the System at a distinct competitive disadvantage in comparison to other lenders for a number of reasons. Specifically, and as will be set forth more fully below, the Proposed Rule imposes requirements that would result in increased burden and potential cost to System borrowers. The Proposed Rule's requirements would also impose an increased regulatory burden on System institutions – requirements that far exceed those required by other regulators. FCE believes that the rigidity set forth in the requirements of the Proposed Rule all but eliminates discretionary practices at the System institution level, thereby disregarding the System institution's ability to tailor its practices based on its risk appetite, risk tolerances, and credit and collateral risk positions. Accordingly, FCE firmly believes that the negative consequences of the Proposed Rule outweigh the benefits, and the Proposed Rule as drafted should be withdrawn.

I. The Proposed Rule Will Result in an Increased Burden and Cost to System Borrowers

One of the primary concerns with the Proposed Rule is the requirement set forth in § 614.4245 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." The focus on "all collateral" pledged by all borrowers, regardless of loan size or risk, is problematic.

A regulation requiring "all" or every piece of property taken as security for a loan to be appraised or evaluated completely overlooks the well-established and fundamental practice in secured lending of taking a blanket lien on a borrower's personal property. An "all assets" blanket lien allows for better collateralization of a loan by allowing collateral to be substituted or replaced in the ordinary course of business without requiring the borrower to update the lender in every single instance, *and* without being required to place a value on same.



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If, however, a System institution is required to assign a value to each piece of collateral taken for all borrowers, regardless of risk or loan size, then all borrowers would be impacted in at least two primary ways. First, the borrower would be required to maintain records on all assets taken as collateral, including catalogued inventories of machinery, equipment, and other agricultural collateral. Depending on the nature of the borrower's business, as well as their size and specific risk profile, such activity could be exceedingly burdensome, especially on young, beginning or small farmers. They would expend potentially unnecessary and significant time and effort on collateral recordkeeping solely to meet regulatory requirements. Additionally, the costs for the institution to complete these evaluations may be passed on by System institutions to their borrowers, directly or indirectly.

II. The Proposed Rule Will Result in an Increased Regulatory Burden and Cost to all System Institutions

The requirement to value "all assets" is also likely to result in negative consequences for all System institutions. If a System institution is not able to take a blanket lien on all personal property without assigning a value to each piece of collateral taken, then the decision will be whether to forego taking all collateral being offered or potentially losing priority of its security interest by failing to specify the collateral as required.

As an agricultural lender, the personal property collateral taken by FCE (and other System institutions) is often fluid in nature and can change over time. For example, as highlighted by the FCC, seeds can be taken as collateral which can then be converted into "goods" or "inventory", which can then be converted into "proceeds". To perfect its security interest, a lender must file a financing statement that contains a collateral description accurately identifying the property covered by its security interest. In the case of a seed, each iteration of its existence may have a different collateral category under the Uniform Commercial Code. In such instances, an "all assets" blanket lien is generally the most appropriate and cost-effective solution for both lender and borrower to avoid having to update collateral descriptions to account for the naturally occurring changes in the character of the collateral.

The Proposed Rule essentially eliminates the simplicity and convenience offered by the taking of a blanket lien. If required to place a value on every single asset taken under such blanket lien, the process would become overly complicated, regulatorily burdensome to the Association, and potentially cost prohibitive.

This proposed regulatory requirement would also impede the ability to secure collateral "out of an abundance of caution." Collateral may sometimes be taken as a means of control, where the value of the collateral is not truly the determining factor. Similarly, collateral taken out of an abundance of caution is, by definition, not being taken to rely on the value of the property, but instead to establish sound credit control. Requiring such property to be subject to an appraisal or evaluation could have the effect of deterring lenders from taking such additional security out of an abundance of caution, thereby resulting in riskier loan profiles.

Presently, no other state or federal law or regulation requires a lender to value each piece of collateral taken on a blanket lien basis. To the contrary, other banking regulators have increased current *de minimis* levels for when an appraisal is required from \$250,000 to \$400,000 for consumer loans, and to \$500,000 for commercial loans. The Proposed Rule's failure to increase the *de minimis* threshold for System institutions coupled with the new requirement to value "all" collateral will serve to put the System at a

competitive disadvantage. The Proposed Rule will require additional resources for conducting appraisals and/or evaluations as well as additional resources for monitoring compliance at a time when other lenders will not face the same burdens.

III. The Proposed Rule Unnecessarily Curbs Institution Discretion

Finally, the Proposed Rule minimizes the flexibility found in existing regulations and guidance that allows System institutions to accomplish the System's goals through safe and sound policies and procedures specific to the institution's needs. Each System institution has its own unique risk appetite depending on many different factors and each System institution is required to establish and maintain procedures that satisfy existing FCA regulations and the five C's of credit. Considerations such as the institution's risk tolerance, credit and collateral risk positions, management's history of implementing effective practices to ensure safe and sound operations, and the absence of historical loss all inform the System institution's approach to lending.

Because the Proposed Rule mandates that certain activity be taken at specific times (e.g. requiring an appraisal or evaluation be conducted when the System institution removes a lien, requiring an appraisal or evaluation be conducted when an item of property is being taken as collateral purely for credit control reasons), the result is that System institutions lose the discretion needed to effectively implement a risk-based approach that addresses regulatory concerns while still allowing flexibility for the institution to meet the Farm Credit mission of improving farmers' lives.

Ultimately, the decision on whether to complete an appraisal or evaluation should be part of an overall credit decision dictated by the System institution's credit and collateral risk positions, and, absent any overarching regulatory requirement, should be left to the System institution to manage. The prescriptive nature of the Proposed Rule unnecessarily curtails discretion while simultaneously failing to add value to the credit decision. The result is, again, a disservice to the System and its borrowers.

IV. Conclusion

FCE believes the Proposed Rule needs substantial changes and joins with the FCC and other System entities in requesting its withdrawal. FCE would welcome collaboration with the FCA and other System entities to develop a rule which equalizes the System's appraisal and evaluation requirements with other lenders. We thank the FCA for the opportunity to provide comments on the Proposed Rule and for considering our concerns and requests.

Sincerely,



Michael J. Reynolds
Chief Executive Officer
Farm Credit East, ACA