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October 20, 2003

Mr. Arthur Veldon Hall  
Director  
Loan Servicing and Property Management Division  
Farm Loan Programs  
United States Department of Agriculture  
1400 Independence Avenue SW  
STOP 0523  
Washington, DC 20250-0523

Dear Mr. Hall:

Re: Comments on Proposed Rule Changes for Farm Service Agency  
Appraisal Requirements for Direct Farm Loans, 68 Fed. Reg. 50,479  
(Aug. 21, 2003).

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of the National Family Farm Coalition (NFFC) concerning the proposed rule to amend the Farm Service Agency's (FSA) regulations governing the requirements for appraisals for FSA Farm Loan Program (FLP) direct loans. This proposed rule was published at 68 Fed. Reg. 50,479 (Aug. 21, 2003).

NFFC represents 35 grassroots farm and rural advocacy organizations in more than 30 states. Formed in 1986, the coalition coordinates the efforts of a growing network of grassroots organizations committed to preserving and enhancing a family farm food production system in the United States. NFFC's work includes education, outreach, and advocacy for stable rural communities, safe food, and the preservation of natural resources through family farming. NFFC has a significant history of long-term interest in USDA's implementation of farm credit, disaster assistance, and conservation programs.

FLAG is a nonprofit, public interest law center dedicated to the preservation of family farms. For over fifteen years, FLAG has provided legal services to thousands of small and mid-sized family farmers

throughout the nation in impact litigation, administrative proceedings, public education initiatives, and legislative technical assistance involving agricultural credit and farm program issues.

### **Remove the Appraisal Requirement as a Precondition for Direct Loan Approval**

NFFC supports FSA's proposed changes to 7 C.F.R. 1910.4 (b)(21) and 1910.4 (j)(1)(i) that would allow FSA to conditionally approve FSA direct loan applications, and defer the appraisal until loan closing.

By deferring the appraisal requirement, FSA will reduce its appraisal costs. In addition to these cost savings, NFFC believes this change would benefit direct loan program applicants by reducing the confusion that often results when a second appraisal is required under the current system.

If and when this change becomes final, NFFC recommends that FSA take formal steps to educate farmers and ranchers about this dramatic change in the timing of the appraisal requirement for the direct loan approval process. Each loan approval package should clearly state that the approval is conditional pending completion of an acceptable appraisal and explain the procedure and timing for the entire appraisal and loan closing process. NFFC urges that FSA's discussion in the loan approval documents include a statement alerting applicants to the risk that FSA may not close the loan if the appraisal indicates that the real estate would not provide adequate security for the loan.

The prefatory comments state that, "On the Agency's 'Request for Obligations of Funds,' applicants will agree that the 15-working day loan closing requirement may be exceeded to obtain the necessary appraisals." Delays in the disbursement of loan funds can have dramatic, negative impacts on a farmer or rancher's operation. NFFC urges the agency to adopt clear regulatory deadlines for completing the appraisal. This deadline might appropriately be added to the proposed 7 C.F.R. § 1910.4(j)(1). NFFC recommends regulatory language stating that, "All required appraisals shall be completed not later than 60 days after receipt of a complete application, if loan funds are available when the application is approved, or not later than 30 days of receipt of notice from the agency that loan funds are available."

### **Issue a New Proposed Rule to Harmonize Appraisal Requirements with Eligibility Requirements for Refinancing Bridge Loans**

The proposed change may also create confusion about the application of a provision in the 2002 Farm Bill. Section 5002 of the Farm Bill [now codified at 7 U.S.C. § 1923(a)(1)(E)] authorized the agency to:

Refinanc[e] a temporary bridge loan made by a commercial or cooperative lender to a farmer or rancher for the acquisition of land for a farm or ranch, if—

- (i) the Secretary approved an application for a direct farm ownership loan to the farmer or rancher for acquisition of the land; and
- (ii) funds for direct farm ownership loans under section 346(b) [7 USCS § 1994(b)] were not available at the time at which the application was approved.

The proposed rule would change the FSA's long-standing interpretation of the meaning of loan approval, a meaning upon which Congress presumably relied when authorizing the use of direct farm ownership loan funds to refinance temporary bridge loans. The proposed change is of sufficient importance that the agency should issue a new proposed rule providing notice of the specific issue of harmonizing the proposed change with the statutory provision (as well as the regulation found at 7 C.F.R. § 1943.16(e)), and allowing an opportunity for public comment.

Any final rule should clarify whether applicants who have an approved application with FSA, conditioned upon completion of an appraisal, will be eligible to obtain FSA direct farm ownership loans if they obtain a temporary bridge loan while waiting for funds to become available. NFFC urges the agency to also make plain in its loan approval documents whether FSA direct loan funds may be used to refinance temporary bridge loans in these circumstances. NFFC believes that if all conditions for loan approval, other than an appraisal, have been met, 7 U.S.C. § 1923(a)(1)(E) applies.

#### **Establish a Loan Amount Below which an Appraisal is Not Required for Approval of a FSA Direct Operating Loan**

NFFC supports FSA's proposal to eliminate the appraisal requirement for approval of FSA direct operating loans (OL) of \$50,000 or less for the purpose of streamlining the OL loan approval process. The proposed addition to the language of 7 C.F.R. 1941.25(a)(4) of this exemption of OL loans of \$50,000 or less should reduce the time it takes to get vital operating funds into the hands of qualified applicants. The speed with which loan funds are made available is a critical factor in the success of their operations. Shortening the timeframe from loan application to disbursement of funds by even two or three weeks, as this proposal will likely do, can make a dramatic difference. NFFC strongly encourages FSA to use this streamlining of the OL approval process as a means to get funds into the hands of Socially Disadvantaged and low-income farmers and ranchers.

#### **Raise the Limit Triggering the Real Estate Security Servicing Appraisal Requirement**

NFFC supports FSA's proposal to amend 7 C.F.R. 1965.13 (d) to raise the trigger point requiring an appraisal prior to sale of a portion of real estate security property to transactions involving more than \$25,000. This change will increase economic flexibility for farmers and ranchers by eliminating potential delays caused by the appraisal requirement on land sales that fall under the new trigger amount.

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NFFC proposes that FSA's new language for 7 C.F.R. 1965.13 (d) retain the following sentence from the current regulation: "However, a new appraisal report need not be obtained if there is an appraisal report not over 1 year old in the case file which will permit the official authorized to approve the transaction to make the proper determination of the market value of the property being retained and the market value of the portion to be released." It is unclear why this sentence was removed in the proposed language, and its retention in the new rule would avoid an unnecessary appraisal for transactions involving more than \$25,000 where there is a current appraisal report already in the case file.

Changing the requirement that the retained land be appraised from mandatory to discretionary appears likely to streamline administration in the area of real estate security servicing. The final rule should include guidance describing when an appraisal is "necessary to protect the financial interests of the government." This will help ensure that the agency's discretion is applied consistently and fairly throughout the country.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

*s/Carl L. Flink*

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cc: Kathy Ozer, *National Family Farm Coalition*