



October 23, 2018

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

**RE: Proposed regulation on Outside Director Eligibility
RIN 3052-AC97**

Dear Mr. Mardock,

I am writing as Director of Farm Credit East, ACA in regards to the Farm Credit Administration's ("FCA") proposed rule on Outside Director Eligibility. Farm Credit East appreciates the opportunity to comment. This letter shall also serve as acknowledging Farm Credit East's support of a more comprehensive letter which is being submitted by the Farm Credit Council. In short, we believe that the proposed regulation is beyond FCA's regulatory authority, overly broad and far reaching, and therefore, we request that it be withdrawn. Specific comments are set forth below.

Violation of the Farm Credit Act: The Farm Credit Act of 1971, as amended, outlines in Section 2.01 (12 U.S.C. 2072) that one member of the Board of Directors shall be elected by other directors. It is the eligibility of this "Outside" (i.e. not elected) Director that is the subject of the proposed changes to the regulations. In complying with the statutory directive, Farm Credit East enacted Bylaws outlining the structure of our individual Board of Directors (including both elected Directors and appointed Outside Directors). The Farm Credit East Bylaws include the requisite qualifications of Outside Directors as we suspect do many other System Institution Bylaws. Section 5.17(b) of the Farm Credit Act, as amended (121 U.S.C. 2252) is clear that the FCA must not "directly or indirectly" interfere with the Bylaws of System Institutions.

This most recent proposed regulatory change relating to Outside Director Eligibility will have the very real consequence of **directly** interfering with our Bylaws as it dictates eligibility which was previously left to the individual institution (which eligibility determination must include compliance with Standards of Conduct regulatory requirements). The fact alone, i.e. that the regulation as proposed will be a direct interference with System Institution Bylaws, is a violation of the statutory mandate of the Farm Credit Act, as amended.

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Section 611.220(b)(1)(ii) - Eligibility to Serve On Board of More than One Farm Credit System Institution: The proposed regulation puts an absolute restriction on Outside Directors serving on the Board of any other institution in the Farm Credit System. This restriction will preclude all Outside Directors in the System from service on the Funding Corporation, the Farm Credit Council as well as other 4.25 Corporations. The legislative history demonstrates that the intent in creating an outside director requirement was to bring additional expertise and perspective to a board. There appears no justification for this restriction, especially in light of the legislative intent, and if this regulation remains unchanged, the result will be an essential dismantling of some Boards in the System.

Section 611.220(a)(3) and (4) – Definition of “Controlling Interest” and “Entity”: The definitional section of the proposed regulation on Outside Director Eligibility includes new definitions of, *inter alia*, “Controlling Interest” and “Entity”. The FCA commentary for the proposed revisions outlines that these two definitions are “consistent” with 612.2130(c) and (e). To begin, the definitions in Part 612 refer to Standards of Conduct. Moreover, as the FCA knows, there are proposed regulatory amendments to the Standards of Conduct regulations. The regulatory changes proposed by the FCA in June, 2018 with respect to Standards of Conduct actually eliminates the definition of “Controlling Interest”. In addition, in the Standards of Conduct proposed regulatory changes, the definition for Entity differs from the existing definition. Thus, at this juncture, Farm Credit East, along with others in the System, are unsure of what the FCA is proposing as definitions for “Controlling Interest” and “Entity” and it is not clear whether the definitions will conflict with other regulatory provisions. Clarification is required to fully understand the impact of the current proposed regulations relating to Outside Director Eligibility.

Section 611.220(a)(2) and (5) – Definitions of “Immediate Family Member” and “Borrower”: The Outside Director Eligibility proposed regulatory change expands the definitions of “Borrower” and “Immediate Family Member” to an impracticable conclusion. In this day and age, given extensive family relationships and geographical considerations, the definitions will not work to benefit any System Institution and, instead, will make the Outside Director Eligibility process unworkable. For example, is it truly the intent of the FCA to exclude an otherwise highly qualified Outside Director from serving a System Institution in the Northeast when the potential candidate has a brother-in-law who is an underwriter (thus an employee) of a System Institution in California? Or, using this same example, the brother-in-law has a small loan (thus is a borrower) that the potential Outside Director may not know about?

Farm Credit East submits that the definitions need to be reworked to a more reasonable measure.

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Section 611.220(b)(1)(i) – Candidates may not be an “Immediate Family Member” of an “Agent”: There has always been a prohibition from an agent becoming an Outside Director, however, the proposed regulation now adds that the Outside Director cannot be an Immediate Family Member of an agent of a Farm Credit institution. First, the term “agent” is undefined which poses a problem in determining scope. Moreover, no matter what the definition, expanding the prohibition to also include “agent” of an “immediate family member” makes the restriction very broad and unmanageable. For example, if a closing attorney considered an agent - the Board of a System Institution in Pennsylvania could not appoint an Outside Director whose sister-in-law acts as a closing attorney for an association in Texas. This restriction is overly broad and needs to be reviewed.

Conclusion.

Farm Credit East submits that the proposed changes to this regulation are entirely too broad and far reaching and should be withdrawn. If enacted, these regulations will have the very real consequence of excluding a large number of very qualified candidates from service as Outside Directors on Boards of System Institutions. If the FCA does intend to move forward, we respectfully request that the changes be reviewed carefully and that a revised set of regulations be provided for public comment.

Thank you for your consideration.

Sincerely,



Terry R. Zittel, Director
Farm Credit East, ACA