Description of document:	Farm Credit Administration (FCA) Inspector General (OIG) Management Advisories and OIG Observations, 2009-2015
Requested date:	2016
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Source of document:	Freedom of Information Act Officer Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090 Fax: (703) 790-0052 Email: foiaofficer@fca.gov

From: "Agans, Autumn"
Date: Feb 25, 2016 10:08:04 AM
Subject: RE: RE: Freedom of Information Act request to FCA (OIG)

This letter is in response to your Freedom of Information Act, 5 U.S.C. § 552 (FOIA), request to the Farm Credit Administration (FCA or Agency). You have requested a copy of each (FCA) OIG Management Advisory from January 1, 2009, through February 16, 2016.

We have conducted a thorough search of the Agency’s records and located 56 pages responsive to your request, which are enclosed in their entirety. The Office of the Inspector General included in its production both OIG Management Advisories and OIG Observations for the requested period. The OIG frequently used the latter title for documents that served the same purpose as Management Advisories prior to 2014.

Generally, the FCA may charge fees to cover the full allowable direct cost of searching for and reproducing records responsive to a request for information. 12 C.F.R. § 602.11. However, we have decided to waive fees in this instance because the amount is de minimis.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.C.S. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Sincerely,

Autumn R. Agans
FOIA Officer
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102

From:	Clinefelter, Carl A., Jr.
To:	Strom, Leland
Cc:	McBeth, Mark; Calhoun, Gaye
Subject:	OIG Observation 09 - 01, Re Government Accountability Office (GAO) Draft Report on Designated Federal Entity Governance
Date:	Wednesday, March 11, 2009 9:23:20 AM

Chairman Strom,

Background

On February 13, 2009, the OIG received for comment a draft GAO report entitled *DESIGNATED FEDERAL ENTITIES – Survey of Governance Practices and the Inspector General Role*. Your office did not receive the report. I provided a copy to Gaye for you. The report is based on a survey of all designated Federal entity (DFE) IGs and a different survey of all DFE (FCA is one) agency heads, which took place in March 2008. Additionally, GAO interviewed IGs and agency heads. I was not interviewed. I don't know whether former Chairman Pellett was interviewed.

Draft GAO Report

On page 14 of the report, GAO indicates only 7 of the 29 DFEs that responded to the survey indicated they have committees for enhancing governing-body (in FCA's case, the FCA Board) effectiveness. FCA is not listed as one of the 7. Several examples of committees listed on page 14 include audit, human resources, compensation, finance, budget, and performance review.

GAO did not make any recommendations in the report. However, they concluded that DFEs lag the private sector "...in commonly accepted governance practices, such as the use of audit committees, ethics committees, and orientation and training of governance body members."

OIG Comment

My office is responding with one comment. We will indicate to GAO that the FCA Board has 3 committees (Strategic Planning, Regulation and Policy Development, and Risk) specifically created by the FCA Board in its Policy 64 "To assist the Board in exercising its authority for oversight and approval of the Strategic Plan, the formulation of regulations and policy, and the monitoring and assessment of risk..."; and that, while FCA Board members themselves are not on the committees, each member's Executive Assistant is on each committee and functions as the conduit between the committees and the Board member. We will also cite the critical role these committees play in the FCA Board's ability to provide effective oversight of the Agency and ensure the Farm Credit System (FCS) remains safe and sound, and fulfills its statutory mission.

Additionally, we will reference 1) the Regulatory Enforcement Committee (REC), which provides the Board with recommendations on the use of the Agency's enforcement authorities with respect to conditions at FCS institutions, and 2) the Information Resources Management Operations Committee (IRMOC), which provides the Board recommendations with regard to the maintenance and updating of the Agency's information technology infrastructure, a major administrative expense.

OIG Observation

While the 3 committees, the REC, and the IRMOC are institutionalized and functional, in light of the example governing-body committees listed on page 14, and based on your perspective of Agency functioning and Board informational needs, you could consider whether there any existing Agency functions or processes that would benefit from more formalization through the establishment of additional committees to serve the Board.

If you have any questions, I would be pleased to discuss this further.

Carl

Strategies to Better Position the Agency to Address Any Downturn in the System

PREMISE

- System health will be governed by asset quality, and
- OE is the mechanism for assessing asset quality and positioning the Agency to take rehabilitative measures.

POLICY APPROACHES TO ENSURING OE REMAINS EFFECTIVE

1. When the Chief Examiner retires (perhaps this year), due diligence would dictate that the job opening be advertised All Sources versus FCA only. While there are probably a few good candidates internally, the Agency and OE could benefit greatly from hiring from the outside the "right" person to bring new philosophies, perspectives and practices to OE. The downside is that sometimes when you think you've hired the "right" person they turn out to be not so "right". While hiring an internal candidate may give the Agency a better idea of the leadership skills of the person entering into the Chief Examiner position, hiring internally is not a guarantee of success.
2. Continue to stress the strengthening of OE through hiring:
   - Entry level examiner trainees,
   - Mid-level examiner trainees with experience in the financial industry and/or from other financial regulators, and
   - Examiners with specialized skills, e.g., capital markets, credit, accounting, information systems, etc.
3. Continue to closely monitor OE's new training and commissioning program for its effectiveness in developing the skills of entry and mid-level examiner trainees and producing well qualified and credible commissioned examiners.
4. Continue to monitor closely and hold the Chief Operating Officer and Chief Examiner accountable for OE's commitment and performance in putting qualified examiners into institutions on a regular schedule and in examining the quality of loans, loan underwriting, loan servicing, and other asset-based commitments.

Organizational Approaches to Ensuring the Agency Remains Effective

Background

OE controls the examination and ongoing supervision of institutions. System institutions seem to readily accept OE's findings, conclusions, and recommendations. This has worked well in the past 15 years or so, a period of relative prosperity in agriculture.

However, OE also "essentially" controls the use of the Agency' enforcement authorities by virtue of:

- OE determines the FIRS ratings for institutions. This is entirely appropriate. However, the first opportunity for a "check" of the FIRS rating is when an institution is rated "3". In this instance, OE is required to notify the REC of the "3" rating and its supervisory plan for the institution. I don't think the REC will ask to review the ROE or question OE to any significant degree.
- The Board's policy re enforcement sets the threshold of when enforcement action must be considered by the REC at a "4" FIRS rating. Part of the definition of a "4" states "Unless prompt effective actions are taken to correct these conditions, they are likely to develop into a situation that will impair future viability or constitute a threat to the interests of investors, borrowers, and stockholders. Risk management practices are generally unacceptable relative to the institution's size, complexity, and risk profile. A potential for failure is present but is not yet imminent or pronounced. Institution requires close regulatory attention, financial surveillance, and a definitive plan for corrective action." Once an institution gets to a "4" FIRS rating it is very close to the edge. One could argue that at this stage it is difficult to reverse the downward trend. Perhaps formal enforcement versus just OE supervision should be imposed at an earlier stage.
- Lastly, once an enforcement action is deemed appropriate by the FCA Board, the implementation of that action and the ongoing monitoring of the institution's compliance with that action revert back to OE.

The human resources ideally suited (economists) to assess agricultural and national economic conditions affecting risk to the System only partially reside with OE. A number of these economists also reside in

Office of Regulatory Policy. Thus, the resources necessary to perform this important function are spread between both offices.

A few approaches to consider in strengthening the Agency's regulatory preparedness in dealing with any System deterioration are:

1. Change the Board's policy on enforcement to require REC consideration of enforcement action at the FIRS "3" versus "4".
2. Designate another member of the REC other than the Chief Examiner as Chairman.
3. Consider establishing an organizational unit outside of OE to implement Agency enforcement actions and oversee institutions' compliance. (This is a significant human resources commitment that would probably need to be contingent on the belief that any System downturn would be relatively long lived and affect significant numbers of institutions.)
4. Consider moving ORP economists to OE. This could be done relatively easily; would consolidate the Agency's ability to conduct economic analyses under one umbrella; should enable a more focused approach to economic analysis; and would enable OE and the Agency to more timely make examination and regulatory adjustments based on these analyses.

Summary

All these strategies are aimed at improving the ability of the Board to oversee the Agency's preparedness to address System safety and soundness, and at further strengthening OE's ability to examine for risk, assess economic risks, enhance supervisory processes, manage institutional risk, and alert the Board to the need for more stringent regulatory measures.

From: Clinefelter, Carl A., Jr.
To: Strom, Leland
Cc: McBeth, Mark; Calhoun, Gaye; OIG
Subject: OIG Observation 09 - 03, Orientation and Ongoing Training of Designated Federal Entity (DFE) Governing Body Members
Date: Monday, April 20, 2009 9:31:00 AM
Attachments: Carl A Clinefelter.vcf

Background

The Government Accountability Office (GAO) issued a draft report dated April 2009 entitled *Designated Federal Entities – Survey of Governance Practices and the Inspector General Role*.

The report is based on information received from different surveys sent to all 31 DFE entity heads and IGs, and on interviews with certain DFE entity heads and IGs.

GAO asked for comments on the draft report. After reviewing the draft report, I sent GAO a letter regarding the report's incomplete characterization of the FCA Board's use of oversight committees. That is, the report indicated that only seven DFE governing bodies utilized oversight committees. FCA was not listed as one of them. My letter indicated that the FCA Board does utilize oversight committees, i.e., Policy and Regulation Development, Risk, Strategic Planning, Regulatory Enforcement, and Information Resources Management Oversight, to assist the Board in its governance responsibilities. GAO called to say that they could not change the report since it is based on the survey responses. I asked that they include my letter in the final report in order to bring additional perspective to FCA governing body operations. They indicated they would. I gave you a copy of the letter at our monthly meeting on March 31.

Draft GAO Report

Another aspect of the report, and the one giving rise to this OIG Observation, is GAO's discussion of DFE orientation and ongoing training programs for governing body members.

GAO indicates the following in the report with respect to orientation and ongoing training:

1. Nineteen DFEs reported having orientation programs for new governing body members.
    - Fifteen of these indicated they provide key information on oversight and governance issues, such as governing body policies and communications with management.
    - Seventeen of these reported that the roles and duties of the entity's IG are included in the orientation program.
2. Nine DFEs reported ongoing training for board members.
    - Only five addressed some of the statutory requirements and oversight topics – such as Government in the Sunshine Act, Freedom of Information Act, travel policy, and ethics.
3. DFEs are unique in their missions, structure, governing body and oversight framework, budget, and are subject to varying governance and accountability statutes.
    - Therefore, orientation and training can be especially important for new governing body members from the private sector who have not worked in the Federal government and are not familiar with Federal statutes and environment, particularly the role of the IG

and how the IG can assist the board in achieving its oversight duties.

