

February 18, 2014

The Honorable Jill Long-Thompson
Board Chairman and Chief Executive Officer
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Dear Chairman Long-Thompson:

The American Bankers Association and the Independent Community Bankers of America write today to follow-up on our January letters expressing concerns with the Farm Credit Administration's (FCA) decision to restrict public access to the January 16, 2014, FCA Symposium titled, "*Consolidation in the Farm Credit System: The Factors Influencing Consolidation and the Potential Impact on Mission.*" (Symposium). While the Symposium was closed to the general public, the FCA just recently published "presentation papers...for most speakers," on the FCA website. The production of only a selection of the presentation papers from the Symposium does not accurately reflect the full contents of the Symposium—especially in light of the fact that all three members of the FCA Board were present and appear to have discussed issues of public importance that could come before the Board for an official action.¹ Given this incomplete public record, and that we have not received a reply to our previous correspondence, we are renewing our initial requests for information on the January Symposium. Additionally, we ask that the FCA open to the public the upcoming second part of the Symposium that is scheduled to occur on February 19, 2014.

The decision to keep the January Symposium closed to the public was troubling in light of the FCA's purported commitment to openness and transparency, as evinced by the FCA's commitment to "ensure that [the FCA] is as transparent as possible."² Further, the public interest is hardly served by selectively producing presentation papers submitted by the speakers, while not including a transcript of discussion between the panel participants, FCA staff, and, most importantly, FCA Board members. Failing to provide a transcript of discussion, including questions and answers, may also run afoul of the Government in the Sunshine Act.

The Government in the Sunshine Act (5 U.S.C. § 552b(a)), and the FCA's own regulations (12 C.F.R. § 604.415), require that every meeting and portion of a meeting of the FCA's Board shall be open to public observation unless the Board determines that such meeting involves matters that fall within one of the statutory or regulatory exemptions. Further, the Supreme Court has interpreted a meeting under the Government in the Sunshine Act to include "discussions that 'effectively predetermine official actions.'"³ The court has also said that "discussions must be

¹ See Leland A. Strom, Board Member, Farm Credit Administration, Remarks at the Farm Credit Administration Symposium on System Consolidation (Jan. 16, 2014) available at <http://fca.gov/Download/Statements/strom16jan2014.pdf>. See also, Jill Long Thompson, Board Chair and CEO, Farm Credit Administration, Remarks at the Farm Credit Administration Symposium on System Consolidation (Jan. 16, 2014) available at <http://fca.gov/Download/Statements/longthompson16jan2014.pdf>.

² See Farm Credit Administration and the Open Government Initiative available at <http://www.fca.gov/open>.

³ *Fed. Comm'n Comm'n v. ITT World Comm'n, Inc.* 466 U.S. 463, 466 (1984) (citing S. Rep. No. 94-354, at 19).

‘sufficiently focused on discrete proposals or issues as to cause *or be likely to cause* the individual participating members to form reasonably firm positions regarding matters pending *or likely to arise* before the agency.’⁴

Because the FCA has not produced a transcript of the event, it is impossible for the public to observe what level of engagement FCA Board members had with the panel participants. Further, it is impossible to tell whether any of these discussions could be construed as to “predetermine official actions” under the Government in the Sunshine Act. This leaves the public to effectively guess whether future actions of the FCA Board on issues discussed at the Symposium were “sufficiently focuse[d] on discrete proposals or issues to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency.” Perhaps this was the goal of the FCA in keeping the Symposium closed to the public, but in any event it is a disservice to the American public and contrary to the intent of Congress in passing the Government in the Sunshine Act.

It has also come to our attention that the FCA intends to host a follow-up Symposium on the Farm Credit System on February 19, 2014. This follow-up Symposium also addresses consolidation in the Farm Credit System, but will have three different panels made up of different presenters. However, this Symposium differs from the previous one held in January in that at least two of the scheduled participants are federal government officials from the U.S. Department of Agriculture (USDA), including an Agricultural Economist from the Economic Research Service at the USDA and the Acting Under Secretary for Rural Development at the USDA. The inclusion of federal government officials on the panel raises the likelihood that policy matters of importance, including those that could lead to future action by the FCA Board, will be discussed. As such, it is imperative that the FCA open this meeting to the public and release official transcripts of the Symposium.

The FCA devotes an entire page of its website to openness and transparency and invites the public to tell the FCA what they can do better. The American people deserve an opportunity to understand how decisions are made by federal agencies—including any pre-decisional discussions that “effectively predetermine official actions.” The FCA can do better on its commitment to openness and transparency by following the Government in the Sunshine Act and opening the upcoming Symposium to the general public. At the absolute least, the FCA should show its commitment to openness by releasing all materials from all presenters, including a complete transcript, from the January 16, 2014, Symposium as well as the February 19, 2014, Symposium. If the FCA continues to ignore the requirements of the Government in the Sunshine Act and disregard calls for improving openness and transparency, we will consider all available options to ensure that the public has the opportunity to understand what is being discussed at these closed door meetings.

Sincerely,

American Bankers Association
Independent Community Bankers of America

⁴ *Id.* (citing R. Berg & S. Klitzman, An Interpretive Guide to the Government in the Sunshine Act 9 (1978)) (emphasis added).

- cc. The Honorable Kenneth A. Spearman, FCA Board member
- The Honorable Leland A. Strom, FCA Board member
- The Honorable Frank Lucas – Chairman, U.S. House Committee on Agriculture
- The Honorable Collin Peterson – Ranking Member, U.S. House Committee on Agriculture
- The Honorable Debbie Stabenow – Chairwoman, U.S. Senate Committee on Agriculture
- The Honorable Thad Cochran – Ranking Member, U.S. Senate Committee on Agriculture