

are accurate and adequate to withstand the legal and technical scrutiny of borrower rights, foreclosure, bankruptcy, and other adverse credit actions. Therefore, the FCA also believes that anyone valuing any form of collateral should be familiar with, and, when required by the regulations, comply with USPAP.

While it might be argued that there is some additional expense involved with USPAP related training and compliance (e.g., field training, USPAP compliance training, and compliance with basic educational course requirements), such expenses are considered necessary to comply with the industry standards and current prudent lending practices. It is FCA's position that knowledge of current appraisal industry practices (including USPAP standards) is a necessary part of any evaluator training that is developed and provided by the System institutions pursuant to the requirements of § 614.4245. The FCA's regulations do provide flexibility to the System relative to the use of specific forms and the providing of necessary training requirements. However, whether conducted internally or through various appraiser affiliated educational programs, there is an expected level of education, expertise, and familiarity with USPAP standards. Therefore, the FCA does not view the requirement for USPAP on transactions in excess of the \$250,000 *de minimis* level to create an unnecessary expense burden.

The FCA regulations provide basic criteria for collateral evaluation practices in order to address safety and soundness concerns. However, an additional intent of the regulations is to provide the FCS institutions flexibility to administer their own programs within the confines of state appraisal agencies and appraisal industry standards. It is not the intent of the FCA to dictate the form of the evaluation process, but rather to establish the basic criteria. The FCA believes that adopting full USPAP compliance for all collateral-based loan transactions would be unnecessary and overly burdensome. The FCA also believes the regulations provide a balanced approach which addresses the concerns of both the appraisal industry and the System.

E. Section 614.4443—Review Process

An FCB requested clarification of the deletion of the language "or a borrower who has applied for a restructuring" that is now in the existing regulation, lest it be read as excluding borrowers seeking restructuring."

By definition (§ 614.4440(b)) the term applicant means "any person who

completes and executes a formal application for an extension of credit from a qualified lender, or a borrower who completes an application for restructuring." A borrower whose application for restructuring has been denied has the rights specified in § 614.4443(c), including the right to obtain an independent collateral evaluation. It is not the intent of the FCA to exclude borrowers who have applied for restructuring.

F. Section 618.8320—Data Regarding Borrowers and Loan Applicants

An FCB urged FCA to consider seeking clarification of the Federal Reserve Board's position on redacting confidential third-party information from copies of appraisals provided to applicants.

The present amendment of § 618.8320 conforms FCA regulations to reflect the requirements of the Equal Credit Opportunity Act. Section 618.8320 is being amended to state that collateral evaluation reports may be released to a loan applicant when required by the ECOA or related regulations. The ECOA is interpreted by the FRB which has amended its regulations to require release of "appraisal reports." Those regulations define "appraisal report" to mean the documents relied upon by a creditor in evaluating the value of the dwelling. (See 12 CFR 202.5a(c). The FRB, in its explanatory language concerning the published final regulation (58 FR 65657, December 16, 1993), provided a discussion of the appraisal report definition as follows:

The statute does not define an appraisal report; however, the legislative history suggests that it is the complete appraisal report signed by the appraiser, including all information submitted to the lender by the appraiser for the purpose of determining the value of residential property. The proposed definition was based on the legislative history, and stated that an appraisal report referred to the documents relied upon by a creditor in evaluating the market value of residential property containing one-to-four family units on which a lien will be taken as collateral for an extension of credit, including reports prepared by the creditor. The proposal stated that an appraisal report would not be limited to reports prepared by third parties.

The final rule provides the same meaning for an appraisal report as was proposed, but the definition has been shortened for clarity. A consumer who requests a copy of the appraisal report will be entitled to receive a copy of any third party appraisal that has been performed. For consistency with the rules implementing the prohibitions of the Fair Housing Act on discrimination in appraising residential real property, an appraisal report includes all written comments and other documents submitted to

the creditor in support of the appraiser's estimate or opinion of value. (See 24 CFR 100.135(b).)

The "appraisal report" does not include copies of "review appraisals," agency-issued statements of appraised value, or any internal documents if a third party appraisal report was used to establish the value of the security. Even when a third party appraisal has been performed, however, a consumer requesting a copy of the report also must receive a copy of documents that reflect the creditor's valuation of the dwelling when that valuation is *different* from that stated in the third party appraisal report. Such documents would include staff appraisals or other notes indicating why the value assigned by the third party appraiser is not the appropriate valuation.

The right to receive a copy of an appraisal report provided under Regulation B includes, but is not limited to, transactions in which appraisals by a licensed or certified appraiser are required by federal law. If the value of the dwelling has been determined by the creditor and a third party appraiser has not been used, the appraisal report would be the report of the creditor's staff appraiser, where applicable, or the other documents of the creditor which assign value to the dwelling.

The FCA believes that the aforementioned discussion taken from the FRB's final rule publication provides a reasonable and thorough explanation of what constitutes an "appraisal report." However, any further clarification of the scope of the Regulation B requirement should be derived directly from the FRB.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.