FARM CREDIT BANK OF TEXAS

January 24, 2022

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 628 – RIN 3052-AC42; *Risk Weighting of High Volatility Commercial Real Estate (HVCRE) Exposures*; 86 Federal Register 47601-47607

Dear Mr. Kramp:

The Farm Credit Bank of Texas ("FCBT") appreciates the opportunity to comment on the Farm Credit Administration's (FCA) Proposed Rule regarding Risk Weighting of High Volatility Commercial Real Estate (HVCRE) Exposures that was first published in the *Federal Register* on August 26, 2021 (the "Proposed Rule").

We appreciate FCA's review of the FCA regulations and attempt to update capital requirements to reflect the risks commercial real estate loans of a speculative nature pose to Farm Credit System ("System") institutions and ensure the regulations for System institutions are similar to those adopted by Federal banking regulatory agencies ("FBRAs").

FCBT participated in the development of the comments submitted by the Farm Credit Council (FCC) requesting clarification and recommendations to the Proposed Rule and fully supports those comments. FCBT wishes to emphasize the following comments in the FCC comment letter that are of elevated concern to FCBT:

1. **<u>Structures on Farm Properties.</u>**

The Proposed Rule excludes from the HVCRE definition credit facilities financing "agricultural land", as defined in FCA regulation §619.6025, or real estate used as an integral part of an aquatic operation. Section 619.9025 defines "agricultural land" as "land improved or unimproved which is devoted to or available for the production of crops and other products such as but not limited to fruit and timber or the raising of livestock." The Proposed Rule provides that the exclusion would apply only to financing for the agricultural and aquatic needs of bona fide farmers, ranchers, and producers and harvesters of aquatic products under §613.3000 of the FCA regulations. It would not apply to loans for farm property construction and land development purposes. The Proposed Rule states that

"[L]oans for farm property construction would include loans made to finance the onsite construction of industrial, commercial, residential or **farm buildings**" (emphasis added).

This statement implies that credit facilities for the construction of poultry barns, dairy parlors, cattle feeding facilities, greenhouses, wineries, sawmills, and many other income-producing bona fide agricultural purposes would not qualify for the exemption and would be considered HVCRE, which contradicts the general premise of the proposed Agricultural Land exclusion.

System institution loan packages are often multi-faceted credit facilities with interdependent collateral packages that support both long and short-term indebtedness. This loan structure reduces the risk of multi-phase, project-based financing where additional risk-weighting and capital allocation may be appropriate. Farm construction projects are often expansions of ongoing farming operations and carry lower risk, compared to a singular speculative venture, which are more common in commercial real property projects (e.g., shopping malls or apartment complexes). When a farm construction project is not part of an on-going farming operations, it is often the result of a new borrower first entering into agriculture. We request FCA consider potential young, beginning or small farmers and whether the proposed rulemaking inadvertently creates a barrier for entry into the agricultural industry based on typical System institution programs that offer reduced down payments, acceptance of a higher level of risk, and the higher risk rating which could potentially increase the cost of credit to this important segment of System borrowers.

As such, we support the FCC's request for further clarification on the FCA's proposed Agricultural Land Exclusion, and its recommendation that the phrase "not related to on-going farming operations" be added in the FCA's explanation of loans for farm property construction.

2. **<u>Additional Proposed Exclusions.</u>**

In support of the FCC's recommendations, we respectively request that the FCA consider the following additional exclusions to the scope of the Proposed Rule.

a. <u>Project financing of public and private utilities.</u>

FCA should explicitly exclude project financing of public and private facilities, including rural infrastructure projects for power generation, water treatment, and other product facilities where contractual agreements to purchase a sufficient amount (as determined by the System institution's lending guidelines) of the energy generated, product produced, or water to be treated/provided are in place prior to construction of the facility.

Project finance is a specialized form of financing, utilized in a very specific circumstance – the non-recourse or limited recourse funding of an individual asset or set of assets (a "project"). These construction projects may not have the collateral support prescribed by the proposed regulation, but they have significant offsetting strengths which mitigate risk and differentiate them from HVCRE exposures. Such offsetting strengths include loan repayment dependent upon the revenues earned from the relevant project, without recourse to the sponsors, and projects are typically "ring-fenced" in a separate project company – a special purpose vehicle - that is bankruptcy remote from the project sponsors.

b. Agricultural production and processing facilities.

FCA should explicitly exclude agricultural production or processing facilities where contractual agreements to purchase the agricultural products or food processed are in place prior to construction of the facility. Specifically, loans to finance construction of poultry or other livestock barns that are originated with an integrator contract to support the lending structure.

Thank you again for the opportunity to comment on the Proposed Rule, and we hope that our comments, as well as those submitted by the FCC and other System institutions, will assist the FCA in reevaluating the Proposed Rule.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Nanci Tucker
SVP Corporate Affairs & General Counsel