

June 10, 2014



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

RE: Proposed Rule on Standards of Conduct

Dear Mr. Mardock:

We appreciate the opportunity to provide feedback on the Farm Credit Administration's ("FCA") proposed standards of conduct rule. Farm Credit Mid-America ("FCMA"), like other institutions in the Farm Credit System, recognizes the importance of regulatory safeguards to promote integrity and transparency in the day-to-day operations of our association as we endeavor to achieve our mission to serve the credit needs of rural America. However, we have fundamental concerns regarding the four key concepts of the proposed rule that are discussed below.

**Attracting/Retaining Qualified Board of Directors**

The proposed rule will substantially impact the ability of a board member to conduct his/her business. The rule proposes to require that any member of an association Board of Directors must seek written pre-approval to enter into any business transaction with anyone with a connection to the association including a customer, employee or agent. A large producer, agribusiness operation or processing and marketing business may need to report transactions on a daily basis. FCMA serves four states and has over 148,000 member-stockholders (customers) who are involved in farming activities in their local communities. Placing additional restraints on board members will not only impact their ability to conduct everyday business, it will also impede the ability of the very customers Farm Credit was formed to serve from conducting their business in an ordinary course. Board members do not have access to customer financial information or make loan decisions. While they may suspect that many of their neighbors and local community members do business with Farm Credit, it is not appropriate for directors to probe for this type of personal and confidential information in ordinary course of business transactions.

In addition, a board member must also seek written pre-approval to conduct any business transaction with an agent of the association. Board members do not have access to information on agents or make decisions related to the approval of agents. Requiring prior approval would again require board members to probe for information that could be considered inappropriate with some agents being required to maintain the confidentiality of their client names. The added requirements will be overly

burdensome to both directors and associations as the implications will almost certainly require directors to contact the association before entering into any business transaction to avoid a violation of the proposed Standards of Conduct regulation.

It is imperative that associations be able to attract and retain qualified candidates to serve on the Board of Directors. By requiring written pre-approval for ordinary course of business transactions, associations could unknowingly put a restraint in the marketplace and on the ability of directors, customers and agents to conduct business in a timely manner. The proposed rule will keep many active farmers and members of agribusiness operations in our rural communities from serving on the Board for fear of its impact on their livelihood. This unintended consequence will leave associations with Boards that are not fully representative of the customers we serve.

#### **Inability to Ratify Past Conduct Subject to Reporting**

In addition to deterring qualified candidates for the Board, the proposed rule goes further to prohibit the Standards of Conduct Officer from ratifying a transaction with a customer, employee or agent that was not reported before the transaction took place. This requirement provides a further deterrent to current Board members and potential candidates by placing an impractical hurdle to daily business transactions. In addition, it could act as a constraint on reporting if the past action cannot be ratified. In the rural areas we serve, FCMA is deeply connected to a vast majority of the individuals in those areas, with relationships with customers, employees, businesses, and agents. In an effort to promote transparency, past transaction reporting should be encouraged and ratified if appropriate. By allowing for ratification of past transactions, associations can effectively report the actual transactions taking place and have effective conversations with Board Members about the importance of reporting transactions in a timely manner.

#### **Standards of Conduct Officer Duty to Investigate**

The proposed rule puts an unreasonable burden on the Standards of Conduct Official to go beyond reviewing the information reported by a Director or employee by requiring that each transaction must be reviewed and approved on a case-by-case basis. This duty to investigate goes beyond any comparable duty imposed on other financial institutions. In addition, even if we establish standard exceptions to reporting for transactions that do not present a potential for conflict and *de minimis* values, those determinations are then subject to FCA scrutiny. The rule, as proposed, puts the Standards of Conduct Official in an untenable position of being accountable for each Director, employee and agent and responsible for the accuracy of these individuals reporting of transactions subject to the rule. For associations with large customer and employee bases, how can one person or one team effectively shoulder this burden? Should the Director, employee, and agent have some responsibility to accurately report transactions with proper training of the requirements? Existing regulations require directors and employees to acknowledge their compliance with the Standards of Conduct annually and to report transactions and outside activities as required. Is there truly a need to add additional constraints which would create undue hardships on associations, their Standards of Conduct Officers or the employees, directors and agents of the associations?

### **Broad Definition of Agents**

Finally, the proposed rule seeks to require that any third party doing business with an association must agree to the acquired property restrictions that apply to employees and if the third party is not in a profession with professional ethics standards, the agent must agree to adhere to the association's code of ethics. In the ordinary course of business, FCMA enters into contractual relationships with a wide variety of individuals and entities that provide technology, training, marketing, title, appraisal, accounting, and other services to help us serve our mission. The proposed rule would impact the association's ability to enter into such contracts in the marketplace by requiring that we must negotiate our code of ethics and acquired property prohibitions into those contractual relationships. Other regulated financial institutions are free to negotiate contracts for these types of services without similar restrictions. This section of the proposed rule will substantially restrain an association's ability to contract for third party services and thus negatively impact the customers we were formed to serve.

### **Alternative Proposal**

Maintaining high standards of conduct to ensure confidence in the Farm Credit System and its entities can be achieved through the FCA's existing Standards of Conduct regulations. We believe addressing the importance of ethical conduct with employees and directors can strengthen compliance without implementing additional requirements that would be burdensome to associations, Standards of Conduct Officials, and employees, directors and agents of associations. This can be accomplished through:

- Policies and procedures that clearly state the purpose, expectations and requirements for complying with the regulations;
- Communications and educational messages provided to employees and directors at periodic intervals throughout the year to re-emphasize Standards of Conduct and reporting requirements;
- An in-house Standards of Conduct Official to oversee implementation and compliance and to provide advice to employees and directors; and
- The implementation of an anonymous reporting service available in a prominent location for employees, directors, customers or others to report unethical conduct or activities.

FCMA is appreciative of the opportunity to provide comments on the proposed standards of conduct rule. Hopefully, our feedback will provide you with practical insight into the impact the proposed rule will have on the ability of Farm Credit System institutions to conduct business, as well as the impact on our ability to attract and retain qualified Board members, employees, and agents. We look forward to working with FCA to strengthen the high standards of ethical conduct of System institutions while allowing for practical processes that take into consideration normal business practices.

Sincerely,



Nancy J. Sparrow  
General Counsel