4. Current commonly accepted practice for public companies is to provide board members with a broad-based orientation that encompasses the organization's mission, vision, and strategic plan; its history; the members' obligations and performance objectives; board policies; and board member job descriptions, including performance expectations and fiduciary obligations.
5. Orientation and training programs help governing bodies stay current with information on governance practices and the regulatory environment.

<u>OIG Observation</u>

I am aware that FCA management is preparing briefing materials for the anticipated arrival of two new board members to orient them to FCA's mission and operations. This has been a traditional practice.

With two new governing body members likely to join the FCA Board in the next few months, and in light of the significance attributed to this area in GAO's report, it is suggested the Agency <u>formalize and institutionalize</u> new member orientation and ongoing training for FCA Board members to ensure such programs are well structured and delivered, and contain comprehensive information. This should help to ensure:

1. New FCA Board members are provided complete orientation information on, for example, FCA's history and mission, regulatory role, organization, operations, regulation development, enforcement, and other statutory authorities; Board policies and functioning, Board member duties and performance expectations, Government in the Sunshine Act, avoidance of ex parte communication, and ethics; and the FCS's history and mission, statutory authorities, organization, and operations.
1. Ongoing training for FCA Board members is provided on these same areas and on, for example, Federal statutes newly enacted or amended; new technologies, enterprises, or FCS products; corporate governance best practices; and new approaches to Federal regulatory oversight.

<u>Formalizing and institutionalizing</u> the process is meant to suggest that the Agency structure FCA Board member orientation and training as an institutional process with, perhaps, one office (OMS, for example) being responsible for program oversight, such as, approval of orientation and ongoing training program content, establishing the frequency of ongoing training, etc.

While the Agency has over time been diligent about new Board member orientation and providing briefings on Board agenda-specific issues, elevating orientation and ongoing training to the next level is what is contemplated by this OIG Observation.

Please call me if you have any questions or would like to generally discuss this OIG Observation.

Respectfully,

Carl A. Clinefelter
Inspector General

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From:	Clinefelter, Carl A., Jr.
To:	Strom, Leland
Cc:	McBeth, Mark; Calhoun, Gaye; OIG
Subject:	OIG Observation FY 2010 - 01, Review and Updating of All FCA Board Policies
Date:	Tuesday, October 27, 2009 2:43:22 PM

Background

The FCA Board has 16 policies listed in the Office of the Board database in Lotus Notes. All but 2 were enacted more than 4.5 years ago. Three of these were enacted between 9 to 14 years ago.

Given that the FCA Board will soon, it appears, have 2 new members, will then have been reconstituted in a major way, and that all but 2 policies are at least 4.5 years old, the next several months present an appropriate opportunity to revisit all FCA Board policies to ensure they reflect the intent of the reconstituted FCA Board.

OIG Observation

It is suggested that all FCA Board policies be reviewed and updated, as appropriate. One recommended addition to all policies is a clause requiring review within a specified time period or by a date certain. Currently, only FCA–PS-64, Rules for the Transaction of Business of the Farm Credit Administration Board, has such a clause.

Please call me if you have any questions or would like to generally discuss this OIG Observation.

Respectfully,

Carl A. Clinefelter
Inspector General

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OIG Observation 2010 - 02

December 8, 2009

To: Leland A. Strom
Chairman, FCA Board

From: Carl A. Clinefelter
Inspector General

Observation 2010 - 02

This is in follow-up to our conversation regarding ways to enhance the management and integrity of FCA's current pay and benefits program, and grade structure.

You may want to consider evaluating:

1. All factors that bear on whether to initiate a coordinated comprehensive study of FCA's pay program and grade structure, and, possibly the performance appraisal process; and, if undertaken in whole or in part, consider how to proceed, e.g., using an outside consultant, a combination of outside consultant and FCA staff, or just FCA staff (problematic as this would not be perceived as objective).
2. All factors that circumscribe the utilization of career FCA employees as Executive Assistants (EA), Special Assistants (SA), and Board Secretary as opposed to staffing these positions with political appointees. If transitioning back to utilizing political appointees is the desired approach, consider how this should be accomplished; and, if it is decided to continue using FCA career staff in these positions, consider methods that could be used to address grade and compensation accretion.
3. Other options available to address the issue of enhancing the management and integrity of FCA's pay program, grade structure, and performance appraisal process.

Possible Short Term FCA Board Actions to Address Pay, Grade, and Performance Appraisal Issues

The implementation of one or more of these actions to enhance the management of FCA's pay program, grade structure, and performance appraisal process may be best facilitated by an evaluation as suggested above:

1. Reinstate in-range ceilings (If in-range ceilings are reinstated, it would seem appropriate to also reinstitute lump sum performance payouts.);
2. Ensure FCA is paying the "average market rate" of the other Federal bank regulatory agencies (FBRAs) versus paying more;
3. Ensure FCA's annual performance appraisal process results in an equitable distribution of ratings and is not inappropriately skewed toward "Excellent" or "Outstanding" ratings;

4. Place all outliers (persons holding higher or lower grades than warranted by their current position) at the grade appropriate for their job and institute a save pay for 2 years for those whose grades are reduced; and
5. Make any future appointments of FCA career staff to the EA, SA, and Board Secretary positions temporary, i.e., when the employee's assignment in the Office of the Board (OB) concludes, the person's temporary grade reverts to that they previously held and pay is saved for 2 years.

Factors that Affect Compensation at FCA

The following are, in general, the factors that affect the Agency's total compensation paid to employees:

1. The requirement of the Federal Institution Reform, Recovery, and Enforcement Act of 1989 (FIRREA) that FBRAs maintain pay and benefits comparability with each other;
2. Grade level structure;
3. FCA organization structure, i.e., how many people are in the various grade levels;
4. Grade range width, or how many dollars from range minimum to maximum;
5. Annual adjustment to grade ranges;
6. Annual merit matrix percentages;
7. Locality pay; and
8. Employees' performance appraisal results.

Background

Due to FIRREA, FCA and the other FBRAs were able to develop pay and benefits programs that differ from standard government practices. As a result of a 1991 study by The Wyatt Company (Wyatt), FCA converted to a new pay program on January 12, 1992 (Attachments 1 - 5). Except for the changes noted below, this remains FCA's current pay program.

One aspect of FIRREA is that FBRAs are required to maintain pay and benefits comparability with each other. As delineated at the top of page 2 of Attachment 1, FCA chose to be comparable in pay by compensating its employees at the "average market rate" paid by the other FBRAs.

However, for 2000 through 2002, FCA did not annually assess comparability and salary ranges remained unchanged during that period. Due to employees raising this as an issue, the Agency commissioned a study of pay comparability by The Segal Company in April 2002. Based on the study's results, FCA had to increase its salary ranges by an average of 21% in 2003 to regain pay comparability.

Compensation, Grade, and Performance Appraisal Related Evaluations Since the 1991 Wyatt Study

Since the Wyatt study, there have been several other evaluations of FCA's compensation, grade structure, and performance appraisal process. The more significant of these seem to have been as follows:

1. A 1995 Agency Performance Appraisal Task Force.
2. A 1996 Compensation Report issued by William Mercer, Inc.
3. A March 1997 Employee Satisfaction Task Force (ESTF) report on Compensation, Performance, and Rewards.
4. The Segal Company's 2002 report on its study of the pay comparability of FCA's pay ranges with the other FBRAs.
5. An in-house 2002 task force (incl. the Board Chairman) evaluation of FCA's performance appraisal process and a decision to transition to "generic" job elements and performance standards for all FCA jobs.
6. A February 2006 Job Evaluation Study report issued by Watson Wyatt Worldwide (formerly The Wyatt Company that did the 1991 study).
7. Annual pay and benefits comparability study by the Office of Management Services (OMS) of the other FBRAs.

All of these studies both validated aspects of FCA's pay program, grade structure, and performance appraisal process, and recommended changes.

1992 FCA Pay Program/Grade Structure and Subsequent Changes

1. The FCA pay program, including the grading or realignment of all FCA positions, was established in 1992 based on a yearlong 1991 study by Wyatt working in conjunction with an FCA employee committee. It was designed to be a performance-based pay system. At the time FCA was on the Government's 10 step GS system.
2. Initially, in this 1992 pay program, the performance rating cycle was calendar year based. However, this was changed in 1995 to a fiscal year based cycle, i.e., October 1 – September 30. This was done to avoid having to make pay adjustments retroactive to January 1.
3. Attachment 5, the FCA 1992 Merit Matrix, shows very high percentages. The percentages in the corresponding matrix for the next two years were also high, although they declined in 1993 and then again in 1994. These high percentages were designed to enable the Agency to achieve pay parity with the other FBRAs within this 3 year period (see top of page 3 of Attachment 1).
4. Originally, there were two salary structures – One covered managerial, professional, and technical positions (VH), while the other covered clerical and support positions (VG). The VH and VG pay structures were combined in 1998 forming a new VH pay structure. This was based on a recommendation in the 1997 ESTF report for the reason that the separate VG salary range for clerical and support positions was lowering their morale.
5. Each VH pay range has a midpoint that is reflective of the level of pay that the job is worth, or the level of pay that should be provided to a fully effective employee in order to maintain

comparability with the other FBRAs. However, as part of FCA's pay program, the Agency decided to allow "good" performers or "Fully Successful" employees to realize pay in excess of the range midpoint by allowing them to progress to 60% of their salary range. Thus, in-range salary ceilings were instituted, i.e., "Fully Successful" employees were compensated up to 60% of their salary range, "Excellent" employees were compensated up to 80% of their salary range, and "Outstanding" employees were compensated up to their range maximum.

