AgCarolina
FARM CREDIT

June 03, 2014

Mr. Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102-5090

RE: Standards of Conduct and Referral of Known or Suspected Criminal Violations; Standards of Conduct – Proposed Rule
RIN 3052-AC44

Dear Mr. Mardock:

AgCarolina Farm Credit appreciates the opportunity to submit comments to the Farm Credit Administration (FCA) in response to the notice published in the *Federal Register* on February 20, 2014, requesting comments on proposed amendments to the regulations on Standards of Conduct (SOC) and Referral of Known or Suspected Criminal Violations (Proposed Regulations). AgCarolina would also like to indicate its general support of the Farm Credit Council's comments on the Proposed Regulations which addresses many important additional concerns not addressed in this letter. Each System institution has a vested interest on behalf of its stockholders to maintain high standards of honesty, integrity, impartiality and conduct. However, we are concerned that many of the Proposed Regulations swing the pendulum too far and are administratively burdensome, difficult to enforce and/or implement and ultimately will prove far too costly to stockholders.

Board of Directors

Unlike most publicly traded institutions, the majority of System institutions' directors are System borrowers and leaders in the agricultural and/or rural communities in which we serve. The nature of our cooperatives means that in the ordinary course of business, many directors have relationships with those who may transact business with System institutions. Any regulations that impose undue burdens on ordinary course business relationships for these directors limit the attractiveness of serving as a director. This has the unfortunate potential of ultimately limiting the effectiveness of our institutions and the cooperative principles upon which we operate. In fact, we are increasingly hearing from nominating committees that the burden of Standards of Conduct compliance is limiting the number of qualified candidates with diverse farm, agricultural and specialized business experience willing to run for open seats on System boards. While we understand that all directors owe a fiduciary duty to their respective institution and such duty may from time to time limit the permitted activities of any director during the term of his or her service, the Proposed Regulations impose burdens beyond that which is necessary or advisable.

For example, we note that the proposed prohibitions in §612.2145(a)(7), are not limited by a qualification that a director[1] not ***knowingly*** become financially obligated with or on behalf of parties who may transact business with their System institution[2]. The absence of this knowledge qualifier leads us to conclude that any transaction with a party transacting business with the related System institution which does not receive ***prior*** approval by the Standards of Conduct Official (SOCO) would violate Section 612.2145(a)(7) even if the director had ***no reason to know*** that the counterparty on the related transaction does business with the System or only finds out such relationship ***after*** the transaction was consummated. Moreover, it is not clear how the permitted de minimis and materiality standards adopted by an institution's board with respect to reporting requirements would impact the prohibited activity provisions in §§612.2145 and 612.2155. We believe that the Proposed Regulations should make clear that prior SOCO approval is only required for transactions (a) involving parties that the director knows or has reason to know are borrowers or otherwise transact business with the related System institution and (b) are in excess of the de minimis and materiality standards set by the board[3]. Without such a limitation, the directors would be subjected to burdensome reporting and approval requirements which may unreasonably delay ordinary course business operations and ultimately dissuade qualified director candidates from serving on System boards.

Agents

While System institutions endeavor to engage quality "agents" with high ethical standards, it is not commercially reasonable to expect that System institutions will be able to enforce and track the activities of many who may be deemed an agent by the Proposed Regulations. For example, if a System institution engages a large industry leader (e.g. Microsoft Corporation) to provide technology consulting services, such entity may be deemed an agent by the broad definition contained in the Proposed Regulations. However, System institutions are highly unlikely to be able to force such types of entities to sign a Code of Ethics, submit the required reporting and take on the resulting increased contractual liability at all, but in any event without significant increased expense to the System institution. The likely result of the Proposed Regulations will be to limit the entities which will be willing to provide services to System institutions, to the detriment of customer service, portfolio credit quality and overall performance. We believe that the Proposed Regulations should be modified to allow System institutions to adopt reasonable policies to address the oversight of agents in light of the circumstances of the related engagement which are approved by the respective board of directors and reviewed by the FCA as a part of its examination process.

In addition, §612.2180(d) is administratively difficult to enforce or track. The Proposed Regulations generally restrict agents from acquiring property that was owned by the related

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[1] The concerns expressed here with respect to directors also applies to the reporting requirements of employees and others under the Proposed Regulations.

