

September 13, 2018

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

**RE: Proposed Rule - Standards of Conduct and Referral of Known or Suspected Criminal Violations; Standards of Conduct (12 CFR Part 612)
RIN 3052-AC44**

Dear Mr. Mardock:

I am writing to offer my comments on the proposed amendments to the regulations on Standards of Conduct ("SOC") and Referral of Known or Suspected Criminal Violations ("Proposed Rule"). As a member of the AgSouth Farm Credit, ACA ("AgSouth") Board of Directors, I am firmly committed in my support of the principle that Farm Credit System ("System") Institutions' directors must maintain high standards of honesty, integrity, impartiality, and ethical conduct.

I have specific concerns that certain elements of the Proposed Rule would create an undue burden and hardship on Farm Credit Institutions such as AgSouth without any corresponding benefit to the integrity and ethical business practices of the Association.

As you know, most of the System institutions' directors are System borrowers and business leaders in their agricultural/rural communities. As a result of the cooperative structure, System institutions' directors may have business relationships with others that transact business with System institutions. I, like other System institutions' directors, am strongly committed to a culture of high ethical conduct and the avoidance of conflicts of interest. In light of these considerations, I have the following comments about the Proposed Rule.

Definition of Agents:

The Proposed Rule seeks to expand the definition of Agent to include many persons who are otherwise considered vendors. While AgSouth is firmly committed to ensuring that its agents and vendors uphold the highest ethical standards, the proposed definition creates a concern that large technology vendors such as Microsoft would be considered an Agent and would need to complete certain acknowledgements and disclosures. Such providers may be unwilling to comply with such requirements. This would limit the number of available vendors for System Institutions such as AgSouth and would potentially unnecessarily drive up prices for consumers and lower the quality of service provided. I would request that FCA retain the current definition of Agents.

Undefined Fiduciary Duty:

Section 612.2136(a)(7) of the Proposed Rule requires Directors and Employees to “Fulfill your fiduciary duties.” The term fiduciary duty is otherwise undefined, and the Proposed Rule is silent on to whom the employee owes a fiduciary duty.

A fiduciary duty is the highest duty of care recognized under American law. Because of the nature of such a high duty of loyalty, state law has recognized that there can generally be no fiduciary duty between a borrower and a lender, because a duty of utmost good faith and highest loyalty to an individual borrower creates an inherent conflict of interest between the employee’s fiduciary duty to the lender.

If an Employee is operating with an individualized fiduciary duty to a Borrower, he or she may take actions with respect to servicing the loan that would be in the best interest of the Borrower but may not be in the best interest of the System Institution or its shareholders.

If FCA is inclined to keep the language regarding employee fiduciary duty, the Rule should clarify that the fiduciary duty is owed to the Association as a whole and not an individual Borrower as a dual fiduciary duty to both would create a conflict of interest.

Reporting of All Transactions:

Section 612.2137(d)(1)(ii) of the Proposed Rule requires all Employees and Directors to disclose all “Transactions not in the ordinary course of business.” Such a broad requirement to report all transactions not in the ordinary course of business placed on all Employees and Directors would create an incredible unnecessary administrative burden and would be difficult to enforce and/or implement. Potential Directors may be unwilling to serve if they are tasked with reporting each and every business transaction. This reporting requirement should be limited to transactions not in the ordinary course of business with Borrowers, Employees, or Directors.

Reporting of All Family Members:

Section 612.2137(d)(1)(iii) of the Proposed Rule requires Directors and Employees to complete annual and interim reporting of the “Names of family members.” This Section appears to require the reporting of the names of all family members regardless of whether they conduct business with the Association. This would create an obvious unnecessary administrative burden and would be difficult to enforce and/or implement. FCA should retain the existing requirement to report family members when there is knowledge of their transacting business with the Association.

Reporting of All Gifts:

As drafted, Section 612.2137(d)(1)(v) of the Proposed Rule appears to call for the reporting of all gifts given to Directors or Employees. This would require all personal, holiday, or birthday gifts to be recorded and reported to the System Institution. This would create an unnecessary administrative burden and would be difficult to enforce and/or implement. The language should be clarified to exclude gifts from family members and acceptable *de minimis* gifts from the reporting requirement.

Report All Previous Family Transactions:

Section 612.2138(c)(2) of the Proposed Rule would require Directors and Employees to report "the names of your family members who have transacted or are currently transacting business with the System institution." The supporting commentary provides "consider requiring whether to require a director or employee to report the name of a family member who has engaged in a transaction in the past." The regulation alone appears to require an Employee or Director to report all family transactions with System Institutions from 1916 to the present. This would create an unnecessary administrative burden and would be difficult to enforce and/or implement. If a look-back period is intended, it should be limited in duration to no more than a year or two.

Reporting All Interest with Agents:

Section 612.2138 (c)(3) of the Proposed Rule would require Directors and Employees to report "All material financial interests with any director, employee, *agent*, borrower or business affiliate of your System institution, or supervised or supervising institution [emphasis added]." This creates an unnecessary administrative burden and would be difficult to enforce and/or implement as many Board members and Employees would have no knowledge of the hundreds of Agents that transact business with the Association.

Conclusion:

Thank you for the opportunity to comment on the Proposed Rule. It is imperative that all System institutions' directors adhere to high standards of conduct and avoid conflicts of interest. However, portions of the Proposed Rule are too broad or unclear and impose undue administrative burdens which may potentially limit the pool of qualified candidates with diverse farm, agricultural, and specialized business experience willing to run for open seats on System institution boards.

As currently written, the Proposed Rule may have the unintended consequence of thwarting the cooperative structure. I respectfully request that FCA consider my comments, as well as comments from other System institutions' directors, to revise the Proposed Rule to reduce unnecessary administrative burdens and clarify responsibilities. Both FCA and the System should make every effort to support the common goal of advancing the mission of the Farm Credit System to provide financing to our rural and agricultural communities.

Sincerely,



H. Frank Ables
Member, Board of Directors