6. Lump sum performance payouts were also a component of the pay program. That is, if an employee's merit pay adjustment would cause the employee to exceed their in-range salary ceiling for their performance level, i.e., 60% for "Fully Successful" and 80% for "Excellent" employees, the employee was awarded a lump sum payment equivalent to the amount that their merit pay adjustment would exceed their in-range salary ceiling. And, employees whose pay would exceed their range maximum would be awarded a lump sum payout equivalent to 50% of the normal merit pay adjustment for someone in the fifth quintile. This would continue until the employee's salary fell within the salary range, then their salary would be administered under normal procedures. These lump sum payouts were rendered moot with the elimination of in-range ceilings. However, currently, employees receiving at least a "Fully Successful" rating and who are at the range maximum will receive a bonus payout percentage as identified each year in the Merit Matrix.
7. In-range ceilings were eliminated January 12, 2003, based on a recommendation in The Segal Company's 2002 study of FCA's pay program's comparability with other FBRAs. Segal determined that the other FBRAs did not have in-range ceilings. The same recommendation was also made in the 1997 ESTF report. However, the reasons seemed subjective. The elimination of in-range ceilings allows employees, regardless of their performance rating, to move to the top of their salary range, versus capping out at 60% for "Fully Successful" or 80% for "Excellent" performance ratings. (In my view, the elimination of this salary control mechanism constituted a weakening of the Agency's pay program.)
8. Also effective for 2003 was a change to the generic job elements and performance standards FCA uses today. They are generic in that now there are only four sets of job elements/performance standards in use and each set covers a relatively broad array of FCA jobs.
9. Geographic differentials were established in 1990 in some FCA locations and were continued at the same level in the new 1992 pay program. At that time, the geographic differential was in addition to salary and did not factor into calculations related to employees' retirement, life insurance, and thrift savings plan benefits.
10. Beginning with pay period 8 in 1994, a locality pay adjustment was instituted (1.4%) that did result in an adjusted base pay amount that was creditable toward retirement, life insurance, and thrift savings plan benefits. (Early in 1994, the Federal government implemented a locality pay system. In response, the FBRAs modified their pay systems to include locality pay.)
11. In January 2001, FCA combined geographic and locality differentials into "locality pay," which when added to base pay results in an adjusted base pay amount that is creditable toward employees' retirement, life insurance, and thrift savings plan benefits.
12. Effective January 12, 2003, a cap on individual salaries (base plus locality) equal to the U.S. Vice President's salary was instituted. This was consistent with other FBRAs' practices at that time.

Effective January 6, 2008, the cap was changed to base salary. The reasons for this recommendation to the Board were that other FBRAs had, since 2003, modified their policies to allow increases to their caps beyond the Vice President's salary and, by FCA doing so, it would enable FCA to maintain comparability with the executive salaries of the other FBRAs.

These are the more significant changes to the 1992 pay program and grade structure that I believe have occurred since its inception.

FCA Pay Program and Grade Structure

There have been several studies of FCA's pay program, grade structure, and performance appraisal process since the 1991 Wyatt study, including the Job Evaluation Study in 2006 by Watson Wyatt Worldwide. Also, I understand that the OMS completed in recent years an evaluation of all Agency job grades and that OMS updates job grades on a case by case basis, for example, when a job is created or when a job's duties are changed significantly, etc.

However, many of the Agency's jobs have evolved, particularly those in the Office of Examination. Many jobs throughout the Agency are now more complex and carry more responsibility.

Also, and for a variety of reasons, outliers in terms of employees holding higher grades and compensation than appropriate for their respective jobs have developed. There could also be employees holding lower grades and compensation than appropriate for their respective jobs.

Having employees properly graded for the position they hold and compensated commensurately creates equity for all employees, and enables the Agency to more efficiently manage its employee pay program, grade structure, and performance appraisal process.

The question to be considered is whether past pay and grade studies and ongoing comparability evaluations by OMS are sufficient to obviate the need for a comprehensive coordinated evaluation of FCA's pay program and grade structure, and, possibly the performance appraisal process.

Philosophy on Office of the Board Staffing

During our conversation, I also mentioned the employment status of EAs, SAs, and the Board Secretary in the OB. That is, the personnel of Board Members have changed in large part from political appointees to career FCA employees. This also holds true for the Board Secretary as the most recent two Board Secretaries have been career FCA employees.

In 1986, the FCA Board's structure changed from a part-time 13-person board to a permanent, full-time, 3-person board (Presidentially Appointed Senate Confirmed), as mandated by statute. Initial Board Member staffing consisted of an EA and an SA for each. There was and remains a position of Board Secretary in the OB. This OB structure continues today. The first 3-person Board, Messrs. Naylor, Duncan, and Billington, each had political appointees filling their EA and SA positions. At that time, the Board Secretary was also a political appointee.

Because personnel for each of the Board Members were political appointees, they normally departed FCA when or shortly after their respective Board Member departed. When there was a new Board Chairman, the Board Secretary usually also changed.

Over time, there developed a mix of political appointees and career FCA staff filling the EA, SA, and Board Secretary positions. However, in recent years, most EAs, SAs, and Board Secretaries have been career FCA employees.

Each staffing configuration has its advantages and disadvantages. For example, an advantage of using a career FCA staffer at the EA position is that the person is already knowledgeable about the FCS and FCA; and, using a career FCA staffer at the SA position results in the person being already knowledgeable about administrative matters at FCA. Both levels of knowledge in EAs and SAs are helpful to a new Board Member. Another advantage is that FCA personnel are fairly well known as to their capabilities and personalities. Therefore, they are much less of an unknown than political appointees.

However, in the context of managing the Agency's pay program and grade structure, one disadvantage of using career FCA staff as EAs, SAs, and Board Secretary is that they rise to a higher grade and compensation level than had they remained in their former FCA jobs. Thus, when their appointing Board Member departs, the Agency has the task of placing a higher graded and compensated employee back into the Agency. This is made more complicated because the employee is now more highly graded than warranted by most positions available to them back in the Agency and their former position would have been filled by someone else. Also, since they have typically retained their higher grade when repositioned within the Agency, ongoing compensation accretion usually results because their salary range is higher. This problem does not exist with political appointees in the EA, SA, and Board Secretary positions as they would leave the Agency when or soon after their appointing Board Member departs.

Summary

Given the FIRREA requirement to maintain pay and benefits comparability among the FBRAs, the main thrust of this observation is identifying opportunities to enhance the management and integrity of FCA's pay program and grade structure.

If a comprehensive evaluation of FCA's pay program and grade structure is pursued, effectively communicating to FCA employees the need for the evaluation, how it is to be conducted, the results, and the impact on each employee will be extremely important.

Attachment 1

Farm Credit Administration
Compensation Program

I. Introduction

The Farm Credit Administration is adopting a new compensation program on January 12, 1992. The new program covers a wide-range of activities and impacts all employees. This paper provides summary information about major compensation policies and practices and how they will operate upon implementation. All employees are encouraged to read the text thoroughly. After studying this material and reviewing your individual salary determination, please feel free to address any questions via electronic mail to the special mailbox account SALARY or contact your Personnel Management Specialist in the Human Resources Division.

II. Basic Policy Commitments:

The agency's program is founded on a number of basic compensation principles and policy commitments. FCA will administer a fair and equitable compensation program that:

* Effectively attracts, retains, and motivates agency employees.

* Strives for pay comparability with the other financial regulatory agencies and the private sector labor market;

* Sets pay at any dollar amount in the assigned range - no steps;

* Awards pay increases on the basis of individual performance and position in the salary range, without regard to any non-merit factors.

III. Program Objectives:

The Farm Credit Administration's compensation program is designed to:

* Attract, retain, and motivate agency employees.

At the very least compensation programs should be designed to attract, retain, and motivate high quality employees. In late 1989, Congress enacted the Financial Institution Reform, Recovery and Enforcement Act of 1989 (FIRREA). FIRREA has enabled FCA and the other financial regulatory agencies (FRAs) to develop new pay programs that vary from standard government practices. FIRREA also required that the FRAs (including FCA) compensate their employees comparably.

* Maintain "comparability" with the other regulators.

Although granted this opportunity, it must also be recognized that FCA is a small agency destined to compete with much larger players in a national labor market. Most of the other FRAs covered by FIRREA have devoted substantial resources to develop and implement new pay programs which they regarded as "comparable" to regulatory counterparts. In doing so, they also have avoided joint efforts and proceeded independently.

At the beginning of 1990, FCA adopted some interim measures while it assessed this fast-changing environment. It proceeded with minor adjustments to its pay ranges and installed geographic differentials at some offices. Then, at the end of 1990, the agency initiated its own compensation study - a study that also focused on the issue of comparability with the other financial regulatory agencies. The Wyatt Company, a nationally renowned compensation consulting firm, was engaged to assist in the project.

The study progressed throughout 1991. It included the internal evaluation and realignment of all agency positions, as well as an intensive survey of the pay practices of the other regulators. In evaluating FCA's market position, agency management concluded that FCA cannot afford to be either a leader or a follower in the compensation marketplace. An overall compensation strategy that reflects market realities and promotes management's continuing commitment to work force quality was thus elected.

Accordingly, FCA's primary goal is to: compensate its employees at the average market rate paid by the other regulators. This is regarded as a realistic pay target that should not only motivate FCA employees but also support comparability with the other financial regulatory agencies.

IV. Major Program Elements:

Salary Ranges and Differentials

Based on study findings and recommendations, it was decided that national salary ranges supplemented by geographic differentials would be continued as the primary pay delivery system for FCA.

The Farm Credit Administration has adopted:

* Uniform national salary ranges consisting of two pay structures- one covering managerial, professional and technical positions, and the other for clerical and support positions.

* Geographic differentials as a supplement to base pay in those localities where cost-of-living expenses exceed national averages.

The FCA Compensation Study focused on a comparison of FCA's base pay rates to the competitive market, consisting of both the financial regulatory agencies and private sector employers. For comparable work, it found that (1) agency managerial, professional, and technical employees are paid approximately 10% below the marketplace, and (2) agency clerical and support employees are paid about the same as market equivalents. (The fact that current pay rates for clerical and support employees are closer to the marketplace is partially attributable to locality special rate structures that were already established by the Office of Personnel Management in geographic areas where FCA has some offices.)

In recognition of the agency's objective to set base pay at the average market rate, the differences between the two employee populations required separate salary ranges. Two new range structures, including 1992 updates, were developed. They are constructed around FCA's current relationship to the pay scales of the financial regulatory agencies. (See attachments 3, and 4.) Each year, FCA's market position will be reassessed. Structural adjustments will be made to keep pace with the marketplace in accordance with current salary survey data and available funding.

Catch-up Focus

The Farm Credit Administration has adopted:

* A compensation policy which places emphasis on base pay "catch-up," rather than enhancements to geographic differentials.

FCA simply does not have a large enough budget to accomplish all of its pay objectives simultaneously. Management has thus decided that available funds should be allocated as follows: first, to achieve base pay catch-up; next, to maintain the current geographic differential program; and last, to proceed with any differential adjustments where supported by updated survey data.

Providing catch-up in base pay is deemed the highest priority because it brings some relief to all employees regardless of where they are located, therefore current differentials will remain unchanged in 1992. A catch-up increase to base pay will also have a positive impact on retirement, thrift plan, and life insurance benefits.

The agency hopes to achieve base pay parity with the other regulators within 3 years. To accomplish this, emphasis will be placed on funding the merit pay matrix (discussed immediately below). The merit matrix is a compensation tool that will be used to determine annual salary adjustments. It provides a means for maintaining the comparability of FCA employee salary rates in relation to the agency's competitive market.

