FARM CREDIT
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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

Via Email

April 25, 2014

Dear Mr. Mardock

On behalf of the stockholders of Farm Credit of Southern Colorado, we appreciate the opportunity to provide our comments and concerns to the FCA's proposed amendments to 12 CFR Part 612 – Standards of Conduct and Referral of Known or Suspected Criminal Violations, Subpart A – Standards of Conduct.

The Farm Credit of Southern Colorado Board of Directors would like to see revisions to the proposed rules. These revisions are detailed below.

§ 612.2130 Definitions

- The definition of agents should be clarified with examples of the types of third parties who are subject to these regulations. As revised, any type of professional service could be included without stretching the definition.
- The definition of Material is vague and open to differing interpretations between FCA and our Association. Specific guidance from FCA for what they consider to be a material level when a "reasonable person with knowledge of the relevant facts" would begin to question the person's objective performance and cause a conflict of interest to rise.
- The current definition of family is adequately inclusive without having to add vague language to accommodate non-traditional family members. The wording in the proposed revision is unnecessary.
- Stating that institutions need to support values established to determine a *de minimis* value but that the determination is "subject to FCA examination" will lead to each FCA examiner arbitrarily reaching their own determination. FCA needs to provide direction so that institutions and examiners are congruent.

§ 612.2135 Responsibilities and conduct

- The words "and guidance" were added and should be removed. This gives Bookletters, FAQs, Preambles to Regulations, Informational Memorandums, etc. the weight of law which is a clear circumvention of the regulatory rulemaking process and is inappropriate. FCA itself says, "Informational Memorandums (Info Memos) are FCA communications addressed to all Farm Credit institutions and are not meant to be a formalized category of communication. Info Memos do not require FCA Board review and prior approval prior to distribution and may be effective for a short period of time." However, the practice of FCA examination teams is to treat Informational Memorandums as if they were regulations that were vetted through the rulemaking process. Adding "and guidance" will exacerbate an already invalid practice.

§ 612.2140 Director reporting and § 612.2150 Employee reporting

- Whether a director or employee would have "reason to know" only creates confusion and ambiguity. Therefore, we believe the regulation should be revised to strike the phrase "or has reason to know" from both the director and employee reporting sections.
- It would be helpful for employee initial disclosures to be due to the Standards of Conduct Official in excess of 5 business days after starting employment to allow time for proper training regarding standards of conduct and reporting in conjunction with other new employee training.

§ 612.2145 Directors – prohibited conduct and § 612.2155 Employees prohibited conduct

- The requirement to renew determinations made by the Standards of Conduct official annually is overly burdensome and unnecessary. Determinations should only be required to be renewed as the circumstances around the determination change.
- There should be a process or mechanism for the SOC Official to 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.
- We ask that FCA include a provision in this section to make transactions in the "ordinary course of business" not require pre-approval from the Standards of Conduct official.

§ 612.2160 Institution responsibilities

- Proposed (a)(3) requires the institution to notify the FCA immediately of any known or suspected material standards of conduct violations. The SOC Official should be given reasonable time to conduct an investigation of any suspected matters before being required to report to FCA to avoid overreaction.
- The requirement under (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 agents is overly burdensome and difficult to manage. An institution should be able to reasonably rely on an appraiser or attorney's good standing with their respective licensing board or bar without having to require documentation.

§ 612.2165 Code of Ethics, policies, and procedures

- The provision requiring the Standards of Conduct official to review loans is concerning. The institution's Standards of Conduct official might not be someone who has knowledge of terms, interest rates, etc. This function should be able to be delegated to someone with such knowledge but is still removed from the loan approval process, at the institution's discretion.

§ 612.2170 Standards of conduct official

- FCA continues to emphasize that each institution is responsible for its own decisions, adherence to regulations, and its conduct no matter who is used as a consultant when reaching a decision, whether outside counsel or its own funding bank. Requiring the Standards of Conduct Official to be an officer of the institution with the rationale that this would allow for the greatest accountability to the institution's board is contrary to the previous message of the institution's accountability regardless of who is consulted. We think it should be up to the institution's board to determine who is best to serve as an institution's Standards of Conduct Official, whether an internal officer or outside consultant.
- The Standard of Conduct Official must investigate "complaints received against directors, employees, and agents". The term "complaints" could extend into perceived poor customer service by an employee that should addressed by a supervisor, not the Standard of Conduct Official. The term is too broad and should be more specifically defined.

§ 612.2180 Standards of conduct for agents

- Requiring an agent to sign an institution's Code of Ethics is inappropriate. The Code of Ethics reflects the values and policies of the institution, not necessarily the agent. The institution should be allowed the latitude to select the company with whom it chooses to do business which will in part be based on that agent's ethics and reputation. It would be more appropriate to have the agent represent that they have no known conflicts (other than dual representation) in the transaction in which they are engaged.
- Not allowing agents to acquire an interest in real or personal property, including mineral interests that were owned by a System institution as a result of foreclosure, applies for 1 year after the transfer of the property out of the System institution. This would be difficult if not impossible to for an institution to enforce or even make itself aware of such acquisitions.

Thank you for your consideration of our requested revisions. Please do not hesitate to contact us for further clarification or other information.

Sincerely,

Gary Pautler
Board Chair

Keith James
Board Vice Chair