



1738 Eva Road, N.E.
Cullman, Alabama 35055

P.O. Box 639
Cullman, Alabama 35056

Phone: (256) 737-7128
Fax: (256) 739-4071

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 – 12 CFR Parts 611 and 619 – RIN 3052 – AC97; Definitions; Eligibility Criteria of Outside Directors; 83 Federal Register 42807-42810 (August 24, 2018)

Alabama Farm Credit, ACA (AFC, Association) 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 outside directors, in regard to associations of the Farm Credit System (System).

Alabama Farm Credit developed its position after researching the details of Farm Credit regulations, and discussions with other System institutions including 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 will have a significant detrimental impact on this Association, we should provide our own comments.

General Comments

First, the Association is not aware of FCA articulating any specific problems or flaws in the regulation as it now stands. FCA's communication has not included any examples of said problems or potential problems. As such, Alabama Farm Credit does not support an amendment to the Act. The regulation in place has served the System well, and specifically this Association, and there appears to be no valid reason to change it.

Second, the Act clearly states that the qualifications for an outside director are that the candidate "shall not be a director, officer, employee, stockholder, or agent of a System institution." The Act does not expand to consider relationships to relatives whom may hold these roles in a System institution. We are not aware of any statutory authority for FCA to expand the list of exclusions for the outside 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, Alabama Farm Credit has assembled 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 should be more "independent" than a stockholder elected director. The outside directors had historically



been an avenue to add additional skills to the board as a whole, not to address an issue of independence. 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 an 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 an 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 obtain a loan, which then disqualifies that board member from serving, based on the proposed regulation.

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.

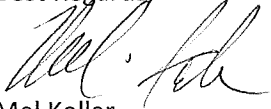
Conclusion

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 required by the Association is difficult under the present circumstances. The proposed amendment may make it nearly impossible for some associations and will result in this Association losing a currently serving board member.

Best Regards,

A handwritten signature in black ink, appearing to read 'Mel Koller', written in a cursive style.

Mel Koller
President, Chief Executive Officer
Alabama Farm Credit