<u>Performance-based Salary Administration Process</u>

The Farm Credit Administration will:

* Administer a "performance-based" merit pay salary system, which provides for variable salary adjustments in accordance with an employee's performance achievements and position in the salary range;

The doctrine of "pay for performance" reflects progressive salary administration principles and has widespread application in the private sector and most of the FRAs. Since the beginning of the 1980's, the Federal government has encouraged some use of merit-based programs. Such programs have eliminated longevity-based pay adjustments (determined by length of service or "time-in-grade") and general cost-of-living increases, in favor of performance-based pay decisions (which provide more variable rewards that are directly tied to performance results).

FCA will utilize its enhanced compensation flexibility to emphasize pay for performance by implementing the following measures; (1) performance-based pay principles will apply to all employees, (2) employees can be compensated anywhere within the assigned salary range, (3) salary ranges and the merit matrix will be adjusted annually to reflect changes in the competitive labor market, (4) annual pay adjustments will be determined through the merit matrix, (5) salary range widths will be changed from 30% to 50%, to afford greater in-range pay variability and potential, and (6) geographical differentials will continue to be paid in addition to salary.

* Apply the approved merit increase matrix as the instrument for effecting 1992 salary adjustments and placing employees in the new range structure.

* Set pay at any dollar amount in the assigned range--no steps.

Under the new program, an employee's base pay rate can reside anywhere within the assigned salary range. The merit pay <u>matrix</u> determines the annual adjustment (percentage of pay) that will be applied to each employee's compensation. The adjustment will vary according to the employee's performance rating level and position in the salary range. The matrix is also being used to convert employees to the new program. The values in the matrix are expected to change annually depending on competitive market movements and the agency's funding situation.

The 1992 matrix is attached (See attachment 5). Your base salary at the end of 1991 is the reference point for computing the 1992 adjustment. As noted, the other two variables are relative position in the new salary range and current performance appraisal. To determine the percentage of adjustment, first locate the appropriate range position (quintile) that covers your current base salary. Then identify the box in the merit matrix that equates to your current performance rating. The number in the merit matrix box corresponding to your current range position and performance rating is the percent of current pay that you will receive as a 1992 salary adjustment. The adjustment may consist of a permanent increase in base pay and/or a lump sum payout (see below).

The new pay administration process completely supersedes previous FCA practices. Two major program revisions that extend from this approach are as follows: (1) Within-grade increases (i.e., longevity adjustments) are eliminated after the pay period ending on January 11, 1992. (2) Employees will no longer receive across the board cost-of-living increases with annual adjustments to FCA salary ranges, such as those which previously occurred when the agency was subject to the General Schedule.

As of the beginning of 1992, all annual salary adjustments will be performance-based <u>and</u> processed through the merit matrix in accordance with the policies specified in this summary. The FCA Policies and Procedures Manual (PPM) will be revised accordingly.

<u>Set Pay at no less than Range Minimum</u>

The Farm Credit Administration will:

* Pay employees at no less than the range minimum for their assigned positions.

As described above, transition to the new structure will be accomplished through application of the 1992 merit matrix. The base pay rate prior to implementation will be the foundation for the adjustment. Employees who are currently paid at a rate below the new range minimum will receive the same percentage of increase as someone who is in the first quintile of the salary range. Such an increase will likely raise base pay to a position above the new minimum. When necessary, an additional adjustment will be provided to bring the employee to the proposed minimum if the initial, matrix-based adjustment did not do so.

<u>Calendar Year Performance Appraisals</u>

* Appraise all employees annually at the end of the calendar year.

The study concluded that performance-based pay can be more efficiently and equitably administered if the current anniversary date appraisal process which applies to most employees was replaced by a calendar year rating plan. A calendar year rating cycle beginning on January 1 and ending on December 31, is consistent with the practices of other regulators who have adopted performance-based pay programs. It will enable management to plan, implement, and process pay program changes and individual salary adjustments in a systematic manner. It also facilitates program consistency and equity.

<u>In-Range Salary Ceilings</u>

The Farm Credit Administration will:

* Compensate "fully successful" (FS) performance by allowing employees to progress to 60% of their salary range ("EFS" to 80%, and "O" to range maximum);

According to standard compensation philosophy, salary programs generally and individual pay adjustments specifically should be managed around the salary range midpoint. The range midpoint reflects the level of pay that should be provided to an experienced, fully effective employee in order to maintain comparability with marketplace counterparts.

This condition is captured in the middle box of the merit pay matrix. It is the focal point for administering pay and developing agency pay strategy. The portion of the salary range above the midpoint (reflecting pay above the competitive market) should be reserved for exceptional performance.

"Fully successful" performance is regarded as a good rating at FCA and will enable an employee to realize pay in excess of the range midpoint. Now that FCA's pay ranges are significantly <u>wider</u>, the 60% in-range target for a "fully successful" performance allows an employee to progress to a salary level that is almost equivalent to the range <u>maximum</u> under the old General Schedule.

Accordingly, the in-range salary target for "fully successful" performance is 60% of the overall width of the salary range; for "exceeds fully successful performance, 80% of the range width; and for "outstanding" performance, the salary range maximum.

"Minimally successful" employees are eligible for a small adjustment if they are positioned at the low end of their salary range. They will maintain the range minimum for their position. Employees who are rated "unsatisfactory" will not receive a salary adjustment. These pay strategies are reflected in the matrix.

<u>Lump Sum Performance Payout</u>

If an employee exceeds the in-range salary target for their performance level, the Farm Credit Administration will:

* Award employees a lump sum payment equivalent to the amount of their merit pay adjustment that exceeds their in-range salary target.

(Note: This provision does not apply to employees rated below "fully successful," nor does it supersede special achievement awards and other incentive programs provided for in PPM Chapter 800-451.)

The performance-based, merit pay matrix has replaced previous salary adjustment measures, including the practice of awarding supplemental cash bonuses for performance evaluated at the "exceeds fully successful" and "outstanding" rating levels. The matrix contains percentiles of current base pay that will be provided to employees according to their performance rating and salary range position.

Salaries will be capped at certain in-range targets based on an employee's performance level. Under the new system, however, there shall be an opportunity for additional compensation in the form of a lump sum payment equivalent to the amount of merit increase, if any, that exceeds the in-range salary target.

Here is an example of how this provision works. An employee with a current salary of $25,000 receives an "EFS" rating that makes him/her eligible for a 7% increase of $1,750.00. It may take only $900.00 to move that person to the 80% targeted in-range salary ceiling.

In this situation, the additional $850.00 will be awarded as a one-time, lump-sum payment which is not creditable for retirement or other benefits. Among other advantages, the intent of this policy is to motivate high-performing employees who are situated at the upper end of the salary range, by means of relieving range constraints and affording them continuing compensation potential.

Employees who are currently compensated within the new salary range but who exceed their in-range salary target will not be subject to a salary reduction. They will retain their level of base pay and receive a total lump sum payout in accordance with the designated box in the merit matrix.

Salary Progression Goal

The Farm Credit Administration's commitment to salary progression is supported by the goal that:

Employees should reach their in-range salary target in no more than 7 years, assuming fully successful performance or better.

In conjunction with designating in-range salary targets, FCA is also adopting a position on salary progression. As described earlier, base pay rates may progress (1) beyond the midpoint to 60 percent of the salary range width for "fully successful" performance; (2) to 80% of the range width for "exceeds fully successful" performance; and (3) to the range maximum for "outstanding" performance.

The salary progression goal provides that, for someone who starts at the base of the salary range with a consistent performance level of "fully successful" or above, the in-range pay target should be achieved in 7 years. Accordingly, the agency's merit matrix will be designed not only to keep pace with competitive market movements, but also to enable an employee's salary to progress at a satisfactory rate within the assigned range.

With any performance rating pattern that is consistently "fully successful" or above, employees should reach their in-range performance targets in no more than 7 years. By comparison, FCA's position under the new program provides greater motivation than the previous step-driven General Schedule, which required up to an eighteen-year time frame for movement from the range minimum to the maximum.

There is a marked contrast between the FCA salary schedule versus the old General Schedule: it takes more time to reach the upper limits of the General Schedule, which is only 30% wide, than to reach the upper levels of the FCA salary range structure, which is 50% wide and provides significantly greater in-range compensation opportunity.

Promotion Increases

Upon promotion of an agency employee, FCA will:

Provide a 10% salary increase or an adjustment to the new range minimum, whichever is greater.

Explanation

A promotion is an important event that should result in significant recognition. The approved 10% minimum is greater than the approximately 6% (two step) increase that employees received with a promotion under the General Schedule. A 10% increase can be absorbed in the wider FCA range structure without any loss in compensation potential. In most cases, the amount required to accomplish promotion of a seasoned employee will not exceed 10% in the new program. Occasionally, however, it may require more than 10% to move some employees who are in a career ladder progression to the new range minimum upon promotion. In this latter event, the person will be placed at the new range minimum even if the adjustment exceeds 10%.

Compensation of Employees who Exceed the Range Maximum

The Farm Credit Administration will:

* Preserve the salary level for employees whose current pay rate exceeds the range maximum in the new schedule.

* Beginning with implementation of the new program and upon each succeeding annual adjustment, such employees will receive a lump sum payout equivalent to 50% of the normal performance-based increase for someone in the fifth quintile of the assigned salary range. This will continue until the employee's salary falls within the salary range, then their salaries will be administered under the normal procedures.

Employees are normally compensated within an approved salary range.

The potential for a salary placement beyond the range maximum results from implementation of the new job evaluation program which has revalued agency positions. Upon implementation, FCA will preserve the current salary level of all employees who are being paid above the range maximum designated for their position. Assuming at least "fully successful" performance, positive recognition will continue to be provided in the form of an annual lump sum payment that does not increase base pay. As the salary structure is adjusted annually to keep pace with the marketplace, base pay rates for such employees will gradually drift back into the approved range and ultimately reside at the in-range salary target for their performance level.

V Summary:

The foregoing consists of a summary of basic policies and pay objectives that were developed to implement the new salary program in FCA. Once again, you may feel free address any questions via electronic mail to the special mailbox account SALARY or contact your Personnel Management Specialist in the Human Resources Division.

Attachment 2

REVIEW PROCESS

An employee may request a review of assigned pay plan, grade or salary. A review request must be in writing, include the basis for disagreement, and be submitted by February 3, 1992 to the Chief, Human Resources Division. The Chief, Human Resources Division, will conduct the review and issue an initial written decision.

