FARM CREDIT of EAST CENTRAL OKLAHOMA

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Mr. Barry F. Mardock
Deputy Director - Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
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Dear Mr. Mardock:

As a director of Farm Credit Services of East Central Oklahoma, I appreciate the opportunity to provide comments in response to the publication of the Proposed Rule filed by the Farm Credit Administration (FCA) regarding the Standards of Conduct (SOC).

We believe that Standards of Conduct and Ethics are an integral part of our business, which without our business could not be successful. However, as drafted, we think you will find it increasingly difficult to find a director who is involved in a business, farming or otherwise, that will want to serve on a Farm Credit Association Board. We feel that portions of the proposal are over-reaching, unnecessarily burdensome, and cannot be fully complied with in its current form. We hope that our comments provide perspective to FCA that will result in a final rule that is practical and workable throughout the System. In addition to our own comments below, we strongly support and endorse the comments being submitted by the Farm Credit Council on behalf of the entire System.

(Definitions)

Agent – it is unclear how agents are defined for purposes of the Standards of Conduct regulations. As drafted, agents might include underwriters, ratings agencies, administrative agents in syndicated loan transactions, providers of information technology services, etc. *We recommend that the definition be clarified, including examples of types of parties that do and do not constitute agents subject to these regulations.*

Controlled entity – in many instances, there is nothing "controlling" about 5%. *We recommend that the term be changed to "Disclosable Interest" for clarity, while the definition remains the same.*

Employee – it is unclear if contract employees fall under the definition of employee, agent, or if they require a separate definition. The lines appear to be blurred as to who is and is not considered an employee. *We recommend that "salaried" and "any non-salaried employee who receives a wage" be stricken for clarity.*

Family – *We would recommend that the added language "and anyone whose association or relationship with the director or employee is the equivalent of the forgoing" be stricken because it appears to be somewhat open-ended.* If the FCA intends to include domestic partners, common law spouses, or adoptive children within the definition of family, then it should add these relationships explicitly.

Material – is overly vague and is open to various interpretations by different System institutions. While we understand that the definition is subject to examination by FCA, we find it rather inequitable for different institutions to be subject to different standards regarding what is considered material. *We ask that FCA consider setting some sort of standard for this definition in an attempt to make it more equitable across the System.*

The following is our section-by-section analysis.

(Responsibilities and Conduct)
The insertion of "policy statements, instructions, procedures and guidance" into this section to be very problematic and contrary to the Administrative Procedures Act. The term "guidance" is vague and ambiguous, making compliance with

the regulation virtually impossible. Does "guidance" include statements made by FCA examiners during closeout discussions and/or statements and recommendations set forth in FCA's examination close-out letters? The existing wording that requires directors and employees to observe "policy statements, instructions, and procedures" is problematic for the same reasons. *We think that the phrase "and policy statements, instructions, procedures, and guidance" be stricken in its entirety.*

(Conflicts of Interest)
The preamble of the proposed rule gives a specific example of a director or employee purchasing farm equipment such as a combine harvester from a known borrower and states that such a purchase should be reported to and reviewed by the Standards of Conflict official for conflicts. Stockholder elected directors of associations are required to be farmers, ranchers, or producers or harvesters of aquatic products. As such, they need the ability to purchase goods and services in the ordinary course of business from other farmers without the need to obtain prior approval from the SOC official (even if the person from whom the director is purchasing the goods or services is a borrower of the director's institution and even if the price is subject to negotiation). Restrictions on a directors ability to run their business while serving as a director could be a serious disincentive for serving as a director. *As we see it, directors should not be required to obtain prior approval before entering into a business transaction with a borrower as long as the transaction is entered into in the ordinary course of business.* Regarding outside directors, some outside directors are lawyers, accountants and financial consultants serving the local farming community. Requirements to obtain prior approval from the SOC official before their entering into a client relationship with a borrower could be a serious disincentive to serving as an outside director. In addition, *the phrase "consultants who provide expert or professional services" is overly broad and should be removed.* As agents are defined as providers of professional services, it is unclear who, in addition to agents, FCA are trying to include. This compounds the already existing confusion around the definition of an agent.

