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June 9, 2014

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

**RE: Standards of Conduct and Referral of Known or Suspected Criminal
Violations; Standards of Conduct – Proposed Rule
RIN 3052-AC44**

Dear Mr. Mardock:

Ag Credit ACA submits the following comments to the Farm Credit Administration (FCA) in response to the notice published in the *Federal Register* on February 20, 2014, requesting comments on proposed amendments to the regulations on Standards of Conduct (SOC) and Referral of Known or Suspected Criminal Violations (Proposed Regulations).

Ag Credit recognizes and appreciates the efforts expended in drafting the Proposed Regulations and by and large supports the proposed changes. However, there are several provisions contained within the Proposed Regulations that we believe are unnecessary and overly burdensome.

Ag Credit is generally supportive of the positions taken by Ag First Farm Credit Bank and the Farm Credit Council with regard to their comments on the Proposed Regulations which address many additional concerns not addressed in this letter.

Directors

Many of the elected directors of Ag Credit are borrowers and all have significant business interests in the agricultural and/or rural communities in which they serve. The nature of our cooperative is such that in the ordinary course of business, many of our directors currently have or may have relationships with those who may transact business with our cooperative. Regulations that impose undue and unnecessary burdens on ordinary course business relationships for our directors will limit the attractiveness of serving as a director. This chilling effect has the unfortunate potential of ultimately limiting the effectiveness of our board and the cooperative principles upon which our Association operates. While we understand that our directors owe a fiduciary duty to our Association and its members and that such obligation may

from time to time limit the permitted activities of any director during the term of his or her service, the Proposed Regulations impose burdens beyond that which is necessary or advisable. Our Board members are active in our agricultural community and bring their expertise and experience, which is beneficial, to our cooperative and our members.

For example, the proposed prohibitions in §612.2145(a)(7)¹, are not limited by a qualification that a director² not knowingly become financially obligated with or on behalf of parties who may transact business with their System institution. The absence of this knowledge qualifier leads us to conclude that any transaction with a party transacting business with our Association which does not receive prior approval by the Standards of Conduct Official (SOCO) would violate Section 612.2145(a) (7) even if our director had no reason to know that the counterparty on the related transaction does business with our Association or only discovers such relationship after the transaction was consummated. Moreover, it is not clear how the permitted de minimis and materiality standards adopted by our board with respect to reporting requirements would impact the prohibited activity provisions found in §§612.2145 and 612.2155.

We believe that the Proposed Regulations should make clear that prior SOCO approval is only required for transactions involving parties that the director knows or has reason to know are borrowers or otherwise transact business with our Association and are in excess of the de minimis and materiality standards set by our board. Without such a limitation, the directors would be subjected to burdensome reporting and approval requirements which may unreasonably delay ordinary course business operations and ultimately dissuade qualified director candidates from serving on our board of directors.

The Proposed Regulations do not appear to provide for ratification of a transaction for those instances when discovery of the regulated business relationship does not occur until after the transaction has been consummated. We believe that the regulations should allow for approval and ratification of transactions for those circumstances when the regulated relationship is discovered after consummation of the transaction. Further, de minimis normal course of business transactions are not worthy of reporting and should not be considered a conflict when our directors cannot impact or benefit the individual member. Association Boards such as ours do not act on individual accounts, nor do they review detailed financial information for individuals. Our Board makes decisions that impact our membership on a global level, but not generally on an individual level and the reporting of de minimis ordinary course transactions furthers no legitimate interest of our Association.

Agents

It is not commercially reasonable to expect that Associations such as Ag Credit will be able to enforce and track the activities of our product and service providers who in the ordinary course of business may be deemed an agent by the Proposed Regulations. For example, if we were to engage a large industry leader (e.g. Microsoft Corporation) to provide technology consulting services, such entity would appear to be an agent by the broad definition contained in the

¹ Unlike §612.2145(a)(6) with respect to acquired property which includes a knowledge qualifier. Principals of statutory interpretation suggest that the omission in §612.2145(a)(7) is intentional.

² The concerns expressed here with respect to directors also apply to the reporting requirements of employees and others under the Proposed Regulations.

Proposed Regulations. However, it is highly unlikely that we would be able to require an entity such as Microsoft to sign a Code of Ethics, submit the required reporting and take on the resulting increased contractual liability. The likely result of the Proposed Regulations will be to limit the entities which could be engaged by our Association or that would be willing to provide services to our Association, to the detriment of customer service, portfolio credit quality and overall performance. We believe that the Proposed Regulations should be modified to allow System institutions such as Ag Credit to adopt reasonable policies to address the oversight of agents in light of the circumstances of the related engagement which policies would then be approved by the association board of directors and reviewed by the FCA as a part of its examination process.

