

MISSISSIPPI LAND BANK, ACA



P.O. Box 667, Senatobia, MS 38668-0667
5509 Hwy. 51 North, Senatobia, MS 38668
Telephone: (662) 562-9671 / Fax: (662) 562-7783
Toll Free: (866) 560-9664
www.mslandbank.com

October 22, 2018

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

RE: Outside Directors Eligibility Criteria – RIN 3052-AC97/ Federal Register 83, No. 165 (August 24, 2018)

Dear Sir:

Mississippi Land Bank, ACA and its affiliates, appreciates the opportunity to comment on the Farm Credit Administration's (FCA) proposed rule published in the August 24, 2018 Federal Register addressing eligibility requirements for the outside directors in regard to associations of the Farm Credit System (System).

The comments that follow were developed after discussions with other System institutions and participating in conference calls with the Farm Credit Council. While we support the comments of the Farm Credit Council and the Farm Credit Bank of Texas, we also feel that since the proposed regulation could have a significant detrimental impact on our association, we should provide our own comments.

First, we see no need to amend or update the current regulation. We are not aware of FCA articulating any specific problems or flaws in the regulation as it now stands, and therefore see no need for any amendments or updating at this time. The regulation in place has served the System well, to the best of our knowledge, and there appears to be no valid reason to change it.

Second, the Act clearly states that the qualifications for a Board appointed or Board elected director are that she or he "shall not be a director, officer, employee, stockholder, or agent of a System institution." We are not aware of any statutory authority for FCA to expand the list of exclusions for that director position, such as being related to a "borrower" or even being a borrower, so long as she or he is not a stockholder, herself or himself as proposed in the regulation. While we believe that FCA should simply withdraw the proposed regulation in the absence of statutory authority, if FCA intends to continue with this rule making, we have the following comments.

The preamble states that one purpose is "to achieve the independence intended by the statutory requirements" but gives no rationale for such statement. FCA has not articulated why an outside director would be less "independent" than a stockholder elected director. It appears that FCA is trying to address an issue where an "outside" director might be a "borrower" (as defined in the proposed regulation) but not be a stockholder as contemplated in the statute or otherwise involved in a loan or lease from the



association in which she or he would serve. FCA has not articulated this, but that is our supposition. If that is the case, while holding to our position that FCA has no authority to expand on the limitations of who may be an "outside" director, we propose that this could be addressed by stating that in addition to the statutory restrictions, the outside director may not be directly involved with a loan or a lease from the organization in which she or he is to serve.

We further see no reason for eliminating as potential directors those who have an "immediate family member" who is a "director, officer, employee, agent, stockholder, or borrower". Again, we do not believe FCA has stated a sufficient reason for this restriction, and it is much too broad. For example, an association could identify someone such as a retired college professor in Mississippi who is an expert in business accounting to provide the necessary financial advice the association requires, but who has a grandchild who has a loan with an association in Idaho. It is difficult enough to find qualified persons willing to serve on a board in today's business climate without unnecessarily restricting the available candidates. There is no reason to believe an outside director with a family member who is a "director, officer, employee, agent, stockholder, or borrower" of the association would be any less qualified than a stockholder elected director in the same position. We believe the stated statutory restrictions are sufficient. Further, even if the association identifies a person who meets the restrictions and qualifies to serve, that person could be compelled at a later date to resign because a family member makes a loan with her or his association *because* of the director's affiliation with that association. In other words, they determine it must be a worthy organization *because* their family member is on the Board and make a loan which then disqualifies that board member from serving, based on the regulation as proposed.

As to the provision that an outside director ". . . is eligible to serve on the board of directors of only one Farm Credit System institution or affiliated organization" this seems to be in conflict with the ability of stockholder elected directors to serve on other boards. In Bookletter BL-009 REVISED, date December 15, 2006, FCA stated:

All directors have the same fiduciary responsibilities to each institution's stockholders, regardless of how they are selected. All directors must also have the same voting rights, and related responsibilities and duties, and be subject to the same rules and requirements, including requirements on pledges of confidentiality, disclosures, and conflicts of interest. Therefore, outside directors and other appointed directors have full voting rights on all matters that come before the board of directors. Accordingly, no director sitting on the board at the time of the vote should be denied the opportunity to vote on the appointment of additional directors

This indicates that ALL directors are equal once serving on the Board, no matter whether stockholder elected, or board appointed. Therefore, to limit the service of an outside director, again with no rationale given, is contrary to FCA's stated position.

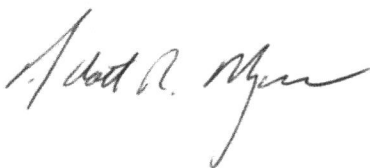
CONCLUSION

As stated above, we see no reason to amend or change the regulation at this time. Additionally, we do not believe FCA has the statutory authority to amend the regulation as proposed. Therefore, we respectfully request that the proposed regulation be withdrawn.

If FCA intends to proceed nonetheless, we would suggest that that proposed § 611.220 (b)(1)(i) be changed to simply read "No candidate for an outside director position may be a director, officer, employee, agent, or stockholder of the entity in which such director is to serve, nor may such candidate be directly involved with a loan or lease of such institution". We also request that proposed § 611.220 (b)(1)(ii) be deleted entirely.

Finding persons willing to serve as an outside director and who possess expertise require by the association is difficult under the present circumstances. The proposed amendment may make it nearly impossible for some associations and may well result in some associations losing currently serving board members as well as potentially losing board members in the future based on a change in circumstance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Abbott R. Myers".

Abbott R. Myers
Chairman of the Board

CC: Rep. Trent Kelly