



**William J. Lipinski**  
Chief Executive Officer

June 18, 2014

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

Dear Mr. Mardock:

RE: Proposed FCA Regulations on Standards of Conduct – RIN 3052-AC44

On behalf of Farm Credit East, I am commenting on the Farm Credit Administration's (FCA) proposed rule addressing Standards of Conduct and Referral of Known or Suspected Criminal Violations (RIN 3052-AC44). Farm Credit East fully supports the more detailed comments being made by the Farm Credit Council. This proposed rule is far reaching and if adopted will create significant burdens and discourage individuals that could be strong Farm Credit System directors from seeking to serve on the boards of Farm Credit System institutions. This proposed rule should be withdrawn.

Farm Credit East serves customers in seven states – New York, New Jersey, Maine, Connecticut, Massachusetts, New Hampshire and Rhode Island. We have a strong and diverse Board of Directors that are working hard to ensure the long-term success of their cooperative. We also have approximately 450 hard-working and dedicated employees, many of who also engage in farming and live in the small rural communities where they work. Farm Credit East has a market share of approximately 65-70% of the credit extended to farmers in our market share. As the dominant or primary lender to agriculture in communities throughout the Northeast, it is reasonable to assume that our employees, and especially our directors, interact in business transactions with other farmers on a regular basis.

Farm Credit East is strongly committed to high ethical conduct and the avoidance of conflicts of interest. We believe the current process, which focusses on "self-disclosure" has worked well. We take very serious our role of informing and educating our directors and employees on Standards of Conduct. Directors and employees regard their responsibilities very seriously. The training we conduct, and the current certification process required by the existing Standards of Conduct rule, serves to emphasize that ethical conduct is an on-going priority for all System institutions.

Letters submitted by Farm Credit East directors, and our Chairman Andy Gilbert in particular, address the proposed rule's impact on directors and address the concerns from a director's perspective. We strongly support the views addressed in those letters and express concern that the proposed rule's onerous requirements will adversely affect the number and quality of future directors.

Farm Credit East also has many other concerns with the proposed regulation as it would impact other areas of operations:

**Prior Approval:** A major concern is the proposed regulation's requirement that the director obtain the prior, written approval of the association's Standards of Conduct Officer ("SOCO") before entering into any transaction with an association borrower (as set forth in Section 612.2145 (b)). This requirement is a major regulatory overreach with no basis of need. It will also transfer the liability for non-compliance with the Standards of Conduct rules from the director to the association (through the SOCO).

Under this proposal, the association's Standards of Conduct Officer will have to "demonstrate," for each such transaction, that the transaction is in the ordinary course of the director's business or is not material in amount and also document that the director did not participate in the determination of any matter that affected the financial interest of that borrower except those matters affecting all borrowers in a nondiscriminatory way. This requirement for written, pre-approval of transactions with association borrowers will be nearly impossible for directors to comply with and will prevent many directors from being able to conduct business with their existing customers. In his or her annual disclosure statement, the director should be required to report only the types of transactions that could involve Farm Credit East customers. Transactions in the ordinary course of business should not require any further approval by the SOCO.

**Family:** This provision (Section 612.2130 (3)) provides a definition for "family" that after mentioning specific family members includes "...anyone whose association or relationship with the director or employee is the equivalent of the foregoing." The use of the word "equivalent" and the entire phrase is confusing, very broad, will lead to uncertainty, and should be deleted.

**Guidance:** Section 612.2135 (b) requires directors and employees of System institutions to follow "guidance" of the Farm Credit Administration. Given that these detailed provisions are regulations, additional regulatory directives in the term of "...policy statements, instructions, procedures and guidance" as proposed in the regulations should be eliminated.

**Appearances of conflicts:** This provision (Section 612.2136 (2)) requires disclosures of "appearances" of conflicts of interests. This is very vague, far reaching and unreasonable to achieve and should be deleted.

**Material non-privileged information:** Section 612.2136 requires disclosure to the "official" or the Board of all "material" non-privileged information. This is a very vague and broad disclosure requirement because there is no definition of what is considered "material" nor is there a definition provided for the term "privileged." Such vagueness will lead to second-guessing after the fact by the FCA, and will not result in meaningful disclosures. It is also not clear if this requirement applies in a situation where a director has already recused him or herself.

**Prohibited Conduct:** This provision of the proposed regulations (Section 612.2145) prohibits directors from participating in deliberations and determinations that directly or indirectly affect the financial interest of the director, the director's relatives, and others. An exception for matters of general applicability affecting all shareholders/borrowers in a nondiscriminatory way has been eliminated,. In its place, a new subparagraph 8 (b)(1) has been added to this section which permits director participation in a matter otherwise prohibited under this section but only so long as the matter is one of "general applicability affecting all shareholders/borrowers in a nondiscriminatory way, as determined by the Standards of Conduct Official." This prohibition on a director's ability to act upon matters which may come before the Board is unduly burdensome and unworkable. It will require the Standards of Conduct Official to make a determination, on a case-by-case basis, of each item to be considered by the Board. It will also require a director to recuse himself from any discussion or

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deliberations which his or her particular industry because those discussions will not affect all shareholders equally in a nondiscriminatory way. For example a discussion on the impact of big box stores marketing of nursery products could require a director that is a nursery operator to recuse herself because this subject area does not have the same potential impact on all directors. The director that could provide some background or perspective to the matter being discussed needs to be excused!

**Standards of Conduct Official:** We are also very concerned that these proposed regulations shift responsibility from individual directors to report their activity and comply with standard of conduct requirements to the association and the Standards of Conduct Official, who must now enforce and ensure compliance. Neither the association nor the Standards of Conduct Official should be responsible for the actions of directors.

The proposed rule (Section 612.2170) requires the standards of conduct official to report a "known or suspected criminal or standards of conduct violation by a director, employee or agent [which] may have an adverse impact on continued public confidence in the System or any of its institutions." I recommend that FCA drop the phrase "adverse impact on continued public confidence in the System or any of its institutions." This phrase is overly broad and essentially undefinable.

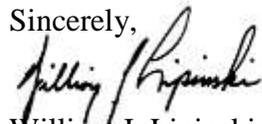
**Agents:** Farm Credit East supports maintaining the existing regulations for agents. The proposed rule creates a distinction between agents who are subject to their own professional standards, and those who have no set industry standards. Asking an institution's outside counsel to acknowledge receipt 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. As the existing rule already provides, it is the institution's responsibility to use safe and sound business practices in retaining agents.

**Employee:** The definition of "employee" is overly complicated. For the purposes of this regulation, we urge that temporary employees with an intended tenure of less than six-months be excluded from the definition. The required training programs and disclosure processes for any employee with an expected tenure of less than six months, such as an intern, would be needlessly burdensome. We suggest that defining "employee" as "any officer or part-time or full-time employee" removes ambiguity resulting from the use of "salaried" or "non-salaried" in the definition.

**Code of Ethics, Policies, and Procedures:** The proposed rule (Section 612.2165) requires the board to "establish criteria for business relationships and transactions not specifically prohibited by this part." This language is vague and potentially applicable to any type of business transaction or relationship which could conceivably take place.

Thank you for consideration of my views.

Sincerely,



William J. Lipinski  
Chief Executive Officer

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