High Plains Farm Credit

2905 Vine Street
P.O. Box 836
Hays, KS 67601
785.625.2110
Toll Free: 1.800.369.9625
Fax: 785.625.4309

May 19, 2014

Mr. Barry F. Mardock
Deputy Director, Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5000
Reg-Comm@FCA.GOV

RE: RIN 3052-AC44: ANPRM Standards of Conduct;
Published in the Federal Register on February 20, 2014

Dear Mr. Mardock:

High Plains Farm Credit, ACA appreciates the opportunity to comment on the Farm Credit Administration's (FCA) advance notice of proposed rulemaking (ANPRM) with respect to standards of conduct.

General Comment

Portions of the proposal are over-reaching, unnecessarily burdensome, and can't be fully complied with in their current form. The primary issues the regulation should seek to address are: (1) the use of insider information for personal benefit; (2) participating in deliberations on any question affecting the interest of insider or any related parties; and (3) obtaining special advantage or favoritism from others. FCA should remain focused on these purposes when evaluating new proposed rules, rather than trying to incorporate unnecessarily broad language to address specific violations that have recently occurred.

Definitions

The "Family" revision which contains added language "and anyone whose association or relationship with the director or employee is equivalent to the foregoing" should be stricken because it appears to be somewhat open ended. Investigating non-traditional relationships which generally are non-formal or not recognized legally is burdensome for the Standards of Conduct Official and the institution. This could also have unintended and embarrassing consequences for an employee and may create a perception of discrimination.

The "Controlled Entity" definition should reflect something greater than 5% ownership. This percentage may be appropriate for publically traded companies, but in the context of family enterprises, which are the typical entity owned by Farm Credit directors and employees, a 5% ownership test doesn't reflect any type of "control" whatsoever. A more appropriate threshold is 33% or greater owner or the ability to direct control, management, etc. for the entity.

Standards of Conduct Official
The proposed rule inappropriately shifts burden from the employee/director/agent to the institution via the Standards of Conduct official. The Standards of Conduct official's role should not be that of an enforcement official. The Standards of Conduct official can educate, provide resources, investigate, take appropriate actions, etc. but should not be expected to be held responsible for any violation that occurs. It is important to clarify in guidance to examiners that accountability for violations, if any, rests with the institution or the specific employee, director or agent and not with the Standards of Conduct Official. The rule reads as if the Standards of Conduct Official is to be held responsible for the above, which would not be appropriate unless he or she willfully failed to discharge the duties set forth in the regulations and/or institution policy.

Revised 612.2170(a) requires the board of directors to "designate *an officer* of the institution as the Standards of Conduct Official". It would be more appropriate to simply require that the individual be "*an employee* of the institution" which would maintain the desired accountability, but give greater flexibility for the board of the institution to determine who may best fill that role.

Conflicts of Interest
Requiring directors to disclose any transaction in the ordinary course of business is not realistic. The regulatory burden placed on directors and the Association would be enormous and has absolutely no impact on any conflict of interest. Perhaps most importantly, the proposal will immediately discourage qualified individuals from serving on the board of their FCS association. It is important to note that unlike situations in the past, Boards at many institutions no longer participate in the loan approval process (as those functions have been delegated to management). This removes any conflicts of interest in this area.

Directors of Farm Credit banks and Associations (except outside directors) 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 Standards of Conduct 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 director's ability to run their business while serving as a director could be a serious disincentive for serving as a director. 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 Standards of Conduct official before their entering into a client relationship with a borrower could be a serious disincentive to serving as an outside director. Language related to prior approval should be removed.

Directors/Employees - Prohibited Conduct

Concern was expressed about the provision requiring the Standards of Conduct 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 Standards of Conduct official in the middle of every ordinary course of business transaction by a director such as purchasing feed or a tractor. FCA should 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 Standards of Conduct official.

The preamble states that the Standards of Conduct official cannot ratify a transaction that has occurred in the past. A more workable and transparent rule would grant authority to the Standards of Conduct official to ratify transactions which had already taken place.

Code of Ethics, Policies and Procedures

There is concern regarding the provision which would require the Standards of Conduct official to review loans. In many instances, an institution's Standards of Conduct official might not necessarily be someone who has knowledge of terms, interest rates, etc. In these cases, this function should be able to be delegated, such as to a loan or credit committee. Please clarify this issue.

Proposed 612.2160(a)(3) would require the institution to notify the FCA immediately of any known or suspected material standards of conduct violations. The Standards of Conduct official should be given reasonable time to conduct an investigation of any suspected matters before being required to report to FCA to avoid overreaction.

A Code of Ethics for an agent is inappropriate as that reflect values and policies intrinsic to the company. Requiring a Code of Ethics for an “agent” adds no value to the process and will simply create an unnecessary compliance burden. 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.

Thank you for the opportunity to comment. High Plains Farm Credit takes its responsibilities and conduct very seriously and discourages any regulatory changes that may impede our ability to meet our stockholders’ financial needs while maintaining excellent customer service and financial stability.

Sincerely,

Doug Thurman, President and CEO