Farm Credit Administration

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Subject: RIN 3064-AE59

Staff of the Farm Credit Administration (FCA) appreciates the opportunity to comment on the proposed rule issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) that would simplify certain aspects of the agencies' capital rule pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996.[1] This comment letter contains the policy views of FCA staff, which we will likely recommend to the FCA Board in a future FCA rulemaking. Because the FCA Board has not yet had the opportunity to adopt these

[1] 82 FR 49984 (October 27, 2017).

policy views, they are not currently policy positions of FCA or the FCA Board. All references to "we," "us," and "our" in this letter refer to FCA staff, unless the context clearly indicates that it refers to the FCA.

FCA is the independent Federal agency that regulates and examines the Farm Credit System (System), a Government-sponsored enterprise (GSE) that is a nationwide network of cooperative lending institutions that is the largest agricultural lender in the United States. We believe our suggested changes to the agricultural exposures exemption to the high volatility acquisition, development, or construction (HVADC) exposure definition would capture agricultural lending that is not covered by the proposed exemption but that should be assigned the same risk-weight as the lending covered by the proposed exemption.

Before we provide our suggested changes, we wanted to explain who FCA is, and why we believe we can provide special insight into the agricultural exposures exemption. As mentioned above, FCA is the independent Federal agency that regulates and examines the System, a nationwide network of cooperative lending institutions that is the largest agricultural lender in the United States. The System provides credit and other services to agricultural producers and farmer-owned cooperatives, and it also makes loans for agricultural processing and marketing activities, rural housing, certain farm-related businesses, agricultural and aquatic cooperatives, rural utilities, and foreign and domestic companies involved in international agricultural trade. FCA's mission is to ensure a safe, sound, and dependable source of credit and related services for all creditworthy and eligible persons in agriculture and rural America. FCA does this by adopting regulations that System institutions are required to follow and by examining System institutions to ensure their compliance with the Farm Credit Act of 1971 (as amended), FCA regulations, and safe and sound banking practices. If a System institution violates a law or regulation, or if its operations are unsafe or unsound, FCA can enforce corrective action in a manner similar to that of the agencies.

On July 28, 2016, FCA published in the *Federal Register* a Tier 1/Tier 2 capital framework final rule, which became effective January 1, 2017. Our final rule was comparable to the standardized approach rules of the agencies to the extent appropriate for the System's cooperative structure and status as a GSE with a mission to provide a dependable source of credit for agricultural and rural America.[2] FCA's rules for determining risk-weighted assets, particularly the calculations of risk-weighted assets for general credit risk, were very similar to those of the agencies.[3] FCA did not, however, adopt the high volatility commercial real estate (HVCRE) provisions that we had proposed, including an agricultural exposures exemption that was virtually verbatim to that of the agencies. FCA received comments from System institutions that expressed concern about and requested clarification of the HVCRE provisions, and we decided to further study the impact of these provisions before adopting them.

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[2] 81 FR 49720 (July 28, 2016).

[3] FCA did omit some risk-weights for exposures that System institutions have no authority to acquire or that are both complex and unlikely for System institutions to acquire.

We agree with the agencies that the proposed HVADC definition (including exemptions) is generally simpler than the HVCRE definition. However, we have concerns about the proposed agricultural exposures exemption. We now explain our concerns and suggest a revision.

The language of the proposed agricultural exposures exemption reads:

> The purchase or development of agricultural land, including, but not limited to, all land used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for commercial or residential development;

The valuation requirement appears in the existing HVCRE definition, and it also appeared in the HVCRE definition that FCA proposed but did not adopt in FCA's final rule. It can be difficult for agricultural land near metropolitan areas to escape non-agricultural influences in valuation, because of the potential for non-agricultural development. The consequence of the valuation requirement, therefore, is that a banking organization would often have to assign a higher risk-weight to exposures that primarily finance or refinance the acquisition, development, or construction of agricultural land near metropolitan areas, even when the land is solely being used for agricultural purposes and the owner has no intent to use the land for non-agricultural commercial development or residential development. We believe that the risk-weight of an agricultural loan for acquisition, development, or construction purposes should not increase simply because the property is located in an area where its valuation reflects non-agricultural influences. We suggest, therefore, that the agencies remove the language pertaining to valuation and focus instead on the owner's intended use of the property, agricultural or non-agricultural.

At the same time, we understand the agencies' intention to limit the agricultural exposures exemption to land that is truly agricultural in nature and not extend it to land used for non-agricultural purposes. Accordingly, we suggest adding language that would capture this requirement, as follows:

> The purchase or development of agricultural land, including, but not limited to, all land used or usable for agricultural purposes (such as crop and livestock production), *provided that the land substantially retains its agricultural nature and does not acquire material characteristics of non-agricultural commercial or residential development.*[4] (Italics added for emphasis.)

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[4] If FCA staff recommends adoption of HVADC risk-weighting to the FCA Board in the future, we expect that we will likely recommend somewhat different language in this exemption that reflects the unique statutory and regulatory provisions related to agricultural lending that govern the System. However, we are likely to recommend the FCA Board adopt the italicized language as we have suggested it here.

We would not expect banking organizations to engage in an extensive analysis of this requirement for every loan that is assigned a 100 percent risk-weight under this exemption from HVADC. We would, however, expect that every such loan satisfies this requirement. Banking organizations should base their determination on the totality of the circumstances.

Factors relevant to this determination could include the following:

- Whether zoning or easements indicate the property should be considered "agricultural land";
- Whether loan advances will be used to fund purposes associated with commercial or residential development;
- Whether the loan term and structure reflects the applicant's agricultural needs;
- Whether plans for repaying the loan are consistent with the intended agricultural use of the property;
- Whether the applicant's planned property improvements enhance an agricultural operation or enhance the property's non-agricultural appeal; and
- Whether the applicant plans to sub-divide the property into smaller parcels.

We believe this exemption, as we have suggested revising it, will ensure that banking organizations assign a 100 percent risk-weight to exposures that primarily finance or refinance the acquisition, development, or construction of agricultural land for agricultural needs and that they assign a 130 percent risk-weight to exposures that are not agricultural in nature.

We appreciate the opportunity to comment on this rule. If you have any questions about anything in this letter, please feel free to contact Jeremy R. Edelstein, Senior Policy Analyst, or Jennifer A. Cohn, Senior Counsel, at (703) 883 4056.

Sincerely,

[redacted]

Gary K. Van Meter, Director
Office of Regulatory Policy