

October 23, 2018

Submitted via email to: [req-comm@fca.gov](mailto:req-comm@fca.gov)

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

**RE: Proposed Rule on Eligibility Criteria for Outside Directors - RIN 3052-AC97/ Federal Register 83, No. 165  
(August 24, 2018)**

Dear Mr. Mardock:

AgriBank, FCB (“AgriBank”) appreciates the opportunity to comment on the Farm Credit Administration’s (“FCA”) Proposed Rule regarding the Eligibility Criteria for Outside Directors published in the August 24, 2018 Federal Register (“Proposed Rule”). As discussed below, AgriBank believes FCA should consider additional modifications as it finalizes this rulemaking. AgriBank also supports and agrees with the Farm Credit Council’s Proposed Rule comment letter, specifically with the position that the Proposed Rule will have serious and negative impact on the System’s ability to attract eligible and well-qualified outside director candidates.

AgriBank focuses on sourcing outside director candidates who exceed the requirements for independence and also provide valuable, unique, knowledge, and expertise. AgriBank believes outside directors’ talents should be utilized by the appointing Institution as well as the full System for the collective benefit, and the Proposed Rule eliminates the collective benefit. The Proposed Rule appears contrary to FCA’s Bookletter 009 (Revised) by excluding outside directors from service on “affiliated organizations.” In particular, the “affiliated organizations” concept is problematic in the context of the Proposed Rule’s prohibition of service on more than one System institution or “affiliated organization” board because it limits their role and engagement. For example, eliminating an outside director of a Section 4.25 service organization from service another one System institution or “affiliated organization” board denies the System of outside directors’ knowledge and perspective in all the affairs of the System. We strongly oppose the Proposed Rule limiting outside directors’ participation to one System institution or “affiliated organization.”

AgriBank is also especially concerned that the Proposed Rule disqualifies any outside director candidates who have “immediate family members” in identified relationships with an “institution in the Farm Credit System.” Furthermore, the Proposed Rule serves to prohibit outside director’s “immediate family members” from establishing relationships with any “institution in the Farm Credit System.” Consequently, AgriBank believes that this particular provision of the Proposed Rule will make it difficult to recruit qualified and knowledgeable outside directors with relevant experience.

As a general comment, to the extent that Regulation § 611.220 is proposed to contain defined terms, we believe that those defined terms should be consistent with similar defined terms used in other FCA promulgated Regulations, particularly those contained in recently re-proposed Regulation § 612.2130, Standards of Conduct. Additionally, we



recommend providing a reasonable period of time, such as six months, following the effective date of the final regulation in which to allow System Institutions to complete selection of outside directors in compliance with the final regulation.

We also offer the following comments and/or recommend revisions to the Proposed Rule:

**§ 611.220 (a) Outside Directors Definitions**

**(1) Affiliated Organization.**

- We recommend providing clarification as to what constitutes an “affiliated organization” because the Proposed Rule is vague and would consequently cause compliance difficulties.

**(2) Borrower.**

- Inclusion of the phrase “or who guarantees repayment of a loan” in the definition of Borrower inappropriately conflates the legal definition of a “Borrower” with the separate and distinct legal definition of a “guarantor.” We recommend this phrase be stricken from the definition because the Proposed Rule should not inadvertently broaden settled and accepted legal and financial definitions.

**(3) Controlling Interest.**

- We recommend a consistent definition throughout the FCA Regulations regarding what constitutes “control” in light of the recent Proposed Rule on Standards of Conduct which removed the definition of a “Controlled Entity.”

**(4) Entity.**

- By legal definition, there is no “controlling interest” in a trust. We recommend this phrase be stricken from the definition.

**(b)(1)(i) Eligibility.**

- The inclusion of the phrase “agent . . . of an institution in the Farm Credit System” should be clarified and limited to refer to the common law definition of “agent” as owing a fiduciary duty to another, or stricken from the section. We recommend this phrase be stricken from the section because the practical implications are overly burdensome.
- The inclusion of the phrase “immediate family member of any of the above” should be clarified, limited, or stricken. We recommend the term be limited to include “immediate family members living in the same household.”

We respectfully request that FCA use its discretion and authority to modify the proposed regulatory text to address AgriBank’s and Farm Credit Council’s comments prior to issuing a final rule.

We appreciate the opportunity to comment and FCA’s consideration of our comment letter. We would be happy to meet with FCA to discuss our comments or provide any additional information that FCA may deem helpful. If you have questions or require additional information, please contact me.

Sincerely,



Barbara Kay Stille  
Chief Administrative Officer and General Counsel