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June 18, 2014

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

Re: Proposed Rule – Standard of Conduct – RIN 3052-AC44/Federal Register 79
(February 20, 2014) 9649-9661

Dear Mr. Murdock:

AgTexas Farm Credit Services, ACA (AgTexas) appreciates the opportunity to provide comments regarding the Farm Credit Administration's (FCA) proposed rule on Standard of Conduct published in the Federal Register on February 20, 2014. In addition to our Association's individual comments below, we fully support the comments submitted by the Farm Credit Council on behalf of System institutions and those submitted separately by the Farm Credit Bank of Texas.

In general, AgTexas supports the expectation for high performance standards on behalf of staff and directors. However, the rule as proposed will make it more difficult for compliance and increase the reporting burden. Furthermore, the amended rule will have the adverse effect of discouraging qualified members from serving as directors and complicate the engagement of agents for association matters.

We support and agree with the Council's comment that the proposed rule creates the threat of "regulation by examination".

Specific response to the proposed rule is provided as follows:

Responsibilities and conduct – 612.2135

AgTexas objects to the addition of the word *guidance* in the provision of subparagraph (b) which requires directors and employees to observe "the letter and intent of policy statements, instruction, procedure and guidance of the Farm Credit Administration." This provides the opportunity for FCA examiners to improperly treat the failure to follow agency "guidance" as a violation of regulation. Without clear understanding of the word "guidance", the proposal provides the opportunity for inconsistent application of regulation, places the board in the position of having to guess what actions are actually required and ultimately provides the opportunity for the agency to "regulate by examination".

Agents and consultants – 612.2130; 612.2136, 612.2160(f); 612.2165(a)(2), 612.2180

Section 612.2130's definition of "agent" is ambiguous as "professional services," as included in the definition itself can be broadly interpreted as opposed to the specific examples cited in the regulation. This will clearly result in difficulty identifying the persons to whom the regulation will apply.

While we disagree that any of the proposed new requirements for agents are warranted at all, we think the proposed regulation should be revised (1) to eliminate the category of "consultants, professionals, and experts" and (2) to clarify the definition of the term "agents". The FCA should clearly define the term "agent" to include only those persons whose activities on behalf of our associations are of such a significant nature to warrant the additional burdens.

Section 612.2160(f) should be clarified to require only those provisions in the institution's standards of conduct policy and Code of Ethics applicable to the agent need be provided to the agent. Additionally, the regulation should identify the provisions of a Code of Ethics that must apply to agents. Also, the requirement of documentation of the standards themselves for those agents subject to industry or professional ethics standards, such as attorneys and accountants, is unnecessary and burdensome.

Section 612.2180(d) restricts an agent's acquisition of property as a result of foreclosure or similar action during the agent's employment. The prohibition applies for one year after the institution has sold the property or terminated the agent relationship. As worded, this provision applies to all agents regardless of whether the agent had any involvement in the institution's decision to foreclose or whether the agent had any inside information relating to the property, which is more restrictive than the regulations in place for directors and employees.

We believe that the proposed regulation should make the control of agent conflicts the obligation of System institutions through the administration of its contracts, rather than make it the obligation of agents themselves. System institutions should not and cannot write policies and procedures that directly govern agents. Instead, institution policies should address communication with agents, elements that must be included in contracts with agents, and termination of agents by employees and directors. The imposition of affirmative obligations that other financial institutions do not require will result in a disincentive for agents to conduct business with System institutions.

Conflict of Interest Disclosure – 612.2136

Section 612.2136 is confusing and should be revised. The proposed rule should be revised to require disclosure of "potential" conflicts of interest, as is consistent with current regulations. It would be better to require the individual to report any material financial interest that he or she may have that could result in a "potential" conflict of interest. Secondly, subsection (a)(2) requires directors and employees to disclose conflicts of interest in any pending matters, activities or transactions at the System institution. In many cases, employees and directors are not in the position to know about such pending matters, activities or transactions. We urge FCA to limit the conflict disclosure to matters for which directors, employees or agents have actual knowledge. Finally, subparagraph (c) should be deleted as any persons deemed not to have a conflict of interest by the Standard of Conduct Official should not need a waiver and persons who do should not get one.

Director and Employee Reporting and Prior Approval Requirements – 612.2130, 612.2140, 612.2150, 612.2145, 612.2155 and 612.2165(e)

As most institutions are structured and operate today, a regulatory requirement that requires transaction-by-transaction reporting and approval for all transaction that a System director conducts with borrowers in the normal course of business is not only unnecessary from a conflicts of interest perspective, it is practically impossible given the nature of the business of agriculture and the statutory design that System directors are engaged in said business. Under our current structure, directors do not directly participate in the credit decisions made by our institution. As a result, they are not in a position to take institution actions with respect to any particular borrower with whom they might do business that could constitute a conflict of interest. Secondly, as agricultural producers, directors must have the flexibility needed to conduct an agricultural operation. It cannot be presumed that directors have advance knowledge that the persons with whom they conduct business are borrowers of their association. It is not reasonable to expect directors to inquire whether a customer or supplier is a borrower of his institution. In fact, borrowers could consider this an invasion of confidential information.

