INDEPENDENT COMMUNITY
BANKERS *of* AMERICA®

March 10th, 2020

Submitted Electronically:
https://www.regulations.gov

Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

RE: Docket ID: CEQ-2019-0003, Council on Environmental Quality (CEQ) / Federal Register / Vol. 85, No. 7 / Friday, January 10, 2020 / Proposed Rules / page 1684

Dear CEQ:

The Independent Community Bankers of America (ICBA), is submitting this letter in response to the Council on Environmental Quality's (CEQ) proposed rule to update its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA).

The proposed rule states the CEQ has not comprehensively updated its regulations since their promulgation in 1978, more than four decades ago. The proposed rule is intended to modernize and clarify NEPA regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies, reduce paperwork and delays, implement court rulings and promote better decisions consistent with national environmental policies and to clarify the regulations in view of over thirty guidance documents issued by the CEQ over the years.

ICBA Views

ICBA agrees with these goals. As the proposed rule states, "implementation of NEPA and the CEQ regulations can be challenging, and the process can be lengthy, costly, and complex." Many bankers would also concur with the PR's statement: "In some cases, the NEPA process and related litigation has slowed or prevented the development of new infrastructure and other projects that required Federal permits or approvals." This is unfortunate since the original goals of CEQ regulations were to reduce paperwork and delays and to promote better decisions consistent with national environmental policy.

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

SAUK CENTRE, MN
518 Lincoln Road
PO Box 267
Sauk Centre, MN 56378

866-843-4222
www.icba.org

Our primary focus in terms of this proposal regards reducing the impact or use of NEPA for government guaranteed lending. ICBA strongly supports the PR's recommendation to "exclude as non-major Federal actions the farm ownership and operating loan guarantees provided by the Farm Service Agency (FSA) of the U.S. Department of Agriculture pursuant to 7 U.S.C. 1925 and 1941 through 1949, and the business loan guarantee programs of the Small Business Administration (SBA)."

This exclusion is particularly important since the private sector provides the funds for these programs, not the government. As the rule notes, government funds are only expended in the case of loan defaults. Loan defaults under these programs are negligible. We also agree with the rule's stated rationale: "FSA does not control the bank, or the borrower; the agency does not control the subsequent use of such funds and does not operate any facilities. In the event of a default, properties are sold, and FSA never takes physical possession of, operates, or manages any facility."

Consistent with the exclusion discussed above, ICBA believes the final regulations should clarify the exclusion should apply to all refinancings of guaranteed loans as well even if there is ground disturbance involved. As the rule states, "courts have determined that NEPA does not require the preparation of an EIS for actions with minimal Federal involvement or funding." The final rule should therefore exclude the need for any significant environmental analysis and/or EIS for the origination or refinancing of USDA and SBA guaranteed loans.

USDA's current interpretation of NEPA requirements has resulted in blocking loan guarantees when the applicant seeks to refinance and there is ground disturbance involved, apparently even if the ground disturbance is minimal. For example, the requirement to undergo the NEPA process could apply to a producer seeking a loan to modernize a dairy parlor in an effort to become more efficient. Or the NEPA process as currently interpreted could apply to a farmer installing fencing or grain bins or similar common farming or ranching activities. While there is no actual adverse environmental impact resulting from these activities, the complexities and time delays involved often block the applicant from obtaining financing.

We believe the exclusion as a non-major Federal action under NEPA should apply to all NEPA requirements whenever a guaranteed loan is involved due to the fact the loan funds are provided by the private sector and the government only steps in with a guarantee when a default is involved.

For very large loans for a particular project, if deemed necessary based on the potential for major environmental impacts, lenders or borrowers could submit a one-page "low doc" form certifying their confidence the loan purposes will not have a major detrimental impact on the environment. The low doc form would therefore be the basis of precluding any required environmental analysis or studies under NEPA. Smaller loans by their nature have less likelihood for any significant adverse environmental impacts and therefore should not need to undergo environmental assessments and/or studies.

Additional Issues

The proposed rule states that although an EIS is supposed to be completed within a one-year time frame, the median time frame for reaching a decision on a project is 3.6 years and that twenty-five percent of EIS's take more than six years for a decision to be made. The regulations should set shorter and more practicable timeframes while requiring government agencies to reach a decision within the timeframe established for the project's level of complexity and significance of impact. If there are mitigating circumstances, the timeframe could be extended for a particular project, but only once and not for more than twenty-five percent of the initial timeframe. Otherwise, the project should be automatically approved as the government was not able to show a significant environmental impact within the established timeframe.

Conclusion

Thank you for the opportunity to comment on this proposed rule. As referenced in our letter, ICBA believes the intent of NEPA can be accomplished in a much more efficient way while still protecting our valuable natural resources and our environment. Ultimately, these regulations should not unnecessarily impede the normal activities of borrowers and the community banks that finance them simply because they are seeking guaranteed loans or refinancing of guaranteed loans to improve their agricultural and small business enterprises.

Should you wish to discuss this letter's contents please contact mark.scanlan@icba.org.

Sincerely,

/ s /

Mark Scanlan
Sr. Vice President, Agriculture and Rural Policy