An employee may request a review of an initial review decision by the Compensation Study Steering Committee (CSSC). The CSSC is comprised of a cross-section of FCA senior officials. At least three members of the CSSC and an FCA office director, other than the office director of the employee requesting the review, will consider each second level request.

A CSSC review request must be in writing, and be submitted within 21 calendar days of the initial review decision to the Chairman, CSSC, Jim Judge, Human Resources Division. The CSSC will issue a written decision. CSSC decisions are final.

An employee may withdraw a request for review at any time.

Attachment 3

SALARY RANGES FOR "VH" EMPLOYEES - 1992

Pay Grade	Range Minimum	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile	Range Maximum
44	$89,464	$98,410	$107,357	$116,303	$125,250	$134,196
43	78,782	86,660	94,538	102,416	110,294	118,172
42	69,376	76,314	83,251	90,189	97,126	104,064
41	61,092	67,201	73,310	79,420	85,529	91,638
40	53,798	59,178	64,558	69,938	75,318	80,698
39	47,375	52,113	56,850	61,588	66,325	71,063
38	41,718	45,890	50,062	54,234	58,406	62,578
37	36,738	40,411	44,085	47,759	51,433	55,106
36	32,352	35,587	38,822	42,058	45,293	48,528
35	28,489	31,338	34,187	37,035	39,884	42,733
34	25,087	27,596	30,105	32,613	35,122	37,631
33	22,092	24,301	26,510	28,720	30,929	33,138
32	20,972	23,069	25,166	27,264	29,361	31,458
31	19,909	21,900	23,891	25,881	27,872	29,863
30	18,900	20,790	22,680	24,570	26,460	28,350

NOTES: Range Spread = 50 percent

Midpoint Differential = 13.5 percent

The range minimum represents the beginning of the first quintile, and the subsequent dollar amounts represent the beginning of each quintile.

SALARY RANGES FOR "VG" EMPLOYEES - 1992

Pay Grade	Range Minimum	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile	Range Maximum
26	$25,554	$28,109	$30,664	$33,220	$35,775	$38,330
25	23,070	25,377	27,684	29,990	32,297	34,604
24	20,827	22,910	24,993	27,075	29,158	31,241
23	18,802	20,682	22,563	24,443	26,324	28,204
22	16,974	18,672	20,369	22,067	23,764	25,462
21	15,324	16,856	18,389	19,921	21,454	22,986
20	13,835	15,219	16,602	17,986	19,369	20,753

NOTES: Range Spread = 50 percent

Midpoint Differential = 10.76 percent

The range minimum represents the beginning of the first quintile, and the subsequent dollar amounts represent the beginning of each quintile.

Attachment 5

FCA 1992 MERIT MATRIX

RATING	Salary Position				
	Q1	Q2	Q3	Q4	Q5
Outstanding	19%	16%	13%	10%	7.5%
Exceeds Fully Successful	16%	13%	10%	7%	4.5%
Fully Successful	13%	10%	7%	4%	2%
Minimally Successful	4%	0%	0%	0%	0%
Unsatisfactory	0%	0%	0%	0%	0%

Miller, Debra

From: Clinefelter, Carl A., Jr.
Sent: Wednesday, March 24, 2010 2:32 PM
To: Strom, Leland
Cc: McBeth, Mark; Calhoun, Gaye; OIG
Subject: OIG Observation 2010-03 Re 1) FCSIC and 2) FCA's Prior Approval of Funding Corporation Debt Issuances
Attachments: Carl A Clinefelter.vcf

OIG Observation 2010-03 Re 1) FCSIC and 2) FCA's Prior Approval of Funding Corporation Debt Issuances

In the context of both FCA and the FCSIC now working on legislative initiatives, I think it an appropriate time to put a couple of matters before you for your consideration.

FCA Inspector General Oversight of FCSIC

The FCSIC does not fall under the oversight of any Inspector General. I think this is largely the result of the timing of certain past legislation. Specifically, the amendments to the IG Act creating an Inspector General within designated Federal entities, which FCA is defined as, were in 1988; whereas, the FCSIC was established by statute in 1987. Had the FCSIC been established subsequent to FCA being required to have an Inspector General, then presumably, the FCSIC would have been required to be under the oversight of FCA's Inspector General.

The observation is that as a member of the FCSIC Board you consider whether and how to move forward with your FCSIC Board counterparts regarding a legislative initiative to bring FCSIC under the purview of FCA's Inspector General. In my view, this is a matter of good corporate governance, and transparency for the Congress and the public into the condition and operations of the System's insurance fund. As a matter of reference, the FDIC and NCUA insurance funds are managed by FDIC and NCUA, respectively, and are provided oversight by the FDIC and NCUA Inspectors General, respectively.

This is not a new issue. Over the years several opinions and memorandums have been generated within FCA and the FCSIC regarding the arguments for and against the matter. Additionally, GAO recommended in its 1994 report "The Farm Credit System: The Farm Credit Administration Effectively Addresses Identified Problems" that the FCSIC be subject to oversight by the FCA Inspector General. I'll provide you copies of several pertinent documents separate from this memorandum.

FCA's Prior Approval of Funding Corporation Debt Issuances

It is my understanding that FCA's ORP prior approves Funding Corporation debt issuances for the FCS banks, as required by statute. This seems inappropriate for FCA as the arms length regulator of the FCS. For years FCA has moved away from being in a prior approval role over bank and association actions by eliminating requirements for FCA prior approval from FCA regulations. However, FCA's removing itself from the prior approval role over Funding Corporation debt issuances would seem to require a legislative change.

The prime reason for FCA seeking removal of itself from this prior approval role is one of regulatory independence and objectivity. That is, can FCA prior approve Funding Corporation debt issuances and then independently and objectively examine and regulate the Funding Corporation?

I would be please to discuss these matters at your convenience.

Carl A. Clinefelter
Inspector General

Memorandum

Office of Inspector General
1501 Farm Credit Drive
McLean, Virginia 22102-5090

October 28, 2011

OIG Observation 2012-01

The Need for Independent, Objective Oversight
of the
Farm Credit System Insurance Corporation
by a
Statutorily Designated Inspector General

Introduction

The duties of an Inspector General (IG) include: making recommendations concerning the economy and efficiency in the administration of programs and operations administered or financed by the IG's agency; reviewing and commenting on proposed legislation and regulations as to their effect on the agency; coordinating relationships between the agency and Federal, state, and local agencies to promote economy and efficiency; and keeping the head of one's agency and the Congress fully informed of such matters. IG Act of 1978, as amended, § 4 (a)(2), (a)(4), and (a)(5). As such, the following background and recommendations are intended to advance economies and efficiencies between the Farm Credit Administration (FCA) and Farm Credit System Insurance Corporation (FCSIC), as well as the optimization of business practices.

Background

The general purpose for both the FCA and the FCSIC is to provide for the safe and sound operation of a permanent system of borrower-owned cooperatives that supply credit for American agriculture. The FCA and the FCSIC are Federal entities which operate under the direction of two different Boards, each of which is composed of the same presidentially appointed members. The Chairman of each cannot be the same member. The FCA is the primary regulator of the Farm Credit System (FCS or System) and the FCSIC is the insurer of most System obligations.

The Agricultural Credit Act of 1987 and the Farm Credit Banks and Associations Safety and Soundness Act of 1992 established the clear intent of Congress that the FCA and the FCSIC carry out joint responsibilities and maintain cooperation at all levels within each entity. Specifically, the intent is to maximize the usage of existing personnel and data-based resources already present at FCA, and to avoid the establishment of separate and duplicative activities and costs.

The FCSIC was established through legislation in 1987. However, collection of insurance fund premiums did not begin until years following that establishment. In the meantime, the 1988 amendments to the IG Act, we believe, unintentionally overlooked a mandate for an IG for FCSIC. As a matter of reference, the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Association (NCUA) insurance funds are managed by the FDIC and NCUA management and are provided oversight by the FDIC and NCUA IGs, respectively. It is a matter of good corporate governance and transparency for the Congress and the public to have the independent and objective oversight of Federal entities.

Through the years, there have been repeated questions and explorations regarding growth and oversight of the FCSIC. In March 1990, Senators Patrick Leahy and Richard Lugar wrote to the FCA Board members to provide guidance on the organization of the FCSIC. They stated their intent and that of other members of Congress in developing the 1987 Act was "...that FCSIC rely on the staff of the Farm Credit Administration for virtually all its operating activity. Our [Congress'] model for the organization of FCSIC was the Commodity Credit Corporation of USDA which has no staff of its own." Nevertheless, FCSIC has grown markedly over the years.

The then General Accounting Office (GAO), on October 14, 1992, while conducting a review of agricultural credit, posed an issue, "whether the Farm Credit Administration Inspector General has the authority to review the activities of the Farm Credit System Insurance Corporation." GAO requested the views of the Counsel to the Inspector General of the FCA and the General Counsel of the FCA. In its report, GAO/GGD-94-14 Farm Credit System, GAO recommended to Congress, ... "that FCSIC be subject to oversight of the FCA Inspector General and be required to have an annual independent audit of its financial statements to ensure that all aspects of its operations are reviewed." In response to subjecting FCSIC to oversight by the FCA IG, neither the Congress nor the FCSIC Board took action.

In August 1998, the Chairman of the FCSIC Board and the IG of the FCA had discussions and exchanged ideas concerning the "Streamlining of FCSIC." This prompted a consideration of enhancing executive leadership by eliminating the FCSIC's COO and GC, and having more FCSIC Board operational direction. IG oversight of FCSIC to increase program accountability and changes in FCSIC operations and staffing to reduce costs to the System was also contemplated. Like before, action was not taken by the FCSIC Board.

In July 2002, the second FCA IG recommended that the FCA IG be designated as the IG for FCSIC. Again, the reasons of interrelationship between FCA and FCSIC, the statutory duty to collaborate and minimize expenses, and the events in the accounting industry leading to Sarbanes Oxley reforms were highlighted to advance the need for an IG for FCSIC. To the contrary, FCSIC argued that establishing an IG for FCSIC can only be done through legislation. Further, FCSIC asserts that financial statements are audited annually and they have operational reviews and an audit committee. FCSIC also asserted it could contract with the FCA OIG but there is a potential conflict of interest.

In May 2003, the Boards of the FCSIC and the FCA requested, in writing, the IG to study "whether the FCSIC should be merged into a single federal executive branch agency" to gain economies and efficiencies. This study concluded that while the missions of the two organizations are different, they are reconcilable. Almost all the time, the missions overlap without conflict. The same makeup of each Board makes policies for both organizations. Although merger would take careful study and planning, and would involve displacement and set up, the long term gains almost certainly outweigh the initial challenges.