The proposed regulation and associated commentary results in confusion and ambiguity in the determination of “materiality” for reporting purposes. The requirement that the board set parameters for materiality is problematic. First, this is a requirement in the commentary rather than the regulation. If the FCA expects every institution to establish such materiality parameters that apply to reporting, the regulation should say so explicitly. This would more clearly establish the opportunity for the board to adopt policies that establish exceptions to reporting requirements. Second, it is unclear what FCA believes the nature of reasonable materiality parameters to be. This determination should not be based on di minimus dollar amounts alone, as the circumstances for each transaction could be substantially different for different directors and employees. Without clarification of reasonable materiality, the institution and its directors and employees are provided absolutely no assurance that they have complied with policy. The FCA’s ability to post-determine their acceptance of the institution’s definition of materiality once again provides the opportunity for “regulation by examination”.

Under the proposed rule, directors and employees will be required to report virtually all material transactions with borrowers that involve a financial interest, as opposed to existing regulation that requires reporting of material financial interest in entities known to be doing business with borrowers. This expanded reporting requirement creates a compliance burden. Once again, directors, as agricultural producers and businessmen, are not likely to know whether their counter-party in any business transaction is in fact a borrower of his or her institution.

Section 612.2165(c)(2) allows for a policy exception from reporting requirements for types of interests or transaction that are either immaterial in amount or value and in the ordinary course of business. However, subparagraph(iii) states that the board must consider the Standards of Conduct Official’s recommendation for policy exception that is adequately supported by a written determination. If this determination incorporates a de minimus level or the tracking of the aggregate amount of purchases, the requirement places an onerous responsibility on the director. In addition, case-by-case exceptions to a reporting requirement must be approved by the institution’s board after consideration of the written recommendation of the Standards of Conduct Official. The timing of official board meetings for approval of exceptions will not provide the opportunity for the director to conduct business expeditiously. The effect would be paralyzing for directors trying to meet the daily demands of conducting an agricultural operation.

We urge the FCA in the strongest possible terms to carefully reconsider whether the compliance burden the proposed rule places on directors is actually manageable and whether it is truly necessary to serve the goals the FCA is trying to accomplish. We feel the requirements will discourage qualified candidates from seeking the director position which is ultimately counter-productive to the cooperative intent of director representation.

We agree with the Farm Credit Council that the FCA should take the opportunity presented by the proposed regulation to revise the definition of controlled entity to a more appropriate threshold reflecting actual influence and control, such as 25%.

Prohibited Conduct – 612.2145 and 612.2155

For the same reasons discussed above in connection with the disclosure and prior approval of director's material financial interests in ordinary course of business transactions with borrowers, we think that the FCA's approach to exception for ordinary course of business lending transaction involving directors and borrowers is unworkable as currently proposed and should be reconsidered. We also note that the lending transactions prohibited under 612.2145(a)(4) and 612.2155(a)(8) do not require that a director or employee "know or have reason to know" that the individual with whom he or she has a financial transaction is a borrower. This will result in inadvertent violation of regulation. We urge the FCA either to qualify the prohibition or allow for some kind of ratification once the director becomes aware that there is a prohibited lending relationship with another party.

Institution Responsibilities – 612.2160

Proposed Section 612.2160(a)(3) requires the institution to notify the FCA "immediately" of any "known or suspected material standards of conduct violations as described in Section 612.2170(b)(7)." First, the Standards of Conduct Official should be given a reasonable time to investigate any suspected matters before being required to report to the FCA to determine whether the suspicion has a reasonable basis. Furthermore, Section 612.2170(b)(7)(i) requires the Standard of Conduct Official to report to the institution's board, and to the Farm Credit Administration's Office of General Counsel, all cases where a preliminary investigation indicates that a Federal criminal statute pursuant to subpart B of 12 CFR part 612 may have been violated. This would include the duty for the Standards of Conduct Official to report suspected violation by third parties, such as, borrowers who have converted loan collateral or unknown persons who commit theft. This kind of violation has nothing to do with standard of conduct and, typically would be addressed by other institution officers. It should not necessarily be a regulatory duty of the Standard of Conduct Official.

Section 612.2160(d) requires institution to remain informed of applicable industry approved best practices for standard of conduct. We feel the FCA should identify what best practices it considers to be applicable or industry approved.

Policy Requirements – 612.2165

Proposed Section 612.2165(b)(2) requires each institution's board to adopt policies and procedures outlining the authority and responsibility of the Standard of Conduct Official to "review for compliance ... all loans before the supervisory bank's approval under Sections 614.4460 and 614.470." This provision should be revised to distinguish between loans which must be reviewed because they are insider loans and loans which must be reviewed under 614.4470(c) because they exceed the supervised institution's

delegated authority. The former clearly may involve standards of conduct concerns, but there is no reason to review "excess" loans that do not involve insiders for standards of conduct violations. The FCA commentary states that the Standard of Conduct Official review of a prior approval loan should ensure that the credit decisions are made without favoritism or special terms. Most Standard of Conduct Officials do not serve in a capacity to have knowledge of terms of a comparable loan.

Concerning exceptions to prohibited conduct and reporting and prior approval requirements, we are concerned that these exception provisions are confusing as currently written and that the language of the regulation is not consistent with the FCA's expectations as expressed in the commentary. Furthermore, we fear that any flexibility apparently provided by these exceptions would be made illusory by Section 612.2165(f) which allows FCA examiners to determine that a particular transaction creates a conflict of interest notwithstanding a board's good faith determination to the contrary in accordance with all the requirements of subparagraph (c).

Thank you for consideration of our comments. All comments and/or recommendations are based on the need to maintain qualified directors and employees to conduct the business of the cooperative and maintain a willing pool of agents to assist in the institution's business practices.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Harris", written in a cursive style.

Mitchell Harris
Chief Executive Officer