[2] Unlike the reporting requirements of §612.2140 and the provisions of §612.2145(a)(6) with respect to acquired property which include knowledge qualifiers. We assume the omission in §612.2145(a)(7) is intentional.

[3] While we generally support the board oversight reflected in the Proposed Regulations, we do believe that boards should be granted flexibility to set de minimis and materiality standards in light of applicable circumstances. For example, a $50,000 transaction may be considered material for a director with a $200,000 net worth, but not for a director with a $1 billion net worth. The board should be permitted to review how materiality is determined and what is reasonably de minimis in the context of its policies. The documented reasonable business judgment of the board on such matters should not be unilaterally overturned through examination. Furthermore, other guidance from the FCA should not be treated as the equivalent of FCA regulations or other applicable law which are transparent to all and which have been subject to public comment and review.

System institution as a result of foreclosure during the agent's employment for one year. For agents who do sporadic work for a System institution over a period of years, it is unclear what would constitute the period of employment. Moreover, while it may be possible to track direct sales to certain agents, it is administratively burdensome and often impossible to track subsequent third party sales for a period of one year. For example, a System institution sells a house acquired through foreclosure to a Party A on January 1. On November 1 of the same year, an attorney handling employee benefits matters for the System institution buys the house from Party A. This transaction would be a violation of the Proposed Regulations even though the "agent" was not involved in the original disposition of the acquired property and may be unaware of the System institution's prior interest. The potential administrative burden of tracking all title changes of acquired property even after it has been sold by a System institution is unreasonable. We believe that the restriction in the Proposed Regulations should be narrowly tailored to cover direct sales between System institutions and agents who are directly involved in such disposition (such as appraisers of the related property or the related closing attorney)[4].

Standard of Conduct Officials

The Proposed Regulations substantially increase the scope of responsibility for each SOCO. The depth of such increase poses a significant regulatory burden on each System institution that is not commensurate with increased benefit. While the FCA may assert that all disclosure is beneficial, the practical reality is that each additional disclosure requires SOCO attention, even if such disclosure is submitted out of an abundance of caution and likely not related to an actual conflict of interest. Given the number of potential agents who would be required to make disclosures, the breadth of additional prior disclosures by employees and directors and the amount of related diligence and tracking that would be required to make SOCO determinations under the Proposed Regulations, it is difficult to see how significant additional resources will not be necessary to comply. For many institutions, it is likely that no one "official" will be able to timely review and analyze SOC issues without the support of additional full-time dedicated SOC resources or outside contractors at significant additional expense. Although the FCA believes that the additional regulations will not have a substantial impact on a substantial number of small entities, we respectfully disagree. The impact of the Proposed Regulations should not be viewed on a consolidated basis. The Proposed Regulations apply to each individual System institution independently and the impact of the rules should also be viewed on such basis. In fact, we believe that the Proposed Regulations will have a significant economic impact on many of the smaller entities in the Farm Credit System who will have to devote significant economic and human resources to handle the new responsibilities. Any significant increase in expenses for a System institution impacts its ability to deploy capital to the communities that it serves. We ask that the FCA consider the comments on the economic impact of the Proposed Regulations and make appropriate revisions.

Conclusion

The maintenance of public confidence in the Farm Credit System requires that each System institution adhere to high standards of conduct and it is a priority of AgFirst, its directors and employees to live up to such standards. Nevertheless, the Proposed Regulations impose

[4] We note that the tracking concerns addressed here with respect to indirect sales to agents also applies to the prohibitions for directors and employees.

significant administrative burdens that in many cases do not advance this goal. Instead, many of the Proposed Regulations potentially limit the pool of directors with significant operations who may be willing to bring their expertise to the boards of System institutions and the pool of professional services providers who may be willing to transact business with System institutions. Moreover, for many entities the substantial increased resources required to oversee a SOC program under the Proposed Regulations will impact the resources available to provide the services that the System was created to address. We respectfully ask that the FCA consider AgFirst's and other System institution comments to revise the Proposed Regulations to reduce unnecessary administrative burdens and clarify responsibilities so that we are not hindered in the advancement of the mission of the Farm Credit System to provide financing to our rural and agricultural communities.

Again, thank you for the opportunity to comment.

Respectfully submitted,

AgCarolina Farm Credit

Audie M. Murphy
Chairman of the Board of Directors

David W. Corum
Chief Executive Officer & President