



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; *Collateral Evaluation Requirements*;
86 Federal Register 27308-27323

Dear Mr. Kramp:

Farm Credit Services of North Dakota (FCSND) 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"). Related analysis and discussions were conducted by various FCSND senior management team members and our Board of Directors. We support the Farm Credit Council's related response to the proposed rule. Based on our review of the Proposed Rule, FCSND respectfully requests that the Proposed Rule be withdrawn.

A number of challenges are presented by the Proposed Rule. Such challenges would require FCSND appraisers and chattel evaluators to spend more time on each action, imposing additional costs and burdens on FCSND customers.

FCA highlights at least one distinction between Title XI of FIRREA and FCA's regulations on collateral appraisals and evaluations, which is Title XI of FIRREA's exemption from requiring a USPAP appraisal where a loan is secured by real estate collateral taken out of an abundance of caution. This distinction is especially important because, while loans made under Title I of the Act ("Title I") require a first lien on real estate and a loan-to-value not to exceed 85%, in general, not all loans secured by real estate are made as Title I loans and/or real estate can be taken as additional collateral (*i.e.*, out of an "abundance of caution," regardless of whether such loan is made under Title I or Title II of the Act. *See, e.g.*, 12 CFR § 614.4200).

This "abundance of caution" situation happens frequently within our Loan Service Area (LSA). Both our applicants and prospects often have or construct buildings or dwellings in rural areas that frequently do not appraise at the cost of construction. This is largely due to the rural nature of our LSA. Oil activity in our LSA also impacts the ability to accurately assess building valuations. We frequently take a mortgage on property and include the buildings out of an abundance of caution without assigning a value to the buildings. Having to always value buildings would require our appraisers to complete an onsite inspection. This increases the time and cost of each appraisal, negatively impacting efficiency and the cost to our customers.

Our purpose is to support the aspirations and vitality of agriculture and rural communities.

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The other option to valuing the buildings is to carve out a legal description that excludes the real estate on which the buildings reside. This creates an undue burden on the customer, as a survey would have to be completed, likely with a metes and bounds description. This would increase the costs for the borrower to hire a surveyor, as well as increase the time to complete the land transaction. This could ultimately make the transaction cost prohibitive for our customers. The Proposed Rule would make collateralization and compliance more difficult, costly, and inconvenient, all while reducing FCSND's ability to remain competitive and satisfy the mission of providing reliable, cost-effective extension of credit to eligible borrowers.

The Proposed Rule would require a System institution to assign a value to all collateral, even collateral taken on a blanket lien basis.¹ Blanket liens are critically important (and valuable) to FCSND, are commonly obtained, and are expressly authorized and permitted by law. If FCSND was unable to take a blanket lien on collateral unless it assigns a value as to each piece of collateral taken, we would be forced 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.

Customers in our LSA have diversified operations, often producing both crops and livestock. Each operation has their own unique equipment needs with the number and pieces of equipment running up to and over 100 items. While much of it carries little collateral value, the time taken to accurately assess the value would be time consuming and costly to our customers, without providing commensurate benefit. This would drive up the cost of borrowing, including the cost to young, beginning, and small borrowers, leasing and loan transactions, and Capital Market transactions including loan participations and syndications. It is noteworthy that Capital Market transactions have become a critically important System activity providing invaluable portfolio, balance sheet, and income diversification and stability for the benefit of System stockholders.

The Proposed Rule has key elements that appear to be inconsistent with other FCA regulations, published guidance, other professional rules, and many technological advancements made over the last decade that allow System institutions to meet their mission in a cost-efficient manner. Because of increased cost and difficulty of compliance, the Proposed Rule would encourage a shift to more unsecured loans, which increases the lending risk for FCSND. This would open up an opportunity for competing lenders to make loans to the same borrower on a secured basis (*e.g.*, if a borrower/debtor is not required to pledge collateral to FCSND, then it would be able to pledge collateral to another lender and take on additional debt, all increasing the risk to FCSND). Operating costs would be increased, capital and patronage would be negatively impacted, and FCSND's competitiveness correspondingly reduced.

Reasonable flexibility is needed in the appraisal and collateral evaluation regulations to allow lending institutions to accomplish the goals of the regulations through safe and sound policies and procedures. FCSND is a \$1.4 billion association – relatively large for our LSA, but small in context of the Farm Credit System. The Proposed Rule would reduce the flexibility found

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

in the existing regulations and published guidance, including interagency guidance, by exceeding the requirements imposed by other regulators 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 constructive and safe and sound valuation practices.

The Proposed Rule in 12 CFR § 614.4260 relates to valuing business chattel and personal and intangible property. The proposed changes included a number of new requirements that would entail significant cost and impair FCSND's discretion regarding the valuations needed with regard to a particular loan or credit, including its risk profile.

There could be significant cost increases associated with related reporting, especially with regard to Automated Valuation Models (AVM's), with little to no additional value to the lender or the customer.

The Proposed Rule in 12 CFR § 614.4265 relates to valuing real property collateral. The proposed changes contained in this provision of the Proposed Rule exceed the regulatory requirements imposed on other regulated lending institutions. Each additional burden has an additional cost for the System institution, making it more difficult to provide agricultural financing at a competitive cost.

For example, the Proposed Rule proposes to continue the current *de minimis* levels of \$250,000 established in the 1990s with regard to consumer loans, while other banking regulations have moved the *de minimis* amount to \$400,000 for consumer loans and \$500,000 for commercial real estate loans. Maintaining a reduced *de minimis* level of \$250,000 on consumer loans as compared to other lending institutions places System institutions at a comparative disadvantage from a cost and convenience perspective, especially given the burdens and costs associated with other regulatory changes being proposed.

In summary, the changes reflected in the Proposed Rule would make FCS lending more costly and inefficient, making FCSND less competitive. Making more unsecured loans to avoid the burdens associated with new these requirements would increase FCSND's risk exposure. The System would be better served by continuing to operate under existing FCA guidance or better aligning with regulations and guidance (*e.g.*, USPAP) applicable to other lending institutions with whom FCSND competes to better ensure consistency, flexibility, and safety and soundness, without placing the System at a competitive disadvantage.

FCSND appreciates the opportunity to comment on the Proposed Rule and to present some of its concerns to FCA for its consideration. FCSND respectfully requests that FCA withdraw the Proposed Rule.



Gordon Hanson, CEO