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

RE: Standards of Conduct – RIN 3052-AC44 / Federal Register 79 (February 20, 2014) 9649-9661

The Board of Directors for GreenStone Farm Credit Services, on behalf of its membership and employees would like to take this opportunity to comment on the Farm Credit Administration's (FCA) proposed rule published in the February 20, 2014 Federal Register addressing requirements for the banks and associations of the Farm Credit System ("System") regarding standards of conduct and creating a new requirement that each institution adopt a code of ethics.

This letter is particularly focused on the impact on association management. These comments come following an evaluation of the Farm Credit Council comment letter which solicited input from all System institutions. GreenStone management participated in much of discussion and contributed perspective. Our association comment letter is made to fully support and augment the Farm Credit Council letter on various aspects of the proposed rule.

### **General Comments**

Overall, we believe the entire System has proven to be strongly committed to a culture of high ethical conduct. The current process of acknowledging the requirements and importance of the rule, and requiring self-disclosure has worked, and is suitable for the professional level of engagement for directors and employees. This is serious responsibility for each individual and it is well trained. The annual certification process serves to emphasize that ethical conduct is an on-going priority for all levels of engagement. Creating additional burden with more uncertainty from this proposed rule will not enhance the already high level of ethical conduct.

If there are any weaknesses in managing through the already stringent requirements of a regulation, then appropriate supervisory or follow-up examination practices are already in place. The tools for supervision and examination have served the purpose of making the System a safe and sound financial services delivery model. If there are weaknesses, one wonders how the weaknesses would be addressed from it. Strengthening and modifying a regulation merely due to having the power and authority to take such action does not appropriately recognize the entirety of the circumstances the System has operated and performed. While agriculture and farm credit associations have evolved since the adoption of the standards of conduct regulation, it has not changed insofar as to have demonstrated any increase in unethical behavior. Rather, the System with its agricultural business leaders has been a beacon of favorable performance in the light of other industries. In essence, the regulation and the existing FCA oversight through supervision and examination practices have worked well and cooperatively with the System in a respective and arm's length manner with the respective boards of directors, management and employees.

Through this proposed rule, it appears that the Farm Credit Administration is attempting to expand the reporting burden and to develop complicated definitions of family relationships and in doing so may do more to discourage individuals from serving in these important positions than increase protections against unethical behavior. The Agency has noted in the past that there is a need for the System's directorate to reflect today's agriculture and the marketplace. Unfortunately, the Agency then proposes regulations such as this one which tends to discourage individuals from seeking a board position due to the unreasonable and unnecessary burden of complying with these reporting requirements, and infringes more deeply on their family privacy.

If there is some reason for the ethical standards of farmers and ranchers and cooperative directors to be in need of greater scrutiny than those of commercial bank directors, then we find that curious and absent of reason. Evidence suggests that the cooperative structure of the System as having produced the highest standard of conduct and ethical behavior, and this is likely in part due to the existence of the existing rule, standards and traditions of behavior that have become part of the culture of the System.

With respect to standards of conduct regulations concerning third party vendors, even as it applies to the agencies themselves, in contracting with third party vendors, regulations relating to conflicts of interest are transaction specific, requiring disclosure when there is the potential for a conflict in a specific circumstance rather than including every possible vendor regardless of enterprise and relationship to the association.

The proposal increases rather than decreases the burdens and costs on System institutions, the changes are largely unnecessary and inconsistent with current operations, and the proposal has no direct basis in law since, unlike other regulated financial institutions, the Congress has not included in the Farm Credit Act specific statutory requirements that underpin these regulations. This creates a situation of reckoning and reconciliation between congressional intent and oversight, and the action of a federal agency empowered to carry out the intent of Congress. It creates a need to further inquire as to why the need for change and what are the public interests to protect which are so unique to the System. The System exists in a safe and sound performance state, and well regulated position of arm's length independence under a proven existing regulation. Hence, why the need to change to create additional meaningless burden opposite of congressional intention?

While some general updating of the existing regulations to have them reflect changes in System operations may be appropriate, we are particularly concerned that certain aspects of the specific director reporting requirements in the proposed rule will be unduly burdensome, costly, without significant corresponding benefit and are confusing. Most System bank and association directors consider farming to be their primary occupation, and most are significantly involved in the day to day management of their farming operations. We have found that the individuals that serve on System institution boards do so primarily out of a desire to protect the System's mission as a dependable source of credit for producers, their cooperatives and rural America, not for financial gain. The reporting and disclosure process should not discourage prospective director candidates from seeking election to the board, and impair existing directors from continuing to serve. The potential for this outcome runs directly counter to the purpose for the foundation of the System which was designed to encourage farmer- and rancher-borrowers participation in the control and direction of the System.

