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

RE: Proposed Rule on Standards of Conduct and Referral of Known or Suspected Criminal Violations

Dear Mr. Mardock:

Farm Credit Services of America, ACA (FCSAmerica) appreciates the opportunity to comment on the Farm Credit Administration's (FCA) Proposed Rule that was published in the *Federal Register* on February 20, 2014, regarding Standards of Conduct and Referral of Known or Suspected Criminal Violations. We support establishment of policies, procedures and programs to uphold a positive and honorable reputation for and to maintain public confidence in the Farm Credit System ("System") with investors, our customer-stockholders and the general public.

We offer the following comments and/or recommended revisions to the Proposed Rule:

- A. Definitions (§612.2130).** Clarifying the definition of *Signed* will provide the ability to expedite certification, reporting and prior approval processes.

The proposed definition of *Employee* would encompass individuals hired/added to a System Institution's payroll regardless of the scope of such employment. For example, an individual employed to perform ministerial tasks for a limited amount of time on a periodic basis (e.g., a receptionist who works less than 20 hours per year) would pursuant to the proposed regulation be considered an Employee who would be required to disclose significant personal information as well as complete various certifications, reporting and prior approval documents. We propose that System Institutions be permitted to establish minimum levels of employment before an Employee would be required to disclose such personal information or complete the various certifications, reporting and prior approval documents that would be required by the proposed Standards of Conduct provisions.

The existing definition of *Entity* incorporates the types of entities that are considered Unincorporated Business Entities without including that phrase in the definition of Entity or adding a definition of Unincorporated Business Entity in §612.2130.

- B. Responsibilities and conduct (§612.2135).** The proposed amendment purports to elevate informal agency “guidance” to the status of a binding legal requirement. This is inconsistent with applicable legal requirements and undesirable as a matter of policy.
- C. Conflicts of interest (§612.2136).** The additional requirements of this section will create a significant burden for the Standards of Conduct Officer to obtain reports on potential conflicts of interest from all Agents and consultants, and make written determinations on whether a conflict exists or would interfere with their ability to impartially perform in the best interest of the System Institution. The effort and resources necessary to carry out these additional requirements far exceed the potential benefits or value. We recommend that 612.2136(a) be revised to simply require Agents, who by definition would include consultants who provide expert or professional services to a System Institution, to abide by the System Institution’s Code of Ethics unless they are otherwise bound by other industry or professional standards.

We recommend that 612.2136(b) be eliminated in its entirety. The System Institution’s Code of Ethics should outline the duty of Directors, Employees, and Agents to refrain from participation in discussion and/or action on matters where they have a conflict of interest. We feel that requirements for Directors, Employees and Agents to disclose a conflict would likely put them in a position of unnecessarily disclosing personal or privileged information during a meeting, and it is not feasible to know or anticipate every potential conflict or its relevance to any discussion that may take place as part of a Board of Directors meeting in advance of any Board of Directors meeting. Therefore, it is neither practical nor reasonable to try to mandate a prior written determination by the Standards of Conduct Officer on whether participation in a particular Board of Directors discussion or action is appropriate.

Further, Employees and Directors have the duty to report any suspected or known violations of the Code of Ethics to the Standards of Conduct Officer, which would then be investigated. Findings of any investigation wherein the Code of Ethics was not followed or that identified a potential negative impact on public confidence in the System or its institutions would be reported to the President and CEO, Board of Directors and the FCA promptly. As a result of any such investigation, the Standards of Conduct Officer would, upon determining that a violation had occurred, have the authority to recommend appropriate corrective action which may include the discharge of an Employee, termination of an Agent or removal of a Director.

- D. Director reporting (§612.2140).** We recommend the language in 612.2140(c) that requires reporting any business relationship, transaction, or activity that “may violate the institution’s Code of Ethics” in writing should be stricken. Directors, who adopt and review the Code of Ethics annually, should understand its meaning and intent and be able to apply it to their actions.

We recommend the language in 612.2140(d) that requires a newly elected or appointed director to report within 30 calendar days after the election or appointment be clarified to require such reporting no later than 30 calendar days after the effective date that the newly elected or appointed director takes office. Such a clarification would be consistent

with the timeframe calculation for new employee reporting, which is after the new employee starts employment, rather than after the employee is notified that he/she was selected as the successful applicant for the position and/or accepts the offer of employment.

- E. Directors—prohibited conduct (§612.2145).** The requirement for the Standards of Conduct Officer to determine if a Director may participate in deliberations and determinations of matters prohibited under 612.2145(b)(1) only if the matter is one of general applicability affecting all shareholders/borrowers in a nondiscriminatory way would add tremendous additional responsibility to the Standards of Conduct Officer to consider all Board of Directors agenda items, the content of Board of Directors meeting materials, have knowledge of all Directors' business relationships and previous reporting, and make a determination as to any potential need for recusal of any Director in advance of every Board of Directors meeting. We feel the requirement for the Standards of Conduct Officer to make such determinations is unreasonable and should be removed. The effort and resources necessary to comply with this requirement far exceeds any potential benefit or value. It is incumbent upon each Director to abide by the Code of Ethics and Standards of Conduct, which includes recusal from participating in such deliberations.

