

June 20, 2014

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

Sent via e-mail to reg-comm@fca.gov

Re: Proposed Rule on Standards of Conduct and Referral of Known or Suspected Criminal Violations Published at 79 Fed. Reg. 9649-9661 (February 20, 2014)

Dear Mr. Mardock:

On behalf of the Board of Directors (“**Board**”) of AgCountry Farm Credit Services (“**AgCountry**”), I am respectfully submitting the following comments on the Farm Credit Administration’s (“**FCA**” or “**Agency**”) Proposed Rule on Standards of Conduct and Referral of Known or Suspected Criminal Violations (“**Proposed Rule**”). The issues raised by FCA in this Proposed Rule are of significant concern to all institutions of the Farm Credit System (“**FCS**” or “**System**”). Our Board understands that the Farm Credit Council will submit a System-wide comment. AgCountry’s Board supports the System’s position in this matter.

We want to thank FCA for engaging with System institutions to receive input on how to improve upon the oversight of standards of conduct, and want to take this opportunity to voice our own specific observations regarding the issues raised by this Proposed Rule. AgCountry is committed to a culture of high ethical conduct and the avoidance of conflicts of interest, both real and in those situations which might create the appearance of impropriety. However, as detailed below, AgCountry is greatly concerned that the Proposed Rule is unnecessarily broad, creates uncertainty and includes many burdensome requirements that impede rather than promote progress in the area of Standards of Conduct.

General Comments

We are concerned that the treatment of directors and extensive disclosure requirements will amount to a serious disincentive for highly qualified individuals who wish to serve as directors on our Board, and provides no corresponding benefit to mitigation of conflicts of interest. Strong, qualified directors are critical to the success of a cooperative, including Farm Credit System institutions. The Proposed Rule would, in many cases, be so burdensome that many directors or potential director candidates simply would choose not to serve.

Further, we are also concerned that the Proposed Rule shifts the burden for compliance from individual directors and employees on to the institution and the standards of conduct official (“SOCO”). While we concur that the institution should be responsible for administering its standards of conduct programs and addressing ethical violations in an effective manner, it is unreasonable to hold an institution accountable for regulatory, ethical and conduct violations of the individuals they employ. Further, FCA’s proposal places SOCO in an untenable position of being responsible and accountable for the quality and accuracy of the individual’s disclosures. Under the proposal, the SOCO would have to investigate the backgrounds of all individuals on a continuous basis and make daily determinations on routine matters in order to reasonably ensure compliance with the proposed requirements. This proposed regulatory standard is entirely unnecessary, and is far beyond the standards applied to other regulated financial institutions and even the government itself.

In addition, the FCA’s proposal overreaches in its treatment of “agents” of System institutions. FCA’s proposed standard goes well beyond that of any other financial regulator and would be a strong disincentive for any firm or person that could be construed as an “agent” from working on behalf of a System institution. Compliance with the Proposed Rule in this area would be virtually impossible in today’s marketplace.

Specific Comments

§ 612.2103 – Definitions:

The definition of “*controlled entity*” is inappropriately low, and should reflect something greater than a 5% ownership. AgCountry suggests the definition utilized by the Federal Reserve in Reg. O of a 25% ownership or the ability to vote 25% or more of the voting, ability to direct control, management, etc., of the entity (see 12 CFR 215.2(c)). We see little reason for the agency to impose a narrower definition for the purpose of this regulation. A 5% threshold is confusing, as that amount fails to reflect any type of controlling interest. Because it includes such a *de minimis* level, disclosure is often missed by employees or directors in completing their disclosures *albeit* good faith.

The definition of “*employee*” should be revised to remove any confusion over employees hired through a temp agency, interns and other similar workers.

The definition of a “*family*” member is unnecessarily broad. It expands “family” to include not only parent, spouse, son, daughter, stepson, stepdaughter, etc., but also “and anyone whose association or relationship with the director or employee is the equivalent of the foregoing”. The new language regarding “equivalent” relationships is so ambiguous that it is not helpful. Attempting to add non-traditional relationships which generally are non-formal or not legally recognized puts an unnecessary burden on association to determine the degree to which romantic or co-habitation arrangements should be disclosed and further delve into the nature of such arrangements. This could

have unintended consequences for employees and may create a perception of discrimination or disparate treatment. Given the reporting requirements placed on directors and employees, we suggest using the definition in Sec. 620.1(e) of “immediate” family members and those living within the same household as the director or employee.

AgCountry would like to see additional clarity regarding the definition of the term “*material*”. First of all, the commentary suggests that the “value” of a transaction may vary depending on circumstance, but then cautions that such determination would be subject to FCA examination. This causes AgCountry concern that determinations will be unappreciated by FCA. In the case of a director’s farming operations, associations need to be assured that FCA will recognize what is considered “material” or “*de minimus*” may well be different compared to other business activities and investments. While we appreciate the attempt to provide flexibility by enabling Association’s to establish exceptions for ongoing and normal business transactions, materiality and *de minimus* transactions, allowing such reasoned decisions by the Board to be arbitrarily overturned by examiners is questionable. Examiners should not be put in a position to make arbitrary decisions that lead to a patchwork of inconsistent policies across the System.

