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October 23, 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:

CoBank appreciates the opportunity to comment on the Farm Credit Administration's (FCA) proposed rule regarding eligibility criteria for outside directors. CoBank 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. CoBank believes that the compliance timeline for the enhanced outside director eligibility criteria is reasonable and workable.

While CoBank is generally supportive of the intent of the proposed rule, we believe that the exclusion of being an immediate family member of an individual 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 also believe that the restriction on an outside director serving on the board of directors of more than one System institution or affiliated organization at any given time goes beyond the eligibility criteria found in the Act, is overly prescriptive and should be removed from the proposed regulation. We are providing comments on these provisions, as well as a number of clarification and technical comments to the proposed rule in coordination with our affiliated associations. CoBank also supports the Farm Credit Council's comments on the proposed rule.

#### **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 organizations, such as Farm Credit Leasing Services Corporation and the Federal Farm Credit Banks Funding Corporation, but would include The Farm Credit Council (FCC). 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 regulations<sup>1</sup>.

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 included in 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 standards of conduct rule as FCA may finalize after considering public comments. 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 individual who is an

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<sup>1</sup> Borrower is defined in §614.4350(a) and entity is defined in §612.2130(e).

immediate family member of a stockholder or borrower goes beyond the eligibility criteria found in the Act, is overly prescriptive and should be removed from the proposed regulation. In the alternative, the proposed regulation should be modified to allow the board of directors flexibility to establish criteria and parameters for determining if such a familial relationship presents an independence issue for an outside director candidate. 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 (SOCO). The board of directors would approve the appointment of such individual as an outside director, in consultation with the institution's SOCO, 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.

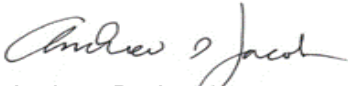
The proposed rule also provides that, at any given time, an outside director is eligible to serve on the board of directors of only one System institution or affiliated organization. This restriction also goes beyond the eligibility criteria found in the Act, is overly prescriptive and should be removed from the proposed regulation. In the alternative, the proposed regulation should be modified to provide that, at any given time, an outside director is eligible to serve on the board of directors of only one System financial institution (namely, a Farm Credit bank or association). We see no policy reason for this restriction as applied to other System institutions such as Section 4.25 service organizations, or other non-System affiliated organizations that benefit and support System institutions, such as FCC. There is no restriction on stockholder-elected directors serving on the board of Section 4.25 service organizations or other affiliated organizations, and we see no policy reason to impose a different rule on outside directors. Whether outside directors of a System bank or association can contribute their skills, expertise and perspective to Section 4.25 service organizations or affiliated organizations without jeopardizing their objectivity and independence is a governance matter to be addressed by the stockholder-approved bylaws of such institutions, as well as such institutions' policies and procedures.

The proposed rule extends the exclusion from consideration for an outside director position to a director candidate or immediate family member having a **"controlling interest in an entity"** that borrows from a System institution or an affiliated organization of a System institution. As mentioned above, this provision should be revised to replace a controlling interest in an entity with a reportable business entity to be consistent with the proposed rule on standards of conduct. We ask the FCA to revise the language to read as follows: "(b)(1)(i) ... An outside director candidate or an immediate family member of such candidate must not have a material financial interest in a reportable business entity that (a) borrows from a System institution, or (b) is an affiliated organization of a System institution."

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Thank you again for allowing CoBank 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. Please contact me if you wish to discuss our comments or require additional information in support of our comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrew D. Jacob".

Andrew D. Jacob  
Chief Regulatory, Legislative and Compliance Officer