We recommend amending 612.2145(b) removing 612.2145(b)(3)(ii) which presumes that every Director and/or the Standards of Conduct Officer has knowledge of all property previously owned by the System Institution in the past 12-months, particularly if the property was sold to a third party and then resold. The requirement set forth in 612.2145(b)(3)(iii) for the Standards of Conduct Officer to grant prior approval for the acquisition of properties through public auction with open competitive bidding should also be removed. Directors have no advantage in the purchase of real or personal property through public auction with open competitive bidding, particularly if they have no knowledge of the prior System ownership and/or they did not participate in the deliberations or decision to foreclose, take similar action, or to dispose of the property or establish the terms of such sale.

- F. Employee reporting (§612.2150).** We recommend that the requirement for new Employees to complete the Standards of Conduct and Code of Ethics certifications within five (5) business days of hire be revised to be consistent with the newly elected or appointed Director requirement of thirty (30) days. This will provide a more realistic timeframe to receive training, review related policies and procedures, and seek guidance from the Standards of Conduct Officer prior to completing required certifications. Extending the time for completion of certification requirements would diminish timing violations which today represent the majority of all policy violations.

- G. Employees—prohibited conduct (§612.2155).** The requirement for the Standards of Conduct Officer to determine if an Employee may participate in deliberations and determinations of matters prohibited under 612.2155(b)(1) of this section only if the matter is one of general applicability affecting all shareholders/borrowers in a nondiscriminatory way creates an undue burden and responsibility for the Standards of Conduct Officer. The effort and resources necessary to comply with this requirement far

exceed any potential benefit or value. It is incumbent upon each Employee to abide by the Code of Ethics, which includes recusal from participating in such deliberations.

Theoretically, this requirement would prohibit Employees from participating in deliberations about a customer segment such as rural homeowners, young and beginning customers, etc. if those include the Employee or an Employee's relative.

The exceptions outlined in 612.2155(b)(4)(ii) presume that Employees have knowledge of all property previously owned by the System Institution prior to attending an auction. This presumption is unrealistic and overly burdensome, particularly with respect to personal property auctions that are generally administered by a third party. We recommend that Employees be granted the ability to purchase property at auctions with open competitive bidding without the need for prior approval or reporting.

H. Joint employees (§612.2157). We have no suggested changes to this section.

I. Institution responsibilities (§612.2160). We agree that immediate reporting to the FCA and the Board of Directors of *suspected criminal violations* that may represent a systemic risk for the System is warranted. However, the requirement for immediate reporting of any *suspected material standards of conduct violations* that are System Institution specific under 612.2160(a)(3) should be limited to material standards of conduct violations as determined by the Standards of Conduct Officer. The investigative work regarding a suspected material violation may result in no violation being found and create unnecessary reporting or disclosure of personal information regarding a Director, Employee or Agent of the System Institution and overreaction as to the severity of any such suspected violation. Violations that have been appropriately investigated should be reported to the Board of Directors as a matter of course at the next regularly scheduled Board of Directors meeting unless the Standards of Conduct Officer determines that more expedient reporting is warranted.

The requirement under 612.2160(f) to have documentation that Agents (1) are subject to applicable industry or professional ethics standards, or (2) have certified to adhere to the provisions of the System Institution's Code of Ethics applicable to Agents is overly burdensome and difficult to manage. System Institutions should be able to reasonably rely on an accountant's, appraiser's or attorney's good standing with their respective licensing board or bar association without having to require additional documentation. The effort and resources necessary to maintain and manage a list of Agents that are not subject to industry or professional standards will far outweigh the potential benefits or value of such activity. We believe that it should be the responsibility of each System Institution to develop and exercise safe and sound business practices in retaining Agents, but the specifics of such practices should not be mandated or determined by regulation.

J. Code of Ethics, policies, and procedures (§612.2165). We recommend that 612.2165(c) be eliminated from the regulation. It is unreasonable to expect the Board of Directors to be available to approve exceptions on a case-by-case basis. The Board of Directors must have the ability to delegate the authority to consider exceptions to appropriate System Institution staff and/or the Standards of Conduct Officer, subject to timely reporting of any exception actions to the Board of Directors.

K. Standards of Conduct Official (§612.2170). We have no suggested changes to this section.

L. Standards of conduct for agents (§612.2180). We recommend that 612.2180(b) be amended to remove the requirement for Agents to certify that they will adhere to their specific professional or industry standards. It is duplicative and unnecessary to require System Institutions to document, and Agents to certify that they will adhere to specific professional or industry standards that they are already required to comply with. Agents who do not have professional or industry standards should be provided access to the System Institution's Standards of Conduct policy and Code of Ethics and be notified of the expectation to follow the same through contractual arrangements.

We recommend that 612.2180(d) be eliminated. It is overly burdensome and unrealistic to assume that an Agent will have access to information regarding or specific knowledge of any real or personal property owned by the System Institution either while serving in their capacity as an Agent or for any period of time after the termination of their service as an Agent of a System Institution.

M. Purchase of System Obligations (§612.2190). We have no suggested changes to this section.

Throughout the Standards of Conduct provisions there are references to immediate or prompt reporting requirements. We recommend that the language be consistent and suggest that prompt reporting is more realistic in practice and will avoid overreaction in the event that preliminary information and final analysis result in different determinations on suspected or known violations of the System Institution's Standards of Conduct policy or Code of Ethics.

Thank you again for the opportunity to provide comment on this matter.

Sincerely,



Scott J. Cozialhr,
Senior Vice President - General Counsel