§ 612.2135 – Responsibilities and conduct:

The preamble to the Proposed Rule notes that § 612.2135 will “not be substantively changed. However, the words “and guidance” have been added to, according to FCA, “make clear that in addition to regulations, policy statements, instructions and procedures, directors and employees must observe...” AgCountry has serious concerns about this seemingly innocuous change that runs counter to the Administrative Procedures Act. This language implies that should an institution fail to comply with “guidance” or other “non-regulatory” issuances by the Agency that staff or directors are in some way violating an ethical standard. Potentially, in order to achieve compliance, directors, employees and agents must comply with non-public documents, written reports, presentations, letters, emails or possibly even verbal instructions given by Farm Credit Administration staff members. Providing FCA Bookletters, FAQs, Informational Memos or comments generated through the examination process the weight of law circumvents the rulemaking process and is inappropriate. If FCA seeks to establish rules, it must be through a full rule-making, with opportunity for notice and comment.

§ 612.2136 – Conflicts of Interest:

The transaction disclosure requirements in § 612.2136 are unrealistic and should be revised. According to the Preamble, if a director or employee were to purchase farm equipment from a known borrower, the prospective purchase should be reported and reviewed by the Standards of Conduct Official for conflicts and pre-approval. This “pre-approval” process is inappropriate and overly burdensome, and would substantially impact how our directors operate. As FCA is well

aware, our elected directors are borrowers of AgCountry, and most, if not all, have significant personal and business relationship with other borrowers, known and unknown, both inside and outside our territory. Our directors conduct business with these individuals and entities in the normal and ordinary course of business. Routine examples include purchasing a tractor from an implement dealer or at auction, procuring any number of agricultural inputs, including seed, fertilizer, pesticide, livestock feed, etc. or even selling grain to a local elevator. These transactions will often exceed any *de minimus* amount, but certainly occur as a part of the ordinary course of business.

For the most part, directors and employee do not know if they are dealing with an AgCountry member. Even assuming that knowledge existed, there is no conflict of interest, real or perceived. Our Board of Directors is removed from the approval and administration of individual loans and is not in a position to influence the terms set for individual loans. It is only the rare occasion that an individual loan is discussed in the board room. As such, it is difficult to understand the effectiveness or purpose regarding many of these disclosure requirements as they relate to directors.

AgCountry is very concerned that these Proposed Rules will have the effect of discouraging individuals from seeking a Board position due to the unreasonable and unnecessary burden of complying with these reporting requirements. Requiring prior approval or any type of reporting will certainly cause these types of business owners from seeking election to our Board. AgCountry would like the Agency to consider removing the requirement for disclosure and approval for ordinary course of business transactions. In the alternative, FCA should consider permitting institutions to be able to opt out altogether from the type of detailed and intrusive reporting for directors when the institution has created a clear separation between loan making and director involvement.

With respect to consultants and agents, § 612.2136(a) expands the disclosure requirement to agents and consultants who provide expert or professional services to the system institution. First of all, the proposal to include agents under new § 612.2136 should be removed. Moreover, expanding coverage to include professionals, consultants and the like is exceptionally far reaching and will be overly burdensome and nearly impossible for System institutions to comply with. The requirement to have a third party to disclose a situation that “may present a conflict or the appearance thereof” is impractical, and implementation of such a practice would likely cause some consultants or vendors to cease performing services for System institutions.

§ 612.2140 – Director Reporting & § 612.2150 Employee Reporting

The reporting requirements in § 612.2140(a) and § 612.2150(a) require disclosure of the name of immediate family member, or affiliated organization who had transactions with the institution at any time during the year. Unlike, the disclosures required in §§ 612.2140(b) and 612.2150(b), there is no qualifier regarding if the director or employee knows or has reason to know that such individual or entity transacts business with the institution or any institution supervised by the

director's institution. Regardless, AgCountry does not agree with the assumption that a director or employee would know or have reason to know whether or not immediate family or a relative has transacted business with AgCountry. Directors and employee should not be expected to disclose information in which he does not have personal knowledge, and they may not always have reason to know where their family members transact business. Dynamics between relatives vary from family to family. FCA should be clear that it does not expect directors and employee to inquire into whether or not family members transact business with AgCountry, and apply an "actual knowledge" standard to this requirement.

§ 612.2145 – Directors – Prohibited Conduct & § 612.2155 Employee – Prohibited Conduct

In Proposed § 612.2145(a)(1), directors are prohibited from participating in deliberations or determinations wherein they, or certain others, have a financial interest. In turn, there is an exception under Section (b)(1) if the SOCO makes a determination, before the conduct takes place, that the action is of "general applicability to all shareholder/borrowers in a non-discriminatory way." Without change, this Proposed Rule presumably would require the SOCO to determine whether a matter is "one of general applicability affecting all shareholders/ borrowers in a non-discriminatory way" before the directors can deliberate upon it. There is a similar prohibition for employees. As written, the SOCO would be required to review and approve each item on the Board agenda as being of "general applicability." We believe this standard is too narrow. Board members regularly engage in deliberations regarding loan programs, interest rate programs, disaster assistance programs, YBS programs, etc., that affect classes of borrowers, but not "all" borrowers. The regulation should be clarified to allow Boards and SOCO to use sound business judgment in such cases and recuse themselves as appropriate in each particular situation.

