



Farm Credit of Enid

Farm Credit of Enid, ACA
1605 W. Owen K. Garriott Road
Enid, Oklahoma 73703
(580) 233-3489 FAX: (580) 233-3499

October 12, 2018

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 Eligibility Criteria for Outside Directors – RIN 3052-
AC97 / *Federal Register* 83 (August 24, 2018) 42807-42810

Dear Mr. Mardock:

Farm Credit of Enid, ACA appreciates the opportunity to comment on the Farm Credit Administration's (FCA) proposed rule regarding eligibility criteria for outside directors. Farm Credit of Enid, ACA is supportive of the proposed rule's clarification of the eligibility criteria for outside directors, and of its objectives to strengthen the safety and soundness of Farm Credit System (System) institutions, strengthen the independence of System institution boards and incorporate best governance practices for System institutions. Farm Credit of Enid, ACA believes that the compliance timeline for the enhanced outside director eligibility criteria is reasonable and workable.

While Farm Credit of Enid, ACA is generally supportive of the proposed rule, we believe that the exclusion of being an immediate family member of someone who is stockholder or borrower from consideration for an outside director position is overly prescriptive and goes beyond the eligibility requirements set forth in the Farm Credit Act of 1971, as amended (Act). We are providing comments on this provision, as well as a number of clarification and technical comments to the proposed rule in coordination with other Associations and CoBank.

Section-by-Section Comments

§611.220(a) Definitions.

The proposed rule provides a new definition of “**affiliated organization**,” which means “an entity that is legally distinct from any Farm Credit System institution, but is organized and operated for the benefit of, and in support of, an institution and conducts activities that advance the mission of an institution.” We believe that this definition would exclude Section 4.25 service corporations, such as Farm Credit Leasing Services Corporation

and the Federal Farm Credit Banks Funding Corporation, but would include The Farm Credit Council. We ask the FCA to clarify this definition by providing examples of entities that the FCA intended to include within this defined term. In addition, we ask the FCA to use another name for this definition, such as “System affiliated organization,” to avoid confusion with “affiliated organization” as defined in §620.1(e).

The proposed rule provides for borrowers to be added to the list of persons excluded from consideration for an outside director position, and adds definitions of “**borrower**” and “**entity**” that are consistent with definitions found in the current FCA regulations¹.

The borrower definition includes a number of entities that are included in the new definition of entity. We ask the FCA to revise the borrower definition to remove partnership, joint venture, trust and corporation because these are subsumed within the new entity definition. The preamble states that a borrower includes an individual who has signed a promissory note in a joint capacity (e.g. co-applicant) but does not own System stock. We ask the FCA to revise the regulation to make clear that a borrower includes a co-applicant or co-borrower of a loan to avoid any ambiguity. In addition, we ask the FCA to add cooperatives to the definition of entity for clarity because cooperatives are entities eligible to borrow under Title III of the Farm Credit Act of 1971, as amended.

The proposed rule provides that individuals who have a “**controlling interest**” in an entity that borrows from a System institution or in an affiliated organization are also excluded from consideration for an outside director position. The preamble states that the controlling interest definition is consistent with the definition in the standards of conduct regulations; however, the preamble does not acknowledge that the definition of a controlling interest is being modified, and a new concept of reportable business entity is being added to replace controlled entity, in the proposed regulations for standards of conduct that were published in the Federal Register on June 15, 2018. We ask the FCA to replace the controlling interest definition with the reportable business entity definition to be consistent with the final rule for standards of conduct. In the alternative, we ask the FCA to revise the control concept to include the materiality standard found in the proposed rule on standards of conduct.

§611.220(b)(1)(i) Eligibility, number and term.

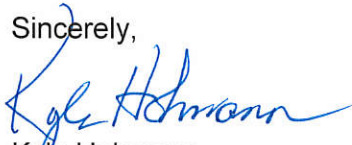
The proposed rule extends the exclusion from consideration for an outside director position to an immediate family member of a director, officer, employee, agent, stockholder or borrower of a System institution, as well as to an immediate family member having a controlling interest in an entity that borrows from a System institution or an affiliated organization of a System institution. This exclusion of an immediate family member goes beyond the eligibility criteria found in the Act, is overly prescriptive and should be removed from the proposed regulation or modified to allow board of directors

¹ Borrower is defined in §614.4350(a) and entity is defined in §612.2130(e).

flexibility to establish criteria and parameters for determining if such a relationship present an independence issue for an outside director candidates. If a System institution board were to consider the appointment of an otherwise qualified individual as an outside director who is an immediate family member, such appointment should be made in consultation with the institution's Standards of Conduct official, and only after a full evaluation of such individual's disclosure and determination that the nature of such individual's familial relationship would not impair his or her ability to observe fiduciary duties, to serve in an objective and impartial manner and to provide an independent perspective to the institution board.

Thank you again for allowing Farm Credit of Enid, ACA the opportunity to comment on this important regulation regarding outside director eligibility. We hope that these comments are useful to the FCA as it finalizes this rule.

Sincerely,



Kyle Hohmann
President



Lyndal Skaggs
Chairman of the Board