### **Specific Comments**

**Guidance versus Regulation** - We object to the implication that directors and employees are legally obligated to follow "guidance" and similar non-binding statements by the FCA. While guidance can be helpful, the uncertainty of what it means creates a vacuum for uncertainty. The role of the Agency is not to directly manage System institution operations through guidance and other policy declarations. This creates confusion for the directors, management and the regulatory agency in the development of sound practices and undermines the rule of law. In order to adopt general requirements with the force of law, the Agency must follow the notice and comment requirements of the Administrative Procedures Act. A requirement that directors and employees

must observe the letter and intent of all applicable “guidance” would depart from these established principles of rule of law, and by elevating agency “guidance” to the status of a binding legal requirement runs afoul of the very law the FCA is charged with providing oversight.

**Applicability of Rules Regarding Agents** - As the existing rule already provides, it is the institution’s responsibility to use safe and sound business practices in retaining agents. The Proposed Rule creates a distinction between agents who are subject to their own professional standards, and those who have no set industry standards. Asking an institution’s outside counsel to acknowledge receipt and review of the Code of Ethics and to certify that they will (nevertheless) adhere to their state’s code of professional responsibility, which they are in any event required to abide by, creates no benefit for the organization, and is costly and burdensome. Overall and appropriately so, it is the association’s responsibility to use safe and sound business practices in retaining agents and other outside service providers.

**Regulatory Burden** – The Association supports a strong Standards of Conduct Program and corresponding Code of Ethics. We support clarifying the circumstances by which directors may purchase property previously acquired through the foreclosure process. Requirements for prior approval of various transactions will result in the need for institutions to dedicate more personnel to the SOC function, without any commensurate benefit. Directors, virtually all of whom have other primary occupations, must be able to conduct those businesses without undue concern that they are somehow “tripping” over a rule in conducting the normal course of buying and selling that is typical of farming operations. Violations of rules and regulations can already be addressed in this area if such violations are discovered to exist by either a Standards of Conduct Officer or the FCA examination team.

**Family members** - the definition of a “family” member appears to be overly broad. Given the additional reporting requirements placed on directors and employees, we suggest using a consistent definition throughout the regulations, and leave it as “immediate” family members and those living within the same household as the director or employee. The new language is so ambiguous that it is not helpful and in any case should be limited to relationships of only those individuals living in the same household as the director or employee.

**Materiality** - While we appreciate the Agency’s attempt to provide flexibility to institutions through enabling them to establish exceptions for ongoing and normal business transactions, the rule creates ambiguity and uncertainty in stating the material standard. Associations need certainty that they have the ability to establish reasonable standards and if questions are raised that there is a specific process in place for them to make their case to maintain that standard before the FCA board. Examiners need clear guidance to avoid making arbitrary decisions that lead to a patchwork of inconsistent policies across the System and this should be clear in the regulation. This of course should be done on prospective basis in the event the rule does change, as business transactions for directors may be well underway within existing standards.

**Reporting Requirements** - If the board member serves on his church board (or similar governing body), unless that church transacts business with the Association, we do not believe that any disclosure, or SOC determination of “insignificance” is required. The reporting requirements of current regulation provide for disclosure of the name of any entity in which the director has a material financial interest or on which the director serves as a board member, if the director has reason to know the entity transacts business with certain parties. We think the current rule is clear.

**Decision Making** - Board members regularly engage in deliberations regarding loan programs, interest rate programs, disaster assistance programs, YBS programs, and the like that effect classes of borrowers, but not “all” borrowers. Boards and SOC officials need to be able to use sound business judgment in such cases and recuse themselves as appropriate in each particular situation. The proposed standard narrows the decision making of the director.

**Property Acquisitions** - Associations should be able to sell foreclosed property in a manner that satisfies the requirements of current regulations (Section 617.7620). If using one of those methods, a director should not be precluded from purchase. The obligation to sell the property through “open competitive bidding” is on the Association, and already part of well-established sound business practices. Further, in the particular instance of property that has been acquired through the foreclosure process, prohibitions should be limited as appropriate in any given situation. The Association should take precautions to ensure that the property is disposed of in a manner that allows open, competitive bidding; there is no real opportunity for a conflict of interest, and no legitimate concern regarding the appearance of impropriety. Rules are already in place to assure this occurs, and we are unaware of any instance requiring more regulations necessary to protect these well-established practices of fair and open sales of foreclosed property.

### **Summary Conclusion**

We support requirements that Associations have in place and abiding by appropriate standards of conduct and codes of ethics. Regulations that require institutions to have these have largely been in place for two decades. It is inappropriate for the FCA to pursue proposals that are so prescriptive and that create significant, unnecessary reporting burdens for directors that they discourage qualified, ethical individuals from seeking positions as System directors.

Once again, we appreciate this opportunity to comment on the Proposed Rule and trust that our comments and those of other System institutions will assist the Agency. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Scott Roggenbuck  
Board Chairman