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: Proposed Rule on Eligibility Criteria for Outside Directors – RIN 3052-AC97 / *Federal Register* 83 (August 24, 2018)

Dear Mr. Mardock:

Farm Credit West (“FCW”) appreciates the opportunity to provide comments on the Farm Credit Administration’s (“FCA”) proposed rule regarding eligibility criteria for outside directors. We support independence for outside directors and a strong program to identify and select well qualified candidates for outside director positions; however, as detailed below, we believe the restrictions imposed by the proposed rule will have a very serious, negative impact on the System’s ability to attract otherwise eligible, excellent candidates for outside director seats and accordingly urge FCA to withdraw the proposed rule.

FCW’s concerns are detailed below. We believe the principles on which our concerns are based are shared by a significant number of other System associations as will be reflected in comment letters submitted by other associations. We request that FCA carefully consider all of these comments. In addition, we strongly support the comments submitted by the Farm Credit Council as they reflect the consensus views of the entire Farm Credit System on this important matter.

**Overall Comments**

FCW believes the Farm Credit Act is clear and unambiguous as to outside director qualifications and as such, FCA has no authority to impose additional eligibility restrictions. The 1987 Amendments to the Farm Credit Act make clear that the boards, be determined “in such manner and with such qualifications as may be required by the bylaws”, and that FCA has no authority to direct or approve these bylaws. Despite this, FCA nonetheless adopted eligibility requirements for outside directors in 2006. While we question FCA’s authority to do so, FCW believes the current regulations for outside directors along with the standards of conduct review process have worked well to ensure outside director independence and that any potential conflicts of interest are properly vetted. This current approach is consistent with FCA’s Bookletter 009, in which FCA recognizes that outside directors must comply with the same regulatory requirements, including standards of conduct, as elected directors. As such, FCW believes the current regulations should be retained as is and urges FCA to withdraw the proposed rule.

The proposed rule will do more harm than good by unnecessarily depleting the pool of qualified outside directors who would otherwise bring added expertise and independent perspective to FCW’s board. Under the broad exclusions of the proposed rule, it appears FCW’s two outside directors, who bring substantial expertise, would potentially be disqualified from serving.

The broader exclusions which limit service if the outside director is or has a certain relationship to a borrower, immediate family members, those with a controlling interest in an entity borrower or affiliated organization, regardless of any connection to the Farm Credit institution the candidate would serve, will vastly reduce the number of qualified candidates and serve no purpose in ensuring director independence beyond existing regulations. For example, should a candidate for FCW be excluded from eligibility because her sister-in-law is a passive investor, with a 5% interest in entity that borrows from another association in a different district? We fail to see how this distant connection undermines director independence or justifies exclusion of a qualified candidate.

Excluding candidates because of borrowing relationships their family members, or related controlled entities and affiliated organizations may have with any Farm Credit System institutions is so vast, candidates may not know if these relationships exist. Compliance would require constant monitoring and intrusive inquiry with every family member to determine whether any such relationship exists or may arise while the director is serving. Further, the potential for outside directors to later become disqualified because a distant family member becomes a new borrower with an association across the country, creates instability on the board and a serious disincentive to serving. This would be so burdensome that many potential candidates may withdraw from consideration. Associations will have difficulty in attracting and retaining strong and qualified outside directors who bring additional expertise critical to the success of FCW and other Farm Credit System institutions. FCW directors have conveyed strong reservations about these proposed exclusions requirements, and the difficulties this would create in finding suitable outside directors.

FCW urges FCA to withdraw this proposed rule. If FCA proceeds, FCW strongly objects and requests FCA substantially revise the proposed rule to line up with the definitions in the proposed standards of conduct regulations once finalized and re-submit for public comment. At the very least, with significant reservations, FCW offers the following specific section-by-section comments to be considered in conjunction with the comments submitted by the Farm Credit Council and by CoBank. FCW joins in and strongly supports the comments submitted by the Farm Credit Council and by CoBank.

**Section-by-Section Comments**

611.220 (a) Definitions

(1) Affiliated organization. The definition of an affiliated organization is so vague and unclear. The definition is so ambiguous as to suggest that any organization that serves farmers, such as 4 H or FFA would be included. Without further clarification, an affiliated organization could encompass any entity with its mission to serve farmers or agriculture. This exclusion goes well beyond any reasonable interpretation of the statutory requirements. Further any concerns related to an affiliated organization of a candidate is best evaluated under the current standards of conduct process. Therefore we propose this limitation be removed or substantially clarified.

(2) Borrower. The definition of Borrower is unnecessary. The standards of conduct review process can be utilized to determine if a borrowing relationship should exclude a candidate from consideration.

(3) Controlling interest. The new term Controlling interest is not needed and can be addressed under the standards of conduct review process. Further, this definition is inconsistent with the new “reportable business entity” definition under the proposed rule for Standards of Conduct and will create confusion. At the very least, this definition should match the materiality standard in the proposed rule for Standards of Conduct. The proposed 5% percent threshold is too low and will bar candidates from serving if they are simply a passive investor with no liability or management influence over the entity borrower.

(5) Immediate family member. This limitation is unwarranted and should be evaluated under the standards of conduct approach as noted above. The breadth of this prohibition is so sweeping that many candidates will be excluded because of relatives who have loans in other Farm Credit districts. Director independence is not lost because of these relationships. At the very least, disqualification for immediate family members should limited to the Farm Credit System institution in which the candidate may serve. Otherwise, this definition is overly broad and burdensome.

611.220(b) Eligibility, number and term.

(1)(i) As stated above, ineligibility due to immediate family members is overly expansive and should be limited to the Farm Credit System institution in which the candidate may serve. For example, an outside director candidate for FCW, with a father-in-law with a loan from a completely separate association across the country, would be barred from serving. We fail to see why a candidate should be excluded because of this relationship. In many cases the candidate will not even know such a connection exists.

As stated above, exclusions for the candidate or one with an immediate family member with a controlling interest in an entity borrower or affiliated organization should be removed and instead vetted under the standards of conduct process. At the very least, these exclusions should only apply to the institution in which the candidate may serve. Otherwise, this definition is overly broad and onerous. Further substantial revisions for the definition of affiliated organization are needed as discussed above.

**Conclusion**

FCW supports a strong, proactive program by banks and associations to identify and select well-qualified, independent candidates for outside director positions. We are unaware of situations in which outside directors lack the “independence” required by Congress in the Act. The intent of Congress and, until now the FCA, has been to fully engage outside directors in the affairs of the institution they serve. Restricting the selection of, and participation by outside directors beyond the statutory requirements should be avoided. As we have noted, a “standards of conduct” approach can be utilized to determine if borrowing relationships by family members compromise independence. The restrictions imposed by the proposed rule are deeply troubling and will have a very serious, negative impact on the FCW’s ability to attract otherwise well qualified candidates for outside director seats.

Thank you again for allowing FCW the opportunity to comment on this important regulation regarding outside director eligibility. We hope that these comments have provided FCA with some practical perspective on how the proposed rule will affect the System associations. As expressed above, FCW finds this topic to be of critical importance and appreciates FCA’s consideration of the concerns and recommendations set forth in this letter.

Please contact me if you wish to discuss our comments or require additional information in support of the comments.

Sincerely,



Joseph C. Airoso Mark D. Littlefield

Chairman of the Board of Directors President and Chief Executive Officer