More recently, in March 2010, in connection with the drafting of FCA legislative initiatives, the current IG recommended, by way of OIG Observation 2010-03, an amendment to the IG Act be advanced, creating an IG for FCSIC. No action has yet been taken.

For over twenty years, internal and external parties have advanced the concept of maintaining efficient FCSIC operations and strengthening its accountability by providing independent and objective oversight of its operations by an IG. To date, the latter has not occurred in spite of an ever growing trend to legislate special IGs (Iraq, Afghanistan, and Troubled Asset Relief Program), and create new IGs for financial regulators (Bureau of Consumer Financial Protection and Export-Import Bank).

The following two recommendations to the FCSIC Board are intended to address these concerns with the FCSIC's efficiency and oversight. Both would require a legislative change.

Recommendations

1. The FCSIC Board should recommend to Congress that legislation be advanced to make the FCA IG the IG of the FCSIC. In this way, the costs of a separate IG staff within FCSIC can be avoided and the FCSIC Board, the Congress, and the public can be assured of objective, independent oversight, review and reporting.

2. Alternatively, offering greater efficiencies, but more complicated, would be merger of the FCSIC into the FCA. This would be in keeping with the congressional intent of avoiding duplicative activities, would ensure costs are better contained, and would optimize the continuation of cooperation on all levels of the interdependent relationship. Under this approach, the FCA IG would also be the IG of the FCSIC.

Summary

This is a concept paper. No attempt was made to provide detailed analyses with respect to either recommendation, particularly the second. Nonetheless, it is prudent for the FCSIC Board, FCS institutions, Congress, and the public to strive for independent oversight and efficiencies at the FCSIC. Certainly, there can be no disagreement with the concept and practical benefits, through legislative change, of at least having oversight of the FCSIC by the FCA Office of Inspector General.

From:	Dean, Elizabeth M.
To:	Smith, Stephen G.
Cc:	Hoffman, William; Rapp, Tammy; Miller, Debra
Subject:	CONFERENCE EXPENSES -REPORTING REQUIREMENTS TO OIGs BY AGENCY HEADS P.L. 113-6
Date:	Wednesday, May 01, 2013 3:36:54 PM
Attachments:	Elizabeth Dean.vcf

Steve,

As we discussed, there has been a progressive effort to cut administrative costs within the Federal government. In November 2011, Executive Order 13589, "Promoting Efficient Spending" was issued, addressing various areas to cut costs, including conferences. The Office of Management and Budget Memorandum M-12-12, dated May 11, 2012, also addressed conference and travel expenses. The most recent language in P.L. 113-6 (below) identifies further focus by requiring Agency Heads to report to OIGs on conference and travel expenses.

Although the FCA is non-appropriated, not subject to restraints placed on taxpayer dollars, similarly situated agencies are taking strides to address the spirit of the law and the instructions from the Administration. Some agencies require that all conferences be held in government facilities, some require the cost of a conference not exceed the cost of holding a conference at a headquarters location, still others require approval by a COO or CEO-level executive if the combined cost of conference and travel exceed a certain dollar threshold.

While the FCA may be vigilant in monitoring conferences and associated travel, as we discussed, it may be prudent and timely to update the written policies/guidance on conferences and travel in light of the current law and instruction to demonstrate good stewardship of the FCA funds.

P.L. 113-6, Consolidated and Further Continuing Appropriations Act, 2013 (H.R. 933) was signed into law on March 16, 2013. Section 3003 of H.R. 933, a substitute amendment offered in the Senate sets forth reporting requirements to OIGs by Agency Heads regarding conferences.

> *Sec. 3003 (a) The head of any Executive branch department, agency, board, commission, or office funded by this or any other appropriations Act shall submit annual reports to the Inspector General or senior ethics official for any entity without an Inspector General, regarding the costs and contracting procedures related to each conference held by any such department agency, board, commission, or office during fiscal year 2013 for which the cost to the United States Government was more than $100,000.*
>
> *(b) Each report submitted shall include, for each conference described in subsection (a) held during the applicable period-*
>
> *(1) a description of its purpose;*
>
> *(2) the number of participants attending;*
>
> *(3) a detailed statement of the costs to the United States Government, including-*
>
> *(A) the cost of any food or beverages;*
>
> *(B) the cost of any audio-visual services;*

(C) the cost of employee or contractor travel to and from the conference; and

(D) a discussion of the methodology used to determine which costs relate to the conference; and

(4) a description of the contracting procedures used including—

(A) whether contracts were awarded on a competitive basis; and

(B) a discussion of any cost comparison conducted by the departmental component or office in evaluating potential contractors for the conference.

(c) Within 15 days of the date of a conference held by any Executive branch department, agency, board, commission, or office funded by this or any other appropriations Act during fiscal year 2013 for which the cost to the United States Government was more than $20,000, the head of any such department, agency, board, commission, or office shall notify the Inspector General or senior ethics official for any entity without an Inspector General of the date, location and number or employees attending such conference.

(d) A grant or contract funded by amounts appropriated by this or any other appropriations Act to an Executive branch agency may not be used for the purpose of defraying the costs of a conference described in subsection (c) that is not directly and programmatically related to the purpose for which the grant or contract was awarded, such as a conference held in connection with planning, training, assessment, review, or other routine purposes related to a project funded by the grant or contract.

(e) None of the funds made available in this or any other appropriations Act may be used for travel and conference activities that are not in compliance with Office of Management and Budget Memorandum M-12-12 dated May 11, 2012.

Please let me know if I can be of assistance.

Liz

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May 7, 2014

OIG MANAGEMENT ADVISORY 14-01

NEED FOR INDEPENDENT, OBJECTIVE OVERSIGHT OF THE FARM CREDIT SYSTEM INSURANCE CORPORATION

This advisory addresses the need for inspector general oversight of the Farm Credit System Insurance Corporation. Realizing you are familiar with this recommendation and knowing you have previously discussed it, I am raising it for your consideration once again.

On April 10, 2014, the Subcommittee on Financial and Contracting Oversight, Senate Committee on Homeland Security and Governmental Affairs, held a hearing on "Oversight of Small Agencies". The hearing was held to review the processes and mechanisms by which small agencies and other federal entities without statutory inspectors general receive oversight, including contracting with independent inspectors general for services. Senator Claire McCaskill, Chairman, emphasized that vigorous oversight by an independent inspector general is one of the federal government's most important tools to prevent and detect waste, fraud, and abuse.

As you will recall, in 1994, the General Accountability Office (GAO) recommended that FCSIC be subject to oversight of the FCA Inspector General.

> Unlike the Federal Deposit Insurance Corporation and the National Credit Union Administration, which manage the insurance funds for banks, thrifts, and credit unions, FCSIC is not subject to the oversight of an inspector general. Although FCA's OIG has authority to examine FCA activities performed for FCSIC, it is unable to examine FCSIC operations without FCSIC's permission. Since the insurers for other financial institutions are subject to inspector general oversight, we believe that FCSIC should be also. Federal oversight is necessary to provide a regular comprehensive assessment of FCSIC's decision making and role in assisting, monitoring, and liquidating institutions. Likewise, FCSIC's operations more closely parallel those of the National Credit Union Administration and the Federal Deposition Insurance Corporation rather than other "federal entities" that are not subject to inspector generals. FCA's inspector general could also

> examine FCSIC operations. FCA provides administrative and legal services to FCSIC, in addition to the special examination services we discussed earlier in this chapter. Given this overlap and FCSIC's small size ($656.2 million in assets and a staff of 11); it seems unnecessary for FCSIC to have its own inspector general. We believe FCA's Inspector General could serve both entities.
>
> FCSIC did not object to our recommendation that it be subject to an inspector general. FCA did not comment and System officials concurred with our recommendation. FCSIC expressed concern, however, that such a change might increase its costs for audit services while limiting its flexibility to retain auditors with special expertise. FCSIC is right to be cognizant of ensuring that any audit services, whether provided by OIG or an independent auditor, provide adequate benefit for the costs incurred. It seems possible that the costs FCSIC would incur by being subject to OIG audits might be essentially the same as it has expected to incur by having independent auditors conduct operational audits periodically. We not that FCA's OIG, on occasion, retains outside expertise to assist with audits or investigations. Nothing would preclude such an arrangement for review of FCSIC operations."

GAO, GAO/GGD-94-14, *Farm Credit System: Farm Credit Administration Effectively Addresses Identified Problems* 117-118 (1994).

I am the fourth IG to raise this issue following GAO's report. The GAO recommendation remains as valid today as it did in 1994, although no action to secure an IG has been taken. While we agree FCA IG has no explicit authority to examine FCSIC activities without FCSIC permission and that the determination of whether to place an IG in a specific agency is a policy decision to be made by Congress, legislative history indicates that federal entities such as FCSIC "may obtain the needed level of internal audit from an appropriate authority such as an existing Office of Inspector General." H.R. Rep. No. 771, 100, Cong., 2d Sess. 17 (1988). Moreover, in early 1990, the Chairman and Ranking Minority Member of the U.S. Senate Committee on Agriculture, Nutrition and Forestry wrote to the FCA Board concerning the legislative intent on the organization of FCSIC, stating that Congressional intent was "that FCSIC rely on the staff of the Farm Credit Administration for virtually all its operating activity. Our model for the organization of FCSIC was the Commodity Credit Corporation of USDA which has no staff of its own."[1]

Although the IG is independent and not "FCA staff", it would be consistent with Congressional intent, a solid, practical solution, and good corporate governance to have the FCA IG provide objective oversight of FCSIC thereby enabling transparency to

[1] *Letter from Chairman Patrick Leahy and Ranking Minority Member Richard Lugar to Farm Credit Administration* at 1 (Mar. 30, 1990).

Congress and the public regarding the conditions and operations of the System's insurance fund. An interagency arrangement, providing for the full panoply of IG authorities, could be crafted in the interim pending legislative action.

Each time this issue has surfaced, FCSIC responded by noting that it has sufficient controls as a government corporation; is a "federal entity" that submits an annual report to OMB; has an audited financial statement; has GAO oversight, and has an audit committee which meets in executive session. FCSIC has also recognized that it could contract with the FCA IG or another IG for oversight.

At the hearing referenced above, however, Senator McCaskill expressed concerns regarding entities that design the scope of their own contracts for oversight and have no formalized audit follow up system for accountability. An objective IG will provide more effective corporate governance by determining the scope of review, selecting the contractor, and systematically following up on findings and recommendations. Also noteworthy is the continued growth from the $656.2 million in assets cited above in GAO's language. Investors in the System now hold $211 billion in debt obligations and the insurance fund has continued to grow to $3.5 billion, thereby making oversight even more important to ensure transparency in the prudent management and the safety and soundness of the Farm Credit System.

