

January 17, 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;

On behalf of our member banks, we are disappointed in the Farm Credit Administration's (FCA) decision to restrict public access to yesterday's FCA Symposium titled, "*Consolidation in the Farm Credit System: The Factors Influencing Consolidation and the Potential Impact on Mission*" (Symposium). The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$185 million in assets.

On January 10, 2014, ABA staff contacted the FCA and attempted to register to attend the Symposium and were informed that "the symposium is by invitation only." However, the FCA Director of Congressional and Public Affairs indicated "prepared papers for the symposium" would be made available via the FCA website. In response, ABA staff again contacted the FCA on January 13, 2014, seeking clarification as to why the Symposium was by invitation only and asking some specific questions in an attempt to better understand the decision to exclude the general public from attending the Symposium. Unfortunately, the FCA chose not to respond to our questions, further indicating the FCA's desire not to allow the public to participate or to simply hear the discussion among the members of the FCA board at the Symposium.

The Government in the Sunshine Act (5 U.S.C. § 552(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. The FCA's regulations further state that in the event a matter falls within an exception, "the public interest" must not be served by discussing the matters in an open meeting.¹ However, according to information relayed by FCA staff, and examining the FCA's narrow regulatory definition of "meeting," it appears that the FCA has taken the position that the Symposium is not a meeting for the purposes of the Government in the Sunshine Act and the FCA's regulations.

Notwithstanding the FCA policy decision to deny the public access to the Symposium, the FCA's definition of the word "meeting" appears to be narrowly construed when compared with the legislative history of the Act and the Supreme Court's own interpretation of the term "meeting." This raises some questions about the Symposium that need to be answered. For example, the FCA's own regulations state that a meeting means "the deliberations of at least two (quorum) members of the Board where such deliberations determine or result in joint conduct or disposition of official Farm Credit Administration business."² This definition was largely taken

¹ 12 C.F.R. 604.415 (2013).

² *Id.*

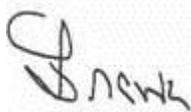
from the Act and the Supreme Court noted that “this statutory language contemplates discussions that ‘effectively predetermine official actions.’”³ The court added that for purposes of a meeting “discussions must be ‘sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency.’”⁴ Accordingly, other Federal agencies have incorporated the predetermine standard into their definition of meeting.⁵

In order to better understand why the FCA board decided that the Symposium did not qualify as a meeting of the FCA, we ask that you provide further clarification to the following questions:

- How many members of the FCA board attended the Symposium?
- How often were two or more members of the board in attendance at the symposium at the same time?
- When will the FCA make public a list of who it invited, and who attended the seminar?
- When will the FCA disclose to the public who it compensated to attend, including honorarium, reimbursement of travel expenses, and incidentals?
- Given the title of the symposium, and attendance by members of the Board, how will the public know when proposals and policy positions discussed at the symposium influenced future official actions of the FCA?
- Why did FCA act to conceal these discussions from additional stakeholders in the agricultural economy in particular and from the public in general?
- How soon following the Symposium will a transcript be released?

The Symposium agenda included a number of topics of importance to Farm Credit System institutions, farmers, ranchers, rural Americans, and the ABA membership. Given the importance of these topics, and that discussions on these topics occurred by and among members of the FCA Board, it is imperative that, at the very least, the public be provided a transcript of all discussions that occurred. If these discussions form the basis for policy positions taken by the Board or are even likely to create firm positions among the members for future consideration, the public has a distinct interest in understanding how the FCA Board came to those positions.

Sincerely,



Frank A. Keating
President & CEO

cc. Kenneth A. Spearman, FCA Board member
Leland A. Strom, FCA Board member

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

⁴ *Id.* at

⁵ *See Natural Resources Defense Council, Inc. v. Nuclear Regulatory Comm'n*, 216 F.3d 1180 (2000).