



September 4, 2018

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

**RE: Proposed regulation on Standards of Conduct
RIN 3052-AC44 / Federal Register 83 (June 15, 2018)**

Dear Mr. Mardock,

I am writing in regard to the Farm Credit Administration's proposed rule on Standards of Conduct. I appreciate the opportunity to comment. I currently serve on the Board of Directors of Farm Credit East. I am commenting on certain provisions of the proposed regulation; however I also support the more comprehensive letter which is being submitted by the Farm Credit Council.

While I support reasonable standards-of-conduct regulations and agree that a culture of high ethics and avoiding conflicts is important, it is of equal importance that the regulations not be overly burdensome on System institutions, that they not interfere with normal business transactions, and do not deter potential director candidates from seeking nomination.

To begin, Farm Credit East believes that the proposed regulations do simplify an otherwise confusing SOC process and the requirement for annual training is welcome. There are, however, some discrepancies and confusion that must be addressed.

Definition of Agents (612.2130). This definition, as written, alters the legal definition of an agent and imposes unnecessary and added burden to SOC reporting. The proposed definition of Agent is:

"...any person... who currently represents a System institution as a fiduciary in contracts with third-parties or who currently provides professional services to a System institutions such as legal, accounting, appraisal, cyber-security, Internet technology and other similar services."

This definition uses the term “fiduciary” without the corresponding legal requirement of “one who has authority to act” (i.e. bind) the Association. A true agent is not only a fiduciary, but is also empowered to act on behalf of the principal. This distinction is important and the failure to include the corresponding ability to act, renders the proposed definition of “agent” entirely too broad and far reaching.

Moreover, the proposed definition expands agency (and reporting requirements) to others who provide professional services and specifically includes “cyber-security” and “Internet technology” in the definition. These inclusions should be revisited.

The FCA must recognize that attorneys and accountants are mandated by their own code of ethics or rules of professional responsibility. The accounting and legal professionals, by the very nature of the services they provide, are bound by rules that include avoiding conflicts of interest. In addition, the proposed definition includes specific reference to “cyber-security” and “internet providers”; when in reality these providers are not agents (i.e. no ability to act or bind the Association) and are simply vendors.

Farm Credit East believes that the failure to include both of the legal requirements of agency law (i.e. “fiduciary” and “ability to act”) and to specifically identify professions that are to be included in the definition of agent adds an increased and unwarranted burden on System institutions. Equally concerning is the tremendous burden of mandating these “agents” to disclose conflicts as contemplated by 612.2137(d)(3)(i).

Farm Credit East does agree that all professionals and vendors must abide by their professional standards of conduct and vendors must be required to maintain confidentiality and security with respect to information received. However, this is done via the vetting of the professionals and/or vendors and not via regulatory process.

Definition of Family - 612.2130. The proposed regulation seeks to add the term “significant other” to the definition of family. This addition is confusing. A further definition of what constitutes a “significant other” and/or removing this reference is appropriate.

Definition of Standards of Conduct Official – 612.2130. This definition includes that the SOC Officer be an employee. While this is currently how Farm Credit East operates and a vast majority of System institutions do have internal employees fill this role, there is validity in permitting the SOC Officer to be an outside attorney. There is no demonstrated benefit of compelling the SOC Officer position be filled by an internal employee.

Posting Code of Ethics on Website - 612.2137(c). This section contemplates the posting of the institutions Code of Ethics on an external Website. Farm Credit East would not object to a requirement that we post a statement outlining that the Association maintains the highest standards of personal and professional integrity and that our Employees and Directors are expected to comply with the laws, regulations and rules. Beyond this, however, we do not see the benefit of requiring our entire code of ethics be published. Farm Credit East has a very detailed code of ethics which if posted would be a “roadmap” for disgruntled borrowers to use in any contested action.

Reporting transactions not in the ordinary course – 612.2137(d)(1)(ii). This provision requires reporting of transactions “not in the ordinary course of business.” This provision is broad and overreaching in that it should exclude non-material transactions.

Requiring Agents to Disclose Conflicts – 612.2137(d)(3)(i). As outlined above, the definition of “agent” needs to be reviewed. As written, the proposed regulation suggests that an agent (i.e. a fiduciary with the authority to act or bind the Association) will be required to disclose conflicts of interest. However, there is confusion as to who is actually required to disclose conflicts? For example, many of the System intuitions utilize technology providers such as Financial Partners, Inc. (“FPI”). We would agree for purposes of argument that FPI is an agent. They are a fiduciary with authority to act on our behalf with respect to certain technology related purposes. Does this regulation require disclosure from the Board of FPI or the individuals who service our account?

If the Association has existing safeguards and contractual obligations with our “agents” relating to conflicts, confidentiality, security, privacy, etc., is there a benefit to requiring yet another disclosure? And, from whom is the disclosure appropriate?

Conflicts of Interest, reporting – 612.2138 (c)(3). The elected directors of the Farm Credit System depend on their livelihood as farmers, ranchers, producers or commercial fishermen. As such, they need the ability to purchase goods and services from other farmers or farm related businesses in their community without the need to report same to the Standards of Conduct Officer. Moreover, it is often the case that employees or directors engage in business without knowing that the other farmer or business is a Farm Credit System customer. This section needs to be clarified or eliminated such that as long as the transaction is in the normal course of business, material or not, there should be no obligation to report. The spirit and intent of the Standards of Conduct regulations is to avoid conflicts. Engaging in arm’s length transactions in the ordinary course of business should never be a conflict.

As written, this regulation could affect a director’s ability to run his or her business and will create a significant disincentive for serving as a director. I do not believe that the FCA wants to create the unintended consequence of dissuading any person from pursuing a director position. Thus, revisiting this regulation is necessary.

Prohibited Conduct – 612-2139(b)(1). This proposed regulation, as written, creates confusion as to whether a director or employee may serve as a director of certain System entities. We believe this may be a simple drafting error. As it presently reads, the regulation prohibits employees and directors from serving as a director of any other System institution. “System institution” is a defined term (612.2130) and includes “...service corporation chartered under section 4.25 of the Act, and the Federal Farm Credit Banks Funding Corporation.”

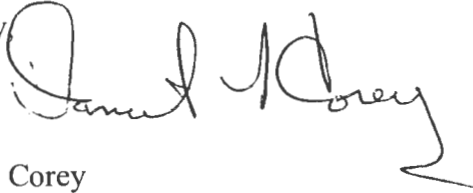
If this regulation remains unchanged, the result will be an essential dismantling of the Board of Directors for all 4.25 organizations, the Funding Corp and all Farm Credit Foundations. Farm Credit East respectfully requests this provision be reviewed carefully as we believe, given the FCA commentary accompanying the proposed regulations, this is an inadvertent error.

Conclusion.

In closing, given the importance of these regulations and the need for clarification of these regulations in a number of areas noted, I urge that if FCA goes forward with these regulations that a revised set of regulations be released for public comment.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Daniel J. Corey". The signature is written in a cursive style with a prominent initial "D" and a long, sweeping tail.

Daniel J. Corey
Board of Director, FCE