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10/17/2016

Honorable Kenneth Spearman
Board Chair & Chief Executive Officer
Farm Credit Administration
McLean, Virginia 22102

Dear Chair/CEO Spearman:

I am writing on behalf of the Independent Community Bankers of America (ICBA¹) which represents over 6,000 community banks nationwide including several thousand banks heavily involved in agricultural lending. As was made evident during congressional oversight hearings on the Farm Credit Administration (FCA) and the Farm Credit System (FCS), many members of Congress are concerned with FCS lending and other activities that are contrary to the Farm Credit Act (Act).

ICBA is often contacted by community banks regarding these inappropriate and illegal abuses by FCS institutions including activities in recent years related to *non-farm* lending, contrary to the mission of the FCS. We are quite concerned the FCA apparently now allows FCS institutions to determine their own borrower eligibility parameters subject only to occasional FCA safety and soundness examinations. This lack of ongoing oversight by FCA in determining lending eligibility and other related FCS activities is alarming in that it allows FCS institutions to act inconsistent with the Act and its legislative history.

Therefore, to begin what we hope will be an in-depth, meaningful and transparent discussion on the part of the FCA regarding these apparent illegitimate activities by FCS lenders, we request FCA review the actions described below and respond to our questions. The inappropriate FCS activities mentioned below have been raised by various community bankers and we therefore ask FCA to respond in detail as soon as possible.

¹ The Independent Community Bankers of America®, the nation's voice for more than 6,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With 52,000 locations nationwide, community banks employ 700,000 Americans; hold \$3.6 trillion in assets; \$2.9 trillion in deposits; and \$2.4 trillion in loans to consumers, small businesses and the agricultural community.

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Commercial Building Loan – It appears Texas based FCS lender Capital Farm Credit made a loan to a Limited Liability Corporation (LLC) in the amount of \$200,000 to purchase/operate a commercial building located in Mason, TX. We have been advised this commercial building has been utilized for *office* spaces.

Therefore the FCS lender’s action in marking the box on the real estate deed of trust as “agricultural property” appears to be entirely misleading on the part of Capital Farm Credit.

In the deed of trust, the “agriculture property” designation commits that “Grantor covenants and warrants that the Property will be used **principally for agricultural, farming, or aquacultural purposes . . .**” (Emphasis added).

We request that FCA explain what agricultural purposes this building is currently being used for. If the building is not being used for agricultural purposes, we insist that FCA require the divestiture of this loan as an eligible loan, requiring Capital Farm Credit to close the loan and turn the borrower’s lending needs over to an eligible commercial bank.

Questions

- What type of agricultural enterprise is this commercial building currently being used for?
- When FCA examiners review FCS loans for compliance with scope and eligibility requirements and lending constraints of the Act, do they actually investigate the loans to determine if they are actually primarily agricultural loans or do FCA examiners simply look at the paperwork to see if loans are marked as agricultural?
- If FCA examiners merely review how loans are designated on paper, how do examiners know whether the loans are truly agricultural in nature?
- In determining whether FCS institution’s loans have been made for eligible purposes, do FCA examiners require proof that more than fifty-percent of a loan is derived from agricultural activities? If not, what requirements guide FCA examiners’ determinations that FCS loans are primarily agricultural in nature?

Excavating Company – Minnesota FCS lender AgStar Financial Services confiscated a *non-farm* line of credit from First Minnesota Bank (FMB) in April 2016 by telling the borrower that it was “difficult” for AgStar to do a farm operating line of credit (LOC) if FMB had a lien on the borrower’s separate excavating business assets. See copy of the pay-off check below.

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Section 1.11 of the Act notes the purposes for extensions of credit are to be for “Agricultural or Aquatic Purposes” (Sec. 1.11(a)). Although other credit needs are allowed within the agricultural loan, the language clearly does not envision allowing loans to farmers for one or more non-agricultural purposes as the law states “other credit needs including financing for basic processing and marketing **directly related to the applicant’s operations** and those of other eligible farmers, ranchers and producers or harvesters” (emphasis added).

We are concerned the FCA is deliberately misinterpreting the Act’s scope and eligibility purposes to allow FCS lenders to make non-farm business loans **unrelated** to an individual’s farming operation. An excavating business, for example, is unrelated to carrying out a successful farming operation and in fact very few farmers or ranchers have excavating businesses.

This loan should not have been extended by AgStar nor allowed by FCA and suggesting that bundling farm and non-farm lending together is simply more “convenient”, as AgStar apparently did, is not an acceptable excuse for making non-farm loans given the Act’s clear limitations on non-farm lending by FCS lenders as noted above.

Questions

- Prior to receiving this letter, was the FCA and FCA examiners aware that AgStar had made this non-farm business loan to the excavation company?
- On what basis could FCA suggest that this loan’s purpose was an eligible loan purpose?
- Why would AgStar, a supposedly modern FCS lender, not be able to provide a LOC for a farm separately so that the community bank could retain the non-farm business loan?
- How can FCA justify this loan when FCA testified before Congress that FCS lenders are trying to work with community banks while FCS lenders have been aggressively pilfering loans from community banks utilizing their GSE tax and funding advantages?

Inappropriate Advertising – AgStar also ran several billboards promoting home loans to residents of Glencoe, MN. A photo of one of these billboards is attached at the end of this letter. Section 1.11 (b)(3) of the Act limits FCS housing loans to rural towns with populations of less than 2,500 residents. Yet, Glencoe, MN has a population of 5,631 residents according to the 2010 census. This means that AgStar was advertising home loans to areas where such lending for any FCS institution would be illegal according to the Act.

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The above example is precisely why community bankers across the nation are so exasperated with the apparent lackadaisical, hands-off approach the FCA appears to be taking in overseeing and regulating the scope and eligibility of FCS lending and properly administering the Act.

Questions

- Do FCA examiners review the content and location of FCS institutions' billboard advertising for home loans?
- If not, how can FCA ensure that FCS institutions are not violating the constraints of the Act by advertising to ineligible residents in ineligible communities?
- Do any FCS institutions have housing loans in communities with populations of more than 2,500? If so, how many such loans exist? Will FCS, without delay, require divestiture of these illegal FCS loans?
- Do FCA examiners review the advertising content of FCS institutions to ensure it does not mislead ineligible borrowers into believing they are eligible for FCS loans?
- If not, how do FCA and FCA examiners know that FCS institutions are not allowing ineligible borrowers to apply for FCS loans?

Again, we request that FCA forthrightly answer the questions raised in this letter in order that we may respond to our members' legitimate concerns. We look forward to receiving an in-depth and full response to these questions in the very near future. Please refer any questions to mark.scanlan@icba.org or 202-659-8111.

Sincerely,

/Signed / Mark Scanlan

Mark Scanlan
SVP, Agriculture and Rural Policy
ICBA

Attachments

cc: Dallas Tonsager, Jeff Hall, Gary Van Meter, Robert Coleman

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