



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:

Farm Credit of New Mexico (FCNM) 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 of New Mexico endorses the conclusions addressed in the Farm Credit Council's comment letter. The proposed ruling is overly prescriptive, providing for practices that would increase risk in the lending process and elevate operating costs. These operating costs would need to be passed onto our customers, creating a competitive disadvantage with non-system lenders and having a potential and adverse impact of extending credit to Young, Beginning and Small Farmers.

While we appreciate the intent of the Proposed Rule, the proposed changes have the impact of taking a significant step backwards with the undue regulatory burdens not required by other regulators; effectively again rendering the system non-competitive in the marketplace.

Collateral represents just one of the "five C's" of credit. The Proposed Rule does not seem to address the interrelationship between these factors when making credit decisions, nor does it consider each institution's own unique risk appetite depending on factors such as its size, capital levels and portfolio diversification.

Further, the Proposed Rule does not recognize the competition faced by System institutions by non-Farm Credit lenders including that some debts are FSA/USDA guaranteed, which carry their own collateral evaluation requirements. The Proposed Rule is more stringent or exceeds the requirements under which other lenders or persons must operate, placing System institutions in a difficult position competitively.

Albuquerque
toll free: 800.451.5997

Clovis
toll free: 800.451.5977

Las Cruces
toll free: 800.755.6432

Roswell
toll free: 800.451.5974

Tucumcari
toll free: 800.824.6403

As a result of these concerns, and others outlined below, Farm Credit of New Mexico joins the Farm Credit Council in respectfully requesting that FCA withdraw the Proposed Rule so FCA and Farm Credit institutions can engage in a thoughtful and thorough discussion on current collateral evaluation practices and tools and find an alternative that better aligns with the stated aims and objectives of the Proposed Rule and protects Farm Credit's ability to serve its customers and fulfill its mission.

The following sections summarize concerns with the Proposed Rule:

§ 614.4240 - Definitions

a. Business Chattel.

In the Proposed Rule, the term "business chattel" is defined 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."

By using this definition, the Proposed Rule creates a new asset class with the apparent intent of improving clarity of expectations. However, the creation of this asset class invites other areas of confusion. For example, the definition is specific to "carrying on of any agricultural activity, such as production or use in the farming of land." However, this definition does not recognize that some loans (e.g., agribusiness loans) include other forms of chattel business assets within processing and manufacturing and other agribusiness operations. It is difficult to discern whether these would be considered business chattel assets or personal property. This confusion is further compounded by the Proposed Rule's definition of "personal property," which excludes "real property and its fixtures or business chattel." Under existing law, the term "personal property" refers to "any asset other than real estate," whether such assets secure business or non-business loans, which is consistent with Article 9 and other applicable laws. See, e.g., UCC §§ 9-102 & 9-109.

b. Personal Property.

In the Proposed Rule, the term "personal property" is defined to mean "all tangible and movable property not considered real property and its fixtures or business chattel." As noted above, this definition is inconsistent with how personal property is defined under other laws, including Article 9, and how other lending institutions define such property. Creating a new definition that is inconsistent with how other laws and lending institutions define the term invites

more ambiguity and confusion than it purports to resolve. The term “personal property” should be consistent with other laws, especially laws that govern secured credit, priority of interests, and UCC filings, among others, and should be consistent with the guidance imposed on other regulated lending institutions in this regard.

§ 614.4245 - Blanket liens

The Proposed Rule requires a system institution to assign a value to all collateral, even collateral taken on a blanket lien basis. Blanket liens are critically important (and valuable) to a System institution to allow it to tie up all available personal property collateral, taking a priority lien on same and maximizing collateralization of System loans.

Further, at times a blanket lien is taken to establish a sound credit control, rather than for collateralization purposes (i.e. Abundance of caution). These controls serve to provide not only risk mitigation to the system institution, but may also have a cost benefit to the customer in the form of potentially more competitive pricing. Due to the costs associated with assigning a value to all collateral (even that of *di minimis* value), these costs would either have to be passed on to the borrower, or the institution may determine that an unsecured lien position is a better alternative, thereby potentially negatively impacting safety and soundness.

The Proposed Rule additionally requires that an appraisal be completed when the System institution removes a lien, which serves no purpose, as the account is typically paid in full when the lien is removed.

§ 614.4245(c) – Age of Appraisal or Evaluation reports

The Proposed Rule indicates that “when making credit decisions or approving new or additional funds, the System lender may use existing collateral appraisals or evaluation reports only if the appraisal or evaluation reflects current market conditions at the time of use.”

In most cases, it is only important to determine that the current value is no less than when the transaction was originally put on the books. Given the acceptable risk at time of origination, considering loan paydowns, it would be unusual for agricultural property values in a current market condition to deteriorate significantly ahead of the paydown.

§ 614.4245(d) – Using the appraisals of another lender

The proposed requirement to have a written agreement to transfer an appraisal exceeds the requirements of the FIRREA (Federal Financial Institution Regulatory Agency), thus creating a distinct disadvantage for System institutions. If the other lender is within the system, this Proposed Rule seems excessively burdensome, and if the other lender is not a System institution, their regulatory requirements will prevail.

§ 614.4245(e) – Releasing Appraisals or Evaluations to Applicants and Borrowers

The Proposed Rule to release appraisals or evaluations to applicants and borrower within a seven-calendar day turnaround time places an increased burden on System institution processes in the need to prioritize the release over other business needs, potentially impacting the ability to provide timely customer service on all borrower requests and putting System institutions at a competitive disadvantage over non-System lenders.

Conclusion

Thank you again for allowing FCNM the opportunity to comment on this important collateral evaluation proposed rule. We hope that these comments will provide FCA with some perspective on how the proposed rule will impact System institutions. For at least the reasons stated herein, we respectfully request that FCA withdraw the Proposed Rule so FCA and Farm Credit institutions can engage in a thoughtful and thorough discussion on current collateral evaluation practices and tools and find an alternative that better aligns with the stated aims and objectives of the Proposed Rule and protects Farm Credit's ability to serve its customers and fulfill its mission.

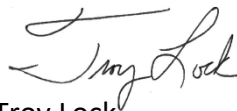
Sincerely,



Alan Feit
Chief Executive Officer



Kevin Kuper
Chief Credit Officer



Troy Lock
Chief Operations Officer