



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 Outside Director Eligibility – RIN 3052-AC97 / Federal Register 83 (August 24, 2018)

Dear Mr. Mardock:

Northwest Farm Credit Services (Northwest) appreciates the opportunity to comment on the Farm Credit Administration's (FCA) proposed rule regarding outside director eligibility.

We are concerned that the proposed rule goes beyond FCA's rulemaking authority. In addition, a survey of other System institutions did not reveal a justification for additional eligibility restrictions on unrelated director candidates.

The Farm Credit Act (Act) provides a clear and unambiguous rule for the eligibility requirements for directors. The applicable requirements of the Act that "at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, stockholder, or agent of a System institution" were established in the 1987 Amendments to the Act. Without ambiguity necessitating clarification, the FCA's interpretation of the Act appears to exceed its statutory authority, with the proposed rule going well beyond the statutory requirements.

The proposed rule would further limit eligibility for the unrelated director positions far beyond the intent of Congress. The purpose for the inclusion of these board-elected directors was to provide expertise and perspective to the boards that the boards might not otherwise get through the election of stockholders. Further restricting eligibility for these important positions reduces the pool of quality candidates who satisfy the clear rule set established by Congress, with the only apparent goal of strengthening the independence of the boards.

Independence, as commonly used in corporate governance, applies to directors selected for their experience and expertise, who are not part of the management team of the organization. All System directors are independent of management. No System employees, management or otherwise, serve on bank or association boards.

No additional regulatory restrictions on the unrelated director positions existed during the 19 years following the 1987 Amendment to the Act. In 2006, the FCA promulgated regulation Sections 611.220 and 619.9235. As part of that rulemaking process, the FCA chose to ignore the corporate community's use of the term "independence" in favor of a Standards of Conduct approach. We suggest that a Standards of Conduct approach would work far

better to identify and address independence concerns of the unrelated director positions than a new regulatory framework further restricting eligibility.

The proposed rule implements no new statutory provision and does not respond to a specifically identified safety and soundness issue. Section 5.17(a)(9) of the Act directs the FCA to issue rules and regulations "necessary or appropriate" to carry out the Act. The proposed rule, going beyond the clear language of the Act, is neither necessary nor appropriate. Further, the instructions of the Farm Credit System Reform Act of 1996 to reduce regulatory burdens, indicates that any rulemaking after 1996 is held to a higher "burden of proof" that a need exists for a rule. No such need has been demonstrated.

We support the proposed elimination of regulation Section 619.9235, as that regulation was not based on law. The FCA previously justified finaling this Section as proposed because there were no comments disagreeing with the actual definition of "outside director" and went on to note that Congress used and defined the term "outside director" in Section 7.12 of the Act, so the FCA's use of the term was appropriate. The use of the term implies that stockholder elected directors are somehow inside directors (part of management). They are not and to promote this misinterpretation is not appropriate. The use of the term in Section 7.12 of the Act is solely a requirement imposed in the context of a merger of similar banks. Congress did not use the term for purposes associated with general board governance of System institutions.

Further limiting the pool of candidates available for the unrelated director positions beyond the statutory limitations will eliminate highly qualified individuals from consideration. As previously indicated, a Standards of Conduct approach can be utilized to determine if borrowing relationships or other activities by immediate family members compromise independence. We believe that the restrictions included in the proposed rule will have a serious, negative impact on the System's ability to attract otherwise eligible, well-qualified candidates for unrelated director positions.

We urge the FCA to withdraw the proposed rule. We hope these comments have provided the FCA with some perspective on how the proposed rule would affect the System from a practical standpoint. We find this topic to be important and look forward to working with the FCA to ensure a workable solution. Please contact Stacy Lavin at (509) 340-5430 or email him at Stacy.Lavin@northwestfcs.com if you wish to discuss our comments or require additional information in support of our comments.

Respectfully submitted,



Phil DiPofi  
President and Chief Executive Officer