Under proposed § 612.2145(b)(4), there should be a process or mechanism for the SOCO and the full Board can ratify a transaction after it has occurred where the facts and circumstances show that despite reasonable efforts to avoid such occurrences, a director or employee learns of facts that show that the other party is owned by or controlled by a borrower.

612.2160 – Institution Responsibilities:

Paragraph (a) of this section requires that each institution must "ensure compliance" with this part. We find it unrealistic to assume that an institution can truly and accurately "ensure" that individuals will comply with any regulation from a practical standpoint. It is appropriate for an institution to take all necessary steps to ensure compliance including, but not limited to, requiring education on policies to their constituencies and mandating signatures acknowledging such policies. However, because an institution cannot fully guarantee compliance by individuals, we find it inappropriate for the regulation to require an institution to "ensure" compliance, therefore holding the institution

responsible for the actions of individuals. We ask that FCA revise this paragraph to reflect that an institution cannot truly "ensure" compliance with a regulation, but that it can take all necessary steps to effectively ensure that it maintains an effective standards of conduct program that supports compliance by individuals.

Proposed § 612.2160(a)(3) would require the institution to notify the FCA immediately of any known or suspected material standards of conduct violations. The SOCO should be given reasonable time to conduct an investigation of any suspected matters before being required to report to FCA to avoid overreaction. As such, "suspected" should be stricken. After completion of the necessary investigation, associations should only be required to report material violations. In addition, further clarity should be provided distinguishing "material" violations from minor violations of SOC. It should be clear that all violations do not and should not result in reporting to the FCA, and will not result in the same corrective action.

The requirement under § 612.2160(f) to have documentation that agents (1) are subject to applicable industry or professional ethics standards, or (2) have certified to adhere to the provisions of the System institution's Code of Ethics applicable to all agents is overly burdensome and difficult to manage. An institution should be able to reasonably rely on an accountant's, appraiser's or attorney's good standing with their respective licensing board or bar without having to require additional documentation. We believe it should be the responsibility of each institution to develop and exercise safe and sound business practices in retaining agents, but the specifics of such practices should be not be mandated by regulation.

We request clarification that an employee of the institution, such as the internal auditor, and not otherwise part of the SOC process, could satisfy the independence requirement for the audit described in § 612.2160(h). Additionally, clarification is needed as to the confidentiality of information reported to and maintained by the SOCO. It should be clear that any employee or vendor with a business need to access the information can have full access to the same (for instance loan approvals and review, audits, etc.).

§ 612.2165 – Code of Ethics, policies, and procedures:

Requiring a Code of Ethics for an "agent" adds no value to the process and will simply create an unnecessary compliance burden. A Code of Ethics should reflect the values and policies intrinsic to the company. As such, while that fits for directors and employees, it does not fit for agents or third party providers. Further, while the current definition of agent is less than clear, it has been generally understood that these are professionals that represent the System institution either regularly or on a transactional basis. The majority of these will be attorneys, accountants and appraisers who are already licensed, regulated and subject to professional and ethical standards.

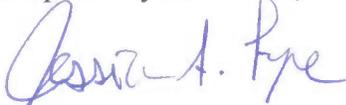
§ 612.2180 – Standards of Conduct for Agents:

We recommend § 612.2180(b) be revised to avoid unnecessary documentation. The Proposed Rule creates a distinction between agents who are subject to their own professional standards, and those who have no set industry standards. Institutions should not have to document the good standing of individuals that are licensed and regulated by other boards or state bar. As the existing rule already provides, it is the institution's responsibility to use safe and sound business practices in retaining agents. In those instances where institutions engage agents who are not otherwise subject to professional standards, it is appropriate to require that they maintain confidentiality of information received, and to not breach their fiduciary duties.

We recommend § 612.2180(d) be eliminated or significantly revised. Prohibitions relating property that has been acquired through the foreclosure process should only apply to those agents who have been specifically involved in the instant matter, and have knowledge thereof. It is unlikely a member of a professional accounting firm employed by the institution would have knowledge of a particular foreclosure action unless it was part of his engagement with the institution. It would also be incredibly burdensome and difficult, if not impossible, to enact the proposed restriction on sales of acquired property.

As described above, the Proposed Rule includes many provisions that are overly burdensome, unworkable in many respects, and incompatible with the cooperative structure of System institutions. We encourage the FCA to rewrite the proposal and re-propose it for further public comment. Thank you again for the opportunity to provide feedback on the Proposed Rule. We hope that the Agency finds value in our observations, requests and comments.

Respectfully Submitted,



**On behalf of the AgCountry Farm Credit Services
Board of Directors**

Jessica A. Fyre
Vice President & General Counsel