Prior to the hearing on "Oversight of Small Agencies", discussion draft legislation was distributed. The draft provided for oversight of 40-plus federal entities that currently have no IG oversight, by providing oversight of these entities largely through existing IG offices. The draft bill also suggested consolidation of some existing smaller IG offices with larger IGs, including consolidation of the FCA IG with the U.S. Department of Agriculture (USDA) IG.

In response to the posited language, FCA IG met with Congressional staff and expressed its concerns regarding consolidation. We noted that FCA and USDA vary considerably in their line of business, size, governance, and funding (appropriated versus assessments). We also emphasized that consolidation would combine FCA IG, -- an independent executive agency, governed by the FCA Board, with USDA IG – the latter a very large cabinet level department IG, funded by appropriations, with high-risk, high-dollar programs to review. These considerable variations between the agencies would result in reduced oversight for FCA at minimal to no cost savings.

FCA IG therefore proposed an alternative to consolidation with USDA IG – providing for the above-referenced FCSIC oversight by FCA IG. It is logical to have FCA IG provide FCSIC oversight because these agencies have similar missions, size, funding, and governance. We also posited that efficiencies would result in the IG's audit of FCSIC's financial statements and also in the fact that FCA IG's current expertise and knowledge would allow the IG to immediately and effectively take on oversight with a minimal transition period and increase in resources based on the office's existing expertise and onsite knowledge of FCSIC operations and thus potentially reduce aggregate costs to FCS.

I welcome discussion on the matter. If more background information would be helpful, please let me know.

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May 29, 2014

OIG MANAGEMENT ADVISORY 14-02

In recent times there have been discussions pertaining to the Farm Credit Administration's Interest Reserve. Congress has posed questions about the reserve fund, and eight years have passed since the FCA Board (totally different Board membership) voted to approve an "Interest Reserve Strategy" (Strategy). The Board should review the Strategy to decide whether changes through a revised Board Policy, Delegation, or revisions to the current format are appropriate.

THE FARM CREDIT ACT

In creating the **Farm Credit Administration Operating Expenses Fund**, section 5.15 of the Farm Credit Act of 1971, as amended, requires the FCA to determine annually:

- the cost of administering the Act;
- the amount of assessments required to pay administrative expenses taking into consideration the funds in the Administrative Expense Account; and
- assessments required to maintain a necessary reserve.

The "necessary reserve" required by this statutory provision is the focus of this Management Advisory. [1]

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[1] 12 U.S.C. 2250 (*emphasis added)* SEC. 5.15. FARM CREDIT ADMINISTRATION OPERATING EXPENSES FUND.
(a) DETERMINATIONS REQUIRED.
(1) GENERALLY. Prior to the first day of each fiscal year, the Farm Credit Administration shall determine—
(A) the cost of administering this Act for the subsequent fiscal year, including expenses for official functions;
(B) the amount of assessments that will be required to pay such administrative expenses, taking into consideration the funds contained in the Administrative Expense Account, **and maintain a necessary reserve**; and
(C) the amount of assessments that will be required to pay the costs of supervising and examining the Mortgage Corporation established under title VIII.
(2) APPORTIONMENTS. On the basis of the determinations made under paragraph (1), the Farm Credit Administration shall —
(A) apportion the amount of the assessment described in paragraph (1)(B) among the System institutions on a basis that is determined to be equitable by the Farm Credit Administration;
(B) assess and collect such apportioned amounts from time to time during the fiscal year as determined necessary by the Farm Credit Administration; and
(C) assess and collect from the Mortgage Corporation, from time to time during the fiscal year, the amount described in paragraph (1)(C).

INTEREST RESERVE STRATEGY

In September of 2006, the FCA Board voted to approve a revision to the 2007 Revised Budget and the 2008 Proposed Budget, and also approved an "**Interest Reserve Strategy**" (FCA Board Notational Vote NV 06-25 (9-AUG-06)). Components of this Interest Reserve Strategy included the following:

- The Board directed the Chief Financial Officer to continue to build and maintain an Agency interest reserve from accumulated interest earned on invested Agency funds. Within 7 years the Agency interest reserve would equal a minimum of 2 months of Agency operating expenses and not exceed a maximum of 30 percent of the Agency's budget.

- With FCA Board authorization, the Agency can use the interest reserve to pay one-time unbudgeted expenses arising from "material unexpected System policy or safety and soundness issues."

- The interest reserve could also be used to create a smooth multi-year transition of System institutions' assessments to a higher Agency budget level as a result of "unexpected ongoing issues" arising from changes in the System's policy environment or fundamental safety and soundness.

The meaning of the terms "material unexpected System policy or safety and soundness issues" and "unexpected ongoing issues" as referenced in this 2006 vote appear to be somewhat unpredictable and labored. It therefore appears appropriate for the Board to consider whether the "safety net" meaning is adequate or whether a clarification or perhaps reengineering of these terms is necessary.

(b) DEPOSITS INTO FUND.
(1) TREASURY FUND. The amounts collected under subsection (a) of this section shall be deposited in the Farm Credit Administration Administrative Expense Account. The Expense Account shall be maintained in the Treasury of the United States and shall be available, without regard, for purposes of sequestration, to the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 note) to pay the expenses of the Farm Credit Administration.
(2) NONGOVERNMENT FUNDS. The funds contained in the Expense Account shall not be construed to be Federal Government funds or appropriated moneys.
(3) INVESTMENT.
(A) AUTHORITY. On request of the Farm Credit Administration, the Secretary of the Treasury shall invest and reinvest such amounts contained in the Expense Account as, in the determination of the Farm Credit Administration, are in excess of the amounts necessary for current expenses of the Farm Credit Administration.
(B) RETURNS. All income earned from such investments and reinvestments shall be deposited in the Expense Account.
(C) TYPE. Such investments shall be made in public debt securities with maturities suitable to the needs of the Expense Account, as determined by the Farm Credit Administration, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

RESPONSE TO CONGRESSIONAL QUESTIONS

The need to revisit the meaning of the above-referenced terms in the context of the Interest Reserve Strategy has been highlighted in recent responses by FCA to Congressional inquiries regarding this Strategy. FCA has responded to these inquiries by stating that:

- "We developed the strategy to help us carry out our statutory responsibilities under various operating scenarios, and to implement the strategy, we built an Agency reserve from accumulated interest on our investments."
- "Carryover, consisting primarily of funds from assessments and interest earned, helped us build the interest reserve and allowed us to return the assessment portion of the carryover to the institutions by reducing their subsequent assessments. The plan allows us to manage operations to avoid the large spikes in assessments that, in the past, have been disruptive to the institutions' financial operations. Carryover funds help us manage the impact that assessments have on institutions."
- "We have been effectively and efficiently building a reserve from accumulated interest earned on invested Agency funds. As a result of this reserve, we are in a better position to cover unexpected, unbudgeted expenses and to manage the annual assessment of Farm Credit System institutions."
- "The interest reserve strategy builds and maintains an Agency interest reserve from accumulated interest earned on invested Agency funds. FCA is not authorized to assess System institutions to cover the unbudgeted expenses arising from unusual and unexpected policy or safety and soundness issues that exceed the congressional limitation."

FCA has also offered the following definitions in response to Congressional questions:

- Carryover Funds – Amounts from prior years that remain available for obligation.

- Interest Reserve – Funds accumulated through interest earned on invested Agency funds.

While the expressed goal and outcome of handling unexpected situations appears to be efficient, the FCA responses seem to blend carryover and interest reserve, making the lines of distinction, if any, difficult to pinpoint. Potentially, both carryover and interest reserve are components of a reserve fund to be used as a safety net when the annual assessment is insufficient (or the congressional limitation on budget is too restrictive). However, the distinctions of which is used when and for what, are blurred. The 2006 Strategy for interest reserve may have broadened into covering "unexpected, unbudgeted expenses and to manage the annual assessment of the Farm Credit System institutions." While not critical of the anticipated use, clarity and consistency may be at issue.

ISSUES RAISED

The interest reserve is currently $11.5 million. Nearing the 7-year point identified in the strategy in 2006, the amount is close to the predicted 2 months of operating expenses and less than 30 percent of the Agency's budget.

This OIG Advisory is not challenging whether FCA should have a reserve fund, nor is it challenging the amount in the fund, or the investment methodology, but suggests that FCA consider:

- the appropriate format of the Interest Reserve Strategy (or plan or policy);
- consistency in the content and substance of the Interest Reserve Strategy;
- how often the Interest Reserve Strategy should be reviewed, both in terms of its policy requirements and the amounts; and,
- whether the Board will perform this function or delegate it.

OIG also suggests that the Board consider whether the current and subsequent FCA Boards may wish to have a stronger role in the review, evaluation, and revisions to the Interest Reserve Strategy. A prior policy, FCA PS-66, *Agency Cash and Liquidity Management* (06-March -95) repealed in 2005, demonstrates a precedent for Board policy on a like matter. As an option to creating a separate policy, the Board might consider expanding the existing policy on FCA budget and expenditures (FCA-PS-64, *Rules for the Transaction of Business of the Farm Credit Administration Board, Part III-Board Operations, Article I, Section 2, Financial Operations*) to confirm or establish an Interest Reserve Strategy. (FCA-PS-64 was issued in July 2011 and is due for review at least every five (5) years; therefore, by July 2016).

As previously noted, the last FCA Board Notational Vote relating to the Interest Reserve Strategy — FCA Board NV 06-25 — took place in September of 2006. In the almost eight years that have passed since, there has been no further official Board determinations or policies issued regarding the FCA Interest Reserve Strategy. As such, the Board should consider whether to continue relying on the 2006 Notational Vote as authoritative, or whether it should expand existing budget and expenditure policy (FCA-PS-64), update the form of the Interest Reserve Strategy, and/or delegate – perhaps to the Chief Financial Officer – authority to evaluate the Strategy.

I welcome discussion on the matter. If more background information would be helpful, please let me know.

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December 18, 2014

OIG MANAGEMENT ADVISORY 15-01

SUSPENSION AND DEBARMENT

Suspension and debarment actions within the Federal government have increased significantly in recent years. A General Accountability Office report issued in May of 2014, highlights the two-fold increase in the number of these Federal agency suspension and debarment actions between 2009 and 2013. GAO-14-513, *Federal Contracts and Grants: Agencies Have Taken Steps to Improve Suspension and Debarment Programs* (May 2014). FCA should consider implementing a policy that would enhance FCA's ability to expediently review and refer cases to another Federal agency for suspension and debarment proceedings, when appropriate.

