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November 18, 2019

Via Electronic Submission: reg-comm@fca.gov

Mr. Barry F. Mardock
Acting Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

RE: RIN 3052-AD35, FCA proposed rule Organization; Funding and Fiscal, Affairs, Loan Policies and Operations, and Funding Operations; Investment Eligibility *Federal Register*, Vol. 84, No. 181, Wednesday, September 18, 2019

Dear Mr. Mardock:

On behalf of the nation's community banks, with over 52,000 locations, the Independent Community Bankers of America (ICBA) writes to share our views regarding the Farm Credit Administration's (FCA, agency) proposed rule (PR) to allow Farm Credit System (FCS) institutions to purchase, sell or hold the guaranteed portion of USDA loans.

The agency notes that these loan guarantees would be ones originated by non-FCS lenders. Although not stated, these non-FCS lenders would primarily be from the hundreds of community banks that utilize the USDA guaranteed loan programs in addition to a handful of larger non-community bank lenders.

ICBA Position on FCA Proposed Rule

ICBA opposes FCA's proposal for many reasons. FCS lenders have long desired to operate their own secondary market and FCA's proposal would lay the groundwork for allowing them to do so. The duplicate and redundant secondary market activities pursued by the FCS would occur to the detriment of Farmer Mac, the institution actually established by Congress to operate in a secondary market role. Although the FCA is charged with regulating both the FCS and Farmer Mac, we notice the rationale expressed in the proposed rule is exclusively from the vantage point of FCS lenders with no consideration of its potentially damaging impact on Farmer Mac.

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Proposal's Objectives Unsubstantiated and Unwarranted

FCA's proposal allows the FCS to duplicate an important secondary market activity of Farmer Mac's, the buying, selling and holding of USDA guaranteed loans from non-FCS lenders. The first two objectives of the proposal (augmenting the liquidity of rural credit markets and reducing the capital burden on community banks and other non-System lenders) are completely consistent with the purposes of Farmer Mac as a secondary market provider but have little to do with FCS's role in rural credit markets.

Community banks do not depend on FCS lenders for reducing capital burdens as there already exist other financial sources to accomplish this objective. The third objective, enhancing the ability of associations to manage risk, could more appropriately be accomplished if FCS associations actually were to use Farmer Mac as a secondary market as Congress intended instead of trying to create their own secondary market. Additionally, there are numerous other ways for FCS associations to manage risks that do not diminish Farmer Mac as evidenced by FCA rulemaking on investments in recent years.

The PR states that an impetus for the proposal was concern by two community bankers and a representative from a USDA office and a broker-dealer. FCA does not explain why the existing secondary market activities operated by Farmer Mac would not accommodate any such secondary market activities in the absence of the FCS and we therefore conclude this rationale by FCA lacks merit.

Proposal's Interpretation of Statute Misaligned

We also disagree with FCA's interpretation of statute as the basis for this proposal. FCA states, "The statutory provisions that are most relevant to this rulemaking are sections 2.2(11) and 2.12(17), which authorize System associations to 'buy and sell obligations of or insured by the United States or of any agency thereof or of any banks of the Farm Credit System.'"

Regarding the referenced statutes, they do not reference buying and selling guaranteed portions of USDA loans from **non-FCS lenders**, the aim of this proposal. These statutes reference buying and selling of loans insured by government agencies or loans **of FCS lenders** – not non-FCS lenders. Further, section 5.17(a)(9) which allows FCA enumerated powers to "prescribe rules and regulations necessary or appropriate for carrying out this Act," is not relevant since the proposal is not warranted or necessary for the reasons stated in this comment letter.

FCA also did not adopt the current proposal as part of its earlier investment rulemaking, which FCA claimed was based on statute. FCA suggests it erred in not doing so in last year's final rule on investments. However, we believe FCA was correct in not doing so previously and errs in this proposed rulemaking. FCA simply does not need to adopt this proposal at this time and the statute does not support the proposal.

Unintended and Harmful Impact of the Proposal

Allowing the FCS, a financial conglomerate with over \$350 billion of assets, to now operate a duplicate secondary market by mimicking Farmer Mac's activities in this space will be quite disruptive to Farmer Mac. This in turn will harm several hundred community banks that actively conduct business with Farmer Mac and thus already accomplish the first two stated objectives in the proposal. But we stress the ability of community banks to accomplish these two objectives is the result of utilizing Farmer Mac – not FCS lenders.

As a large financial conglomerate, FCS has many more sources of income than Farmer Mac's limited charter allows and will utilize the billions of dollars in annual profits FCS lenders accumulate to underprice business activity from Farmer Mac. FCS will routinely lowball the pricing found on Farmer Mac's rate sheets.

FCA, the regulator of Farmer Mac, provides no indication they will protect Farmer Mac from encroachment and manipulation by the larger, more financially powerful FCS. For some curious reason, Farmer Mac's interests seem completely disregarded by the FCA's proposal, even though the FCA is charged with ensuring, through proper regulation, the financial health of Farmer Mac.

While FCA notes they have a cap on FCS investments based on 10 percent of overall loans, given the gigantic size of the FCS's loans and assets, which would approximate one of the 11th largest bank in the U.S. if FCS were considered a bank, and the relative small size of USDA's guaranteed loan portfolios, this 10 percent cap hardly represents a meaningful cap against FCS completely dominating the secondary market for USDA loan guarantees.

FCA Mischaracterizes the Secondary Market

FCA's proposed rule makes the astonishing claim that "The final rule (previous investments rule) may have an unintended impact by causing 40 percent of the existing buyers to be excluded from the secondary market." Quite frankly, ICBA views this statement as extremely misleading since there are multiple other outlets for secondary market activities other than the FCS. FCS's absence from the secondary market would not meaningfully impact the ability of market participants to locate buyers and sellers. This proposal is just a power and money grab by FCS.

ICBA also disagrees with FCA's statement that "More importantly, USDA loan guarantees contribute to the flow of adequate and affordable credit into rural areas, which is related to the System's mission as a government-sponsored enterprise." FCS's absence from the robust secondary market will not negate the "adequate and affordable" flow of credit to rural areas. These types of misleading, exaggerated statements, rather than add substance to the proposal actually undermines its credibility.

Conclusion

For the reasons stated above, FCA should withdraw the proposed rule or limit it to loan purchases and sales of USDA guarantees between FCS lenders as that is what the statute states. FCA could also require FCS institutions to buy the guaranteed portion of such loans only from Farmer Mac or sell the guaranteed portion of USDA loans that FCS originates to Farmer Mac if transacting outside the sphere of FCS lenders.

This approach would actually enhance the secondary market rather than eventually diminishing its functionality as FCS seeks dominance over it. FCS's activities should not seek to replace or usurp Farmer Mac's secondary market role but this is precisely what the proposed rule allows.

Thank you for considering our views. Should you desire to discuss the contents of this letter please feel free to contact our staff at: Mark.scanlan@icba.org.

Sincerely,

/S/

Mark Scanlan
Sr. V.P., Agriculture and Rural Finance