(Director/Employee Reporting)
The regulation states that the director (or employee) must report the name of any relative or person residing in the director's (or employee's) household, any business partner, or any entity controlled by the director (or employee) or such persons if the director (or employee) knows or has reason to know that such individual or entity transacts business with the institution or any institution supervised by the director's (or employee's) institution. One should not presume that a director (or employee) would know that his or her relative has a loan with an association. Further, whether a director (or employee) would have "reason to know" only creates further 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.*

(Directors/Employees – Prohibited Conduct)
The requirement to renew determinations made by the SOC official annually is overly burdensome and unnecessary. *Determinations should only be required to be renewed as the circumstances around the determination changes.* In addition, the provision requiring the SOC official, on a case by case basis, to determine that the potential for conflict of interest is insignificant in a financial obligation between a director and a customer. This has the potential to put the SOC official in the middle of every ordinary course of business transaction by a director such as purchasing feed or a tractor. *We would ask that FCA include a provision in this section to make transactions in the "ordinary course of business" (or at the very least transactions made at a fixed price) not require pre-approval from the SOC official.* The preamble states that the SOC official cannot ratify a transaction that has occurred in the past. As currently written, this does not provide a director or employee incentive to disclose such a transaction which occurred in the past and may have been inadvertently overlooked. Moreover, it creates an untenable situation where disciplinary action would be immediately required despite the circumstances and intent, which fundamentally creates a negative "caught you" ethics environment. *We believe it would create a more workable and transparent rule if the SOC official were granted authority to ratify transactions which had already taken place.*

(Institution Responsibilities)
How can an institution truly "ensure" compliance with the proposal? An institution can only go so far to educate on their policies, require signatures acknowledging policies, etc., but should they really be held responsible for an employee/director/agent's individual actions? *This should be re-worded to reflect that it is the responsibility of the institution to certify that they have taken all necessary steps and made every attempt to ensure compliance.* Requiring agents to review the institution's Standards of Conduct policy and certify that they will adhere to the provisions of the institution's Code of Ethics does not appear to be market standard for public companies regulated by the SEC or financial institutions regulated by federal banking regulators. It is unclear why an agent would agree to this. An institution can require education and the signing of a contract, but is it truly possible to require compliance from an outside entity? In addition, FCA should include a grandfather provision for existing contracts. What is the legal precedent for this type of requirement as it relates to wrongful dismissals? There is concern that some agents may be unwilling to sign such a contract due to uncertainties around liabilities to the institution. FCA should move all provisions applicable to agents into a single section of the regulations. It would be unduly burdensome for agents to have to review the regulations in their entirety to locate and understand the provisions that apply to agents. In one instance the proposal requires the institutions to "immediately" notify FCA of all known or suspected Standards of Conduct violations, and in another instance it requires the SOC official to "promptly" notify the FCA's Office of General Counsel of such violations. *FCA should be consistent on this.* This section (as well as proposed §612.2170) require a report to the FCA General Counsel in all cases where there is a known or suspected Standards of Conduct violation by a director, employee or agent that may have an adverse impact on the public confidence in the System or the institution. As a practical matter, this could be construed to mean that all known or suspected Standards of Conduct violations by anyone (director, employee, or agent) would need to be reported since all "may have an impact on public confidence". *In our opinion, this requirement is too vague and too broad.* We also have concerns regarding waiver of the attorney-client privilege, particularly if information is disclosed to FCA regarding an investigation resulting in an employee discharge or director removal. *As such, at a minimum, this regulation should make it clear that only non-privileged information needs to be reported to the FCA.* Item (a)(3) of this section calls for all known "or suspected" violations to be reported to the FCA. We find "suspected" violations to be overly ambiguous and could potentially be construed differently by different parties. Reporting suspected activities without proper research and proof appears dangerous at several levels. For these reasons, *we recommend that the phrase "or suspected" be stricken from the regulation.*

As stated before, we believe that Standards of Conduct and Ethics are an integral part of our business, and anything needed to improve the current rule is acceptable, but as drafted, we feel that portions of the proposal are over-reaching, unnecessarily burdensome, and cannot be fully complied with in their current form. We find that the proposed rule inappropriately shifts burden from the employee/director/agent to the institution via the SOC official. The SOC official's role should not be that of an enforcement official. The SOC official can educate, provide resources, investigate, take appropriate actions, etc., but should not be expected to be held responsible for any violation that occurs.

Thank you for the opportunity to comment on this important matter.

Sincerely,

Wayne Johnson

Wayne Johnson
Board Member
Farm Credit Services of East Central Oklahoma, ACA