In addition, §612.2180(d) would be administratively difficult and very costly to enforce or track. The Proposed Regulations generally restrict agents from acquiring property that was owned by the related System institution as a result of foreclosure during the agent's employment for one year. For agents who do sporadic work for a System institution over a period of years, it is unclear what would constitute the period of employment. Moreover, while Ag Credit could track direct sales to certain agents, it is administratively burdensome and often impossible to track subsequent third party sales for a period of one year. If, for example, Ag Credit sold a property through foreclosure to a Party A on January 1 and on November 1 of the same year, an attorney handling totally unrelated matters related to employee benefits for Ag Credit were to purchase the property from Party A, it appears that the transaction would be a violation of the Proposed Regulations. This transaction would be a violation even though the benefits "agent" was not involved in the original disposition of the acquired property, which in Ohio would have been via auction and such benefits agent would likely be unaware of our prior interest.

As well, a transaction such as this would likely only be uncovered after the fact and it is unclear what conflict would have existed or what corrective action could reasonably be taken in any event. The potential administrative burden of tracking all title changes of acquired property even after it has been sold is unreasonable. We believe that the restriction in the Proposed Regulations should be narrowly tailored to cover direct sales between System institutions and agents who are directly involved in such disposition (such as appraisers of the related property or the foreclosure or closing attorney)³.

Standard of Conduct Officials

The Proposed Regulations require the scope of reporting for directors, employees and agents which necessarily substantially increases the responsibilities of our Association SOCO in terms of the review of these disclosures. The depth of such increase poses a significant regulatory burden on Association with little or no commensurate increased benefit from such disclosure. Each additional disclosure requires SOCO attention, even if such disclosure is submitted out of an abundance of caution and likely not related to an actual conflict of interest. Given the number of potential agents under the Proposed Regulations who would be required to make disclosures, the breadth of additional prior disclosures by employees and directors and the amount of related diligence and tracking that would be required to make SOCO determinations under the Proposed

³ We note that the tracking concerns addressed here with respect to indirect sales to agents also applies to the prohibitions for directors and employees.

Regulations, it is difficult to see how significant additional resources will not be necessary to comply. Although the FCA has indicated that the additional regulations will not have a substantial impact on Associations such as Ag Credit, we respectfully disagree. In fact, we believe that the Proposed Regulations will have a significant economic impact in that we will have to devote significant additional economic and human resources to handle the new responsibilities. We ask that the FCA consider the comments on the economic impact of the Proposed Regulations and make appropriate revisions. It is noteworthy that our Association in December of 2013 completed its periodic examination and was commended by FCA with regard to our SOC policies and procedures. We do not believe that SOC issues arise as a result of a lack of regulation, but rather a lack of policies and procedures that implement the existing regulations.

Other Guidance

In the preamble to the Proposed Rule, FCA states that §612.2135 will “not be substantively changed,” but goes on to note that the words “and guidance” will be added to “make clear that in addition to regulations, policy statements, instructions and procedures, directors and employees must observe....” We object strenuously to the implication that directors and employees are legally obligated to follow “guidance” and similar non-binding statements by the Agency.

Moreover, Standards of Conduct regulations may not be used to thwart the requirements of the Administrative Procedure Act. In order to adopt general requirements with the force of law, the Agency must follow the notice and comment requirements of the APA. *See Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1019 (D.C. Cir. 2000). For this reason, agency guidance should “not [be] improperly treated as legally binding requirements.” 72 Fed. Reg. at 3433. Office of Management and Budget, *Final Bulletin for Agency Good Guidance Practices*, 72 Fed. Reg. 3432, 3433 (Jan. 25, 2007). A requirement that directors and employees “must observe . . . the letter and intent of all applicable . . . guidance” would violate from these established principles, by elevating agency “guidance” to the status of a binding legal requirement. It could also have unintended consequences. For example, institutions may be less willing to seek the Agency’s guidance if doing so is likely to subject them to additional binding requirements for which penalties can be assessed.

FCA is significantly modifying many provisions relating to institution policies. In turn, it is stating that determinations made in those policies are “subject to FCA examination.” If the FCA seeks to establish rules, it cannot be through informational memorandums or the examination process. Instead, it must be through rulemaking, with an opportunity for notice and comment.

Conclusion

We acknowledge that the maintenance of public confidence in the Farm Credit System requires that each System institution adhere to high standards of conduct. Nevertheless, the Proposed Regulations impose significant administrative burdens that in many cases do not advance this goal but rather put Associations at risk of being able to further our mission to provide support and financing to our rural communities. Instead, many of the Proposed Regulations potentially limit the pool of directors with significant operations and experience who may be willing to bring their expertise to our Association board. The substantial increased resources required to

oversee a SOC program under the Proposed Regulations will impact the resources available to provide the services that our Association can provide to our members and prospective members in the communities that we serve.

We respectfully ask that the FCA consider our comments and those of AgFirst, the Farm Credit Council and other System institutions to revise the Proposed Regulations to reduce unnecessary administrative burdens and clarify responsibilities so that we are not hindered in the advancement of our mission.

Thank you for the opportunity to comment.

Respectfully submitted,

Ag Credit ACA



S. Jerry Layman
Chairman of the Board of Directors



Brian J. Ricker
President & Chief Executive Officer