Federal agencies use the suspension and debarment process to protect the government's business interests. Suspension and debarment ensures, through a fair and transparent process, that contractors who are irresponsible and unable to conduct business with the Government are excluded from doing business with the government. FCA should consider developing a policy that would provide guidelines for FCA to follow should a contractor's actions raise questions on whether the contractor should be suspended or debarred from contracting with Federal agencies. Although we anticipate these circumstances will rarely arise, should they occur, FCA would benefit from having a policy already in place that would allow the agency to efficiently evaluate the need for suspension and debarment proceedings. The Agency would also benefit from having a process delineated to allow FCA to refer the matter expediently to another agency for processing through that agency's existing suspension and debarment program. The policy, perhaps included as part of the *FCA Contracts Desk Manual*, OMS-PPT 4 (June 26, 2012), could further address alternative mechanisms to a formal suspension and debarment process, such as a "Letter of Assurance" or other informal process through which FCA could reiterate a contractor's obligation to comply with Agency policy and Federal contracting laws and regulations.

Specific matters that might be included in such a policy are:

1) **Purpose/Goal Statement:**
   a) This statement would address the purpose of a suspension and debarment program, which is to protect government contracting interests by holding contractors accountable and ensuring that the federal government does not do business with companies or persons who demonstrate a lack of present "responsibility". 48 C.F.R. § 9.406-2(a)(5).

b) The statement would also emphasize that the hallmarks of a successful suspension and debarment program are a program that is transparent and fair, and results in timely suspension and debarment decisions.

2) **Definitions and Standards for Debarment and Suspension.**
   a) The suspension and debarment policy would include definitions, such as the following:
      i) A debarment ensures that for a specific time period, the federal government will not do additional business with a person or business that is found to be not "presently responsible". The evidentiary standard is "preponderance of the evidence". 48 C.F.R. § 9.406-3(d)(3).
      ii) A suspension is a temporal action taken to address an immediate need to protect the integrity of a federal procurement or nonprocurement process. The evidentiary standard is "adequate evidence". 48 C.F.R. § 9.407-1(b)(1).
   b) The policy might also describe the types of suspension and debarment:
      i) A "statutory" debarment occurs where, by law, a specific type of violation automatically results in a debarment. For example, a Clean Water Act violation that requires debarment under certain circumstances for violators. 33 U.S.C. 1368(a).
      ii) A "discretionary" suspension or debarment occurs where the agency determines debarment or suspension is appropriate and in the government's best interests. There are two types of such discretionary actions:
         (1) Fact-Based Actions: Where evidence or information meets the preponderance of evidence standard for debarment or suspension. These include, for example, a violation of the terms of a government contract through willful failure to perform; commission of an unfair trade practice; and "any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor." 48 C.F.R. §§ 9.406-2, 9.407-2.
         (2) Court-Based Actions: Where judicial action such as an indictment, conviction, civil judgment, plea agreement, or sentencing meets the standard for debarment or suspension. 48 C.F.R. §§ 9.406-2(a), 9.407-2(b).
   c) Established causes for suspension and debarment actions should be included in an FCA policy:
      i) Debarment: Causes for debarment include conviction for embezzlement, theft, forgery, false statements, etc., as well as "any other cause of so serious or compelling a nature that affects the present responsibility of the contractor or subcontractor." 48 C.F.R. § 9.406-2(c).
      ii) Suspension: Causes for suspension are similar to those for debarment, except although an Indictment or Information (prior to conviction) does establish cause for suspension, a contract violation does not. 48 C.F.R. § 9.407-2(b).

3) **Referral.** Because FCA would rarely have circumstances arise requiring a suspension and debarment, an FCA policy should include a description of the actions required for referral to another agency to conduct debarment and suspension proceedings on behalf of the FCA. These procedures would be delineated through a Memorandum of Understanding and might include the following:
   a) Background and Purpose Statements that describe the underlying purpose for the agreement.
   b) Referral Procedures indicating how matters will be referred and possibly establishing FCA's obligation to provide documentation, consultation, financial and personnel resources, and litigation support should a contractor challenge the debarment or suspension in court.

c) Description of the Decision Process addressing the role of the final decision-maker, documentation requirements, hearing procedures, and which agency will enter final suspension and debarment orders into the System for Award Management (www.SAM.gov).
d) General Description of Remedies Available, such as suspension, debarment, and alternative actions.
e) Document Retention Requirements for suspension and debarment actions.
f) Points of Contact.
g) Modification Provisions for the Memorandum of Understanding.

In developing this policy, FCA might work with the Interagency Suspension and Debarment Committee (ISDC). The ISDC is a government-wide committee created by Executive Order 12549 to "increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs . . . ." Exec. Order No. 12549, *Debarment and Suspension*, 51 Fed. Reg. 6370 (Feb. 18, 1986). The ISDC assists Federal agencies in debarment and suspension programs and activities by drafting revisions to the government-wide nonprocurement suspension and debarment common rule; coordinating between agency suspension and debarment program leads; and providing a discussion forum to address current issues. Specifically, the ISDC Standing Subcommittee on Training provides assistance to Federal agencies in developing suspension and debarment policies and programs and would be an excellent resource for FCA in this context.

I welcome discussion on the matter. If more background information would be helpful, please let me know.

Elizabeth M. Dean

Elizabeth M. Dean
Inspector General

REFERENCES:

- Understanding the Basic Mechanics of a Successful Suspension & Debarment Program (General Services Administration)
- Suspension and Debarment - Building a Robust Program (General Services Administration)
- Don't Let the Toolbox Rust: Observations on Suspension and Debarment (Council of the Inspectors General on Integrity and Efficiency)
- Sample Memoranda of Understanding:
    - S&D Memo of Understanding - NRO and Air Force
    - S&D Memo of Understanding - WHS & PFPA-OGC and Air Force

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April 16, 2015

OIG MANAGEMENT ADVISORY 15-02

FEDERAL RECORDS ACT AMENDMENTS ON PERSONAL EMAILS AND TEXT MESSAGES AS FEDERAL RECORDS

On November 26, 2014, Congress amended the Federal Records Act and created new requirements for preservation of emails and text messages. Under 44 U.S.C. § 2911, if a Federal employee uses his or her personal email or text messaging account to send an email or text that constitutes a federal record, the employee must either cc: their official government email or text message account when sending the message, or within 20 days, forward the text or email to their official government account. The purpose of this amendment is to ensure that all electronic messages that constitute Federal records and are transmitted through a non-government, electronic messaging or email account, are captured in the agency's Federal recordkeeping system. This new law also states that an "intentional violation" of these requirements "shall be a basis for disciplinary action." 44 U.S.C. § 2911(b).

To ensure compliance with this new legal mandate, OIG recommends that FCA implement procedures and issue policy statements in order to achieve two goals. First, to ensure FCA employees are notified of this new requirement; and second, to ensure FCA policies and procedures on use of the Internet, text messaging, and email as well as policies on use of Agency equipment, reflect the new mandate. *See* PPM 902B, *FCA Internet, E-Mail, and Network Acceptable Use Policy (11/3/2011)* and *PPM 906, Personal Use of Farm Credit Administration Office Equipment* (8/28/2000).

If I may provide additional information, please let me know.

Elizabeth M. Dean
Inspector General

Attachment

Attachment 1

Presidential and Federal Records Act Amendments of 2014

Public Law 113-187, Sec. 10

44 U.S.C. § 2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts

"(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—

"(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

"(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

"(b) ADVERSE ACTIONS.—The intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

"(c) DEFINITIONS.—In this section:

"(1) ELECTRONIC MESSAGES.—The term 'electronic messages' means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

"(2) ELECTRONIC MESSAGING ACCOUNT.—The term 'electronic messaging account' means any account that sends electronic messages.

"(3) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given that term in section 105 of title 5.".

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September 16, 2015

OIG MANAGEMENT ADVISORY 15-03

ELIGIBILITY TO PARTICIPATE IN FCA 401(K) PLAN

The Farm Credit Administration (FCA) has implemented a new 401(k) plan for Agency employees. OIG has been provided with information raising questions regarding the eligibility of the FCA Chairman and Board Members to participate in this new plan, to the extent their participation increases their pay above statutory limitations.

Our review of relevant statutes and case law, and consultations with other Federal agencies including the Federal Deposit Insurance Corporation (FDIC), indicates that although it appears that the FCA Chairman and Board Members can participate in the FCA 401(k) plan, they cannot receive Agency contributions in the form of automatic or matching contributions unless receipt of these contributions does not improperly augment their salaries under 5 U.S.C. § 5536.

The Farm Credit Act fixes compensation of the FCA Chairman at Level III and Board members at Level IV of the Executive Schedule under 5 U.S.C. § 5315. 12 U.S.C. § 2242(d). This same subsection also states, "This subsection shall be subject to the provisions of section 5.11 [12 U.S.C. § 2245] of this Act." *Id.* Section 5.11 of the Farm Credit Act includes language authorizing the Chairman to "fix the compensation and number of, and appoint and direct, employees of the Administration." 12 U.S.C. § 2245(c)(2)(A).

Funding for employees' compensation and for salaries of the Board Chairman and Board Members is paid for through the FCA Administrative Expense Account established under 12 U.S.C. § 2250, and this account is funded through Farm Credit System institution assessments. The Farm Credit Act expressly states that this FCA Administrative Expense Account "shall not be construed to be Federal Government funds or appropriated moneys." 12 U.S.C. § 2250(b)(2). In sum, these statutes indicate that the FCA Chairman and Board Members' salaries are set by statute and that funding for salaries of the Board Chairman, Board Members, and FCA employees is paid from the FCA Administrative Expense Account which constitutes neither government nor appropriated funds.

In terms of retirement plans, FCA employees, including the Board Chairman, Board Members, and FCA employees, are eligible to participate in the Thrift Savings Plan (TSP) under 5 U.S.C. § 8401, et seq. The TSP provides Federal employees with an automatic 1% contribution of basic pay, and for FERS employees only (not for CSRS employees), the opportunity to receive up to 5% in matching contributions.

FCA's newly-created FCA 401(k) plan also provides FCA employees with automatic plan contributions of 1% of an employee's gross salary, as well as matching Agency contributions of up to an additional 2%. Thus, if an employee participates in the FCA 401(k) plan, he or she could receive 3% in additional compensation through the FCA 401(k) plan.

Should the FCA Chairman and Board Members plan to participate in this new 401(k) plan, their receipt of Agency contributions through the plan should be evaluated to ensure they comply with Federal law on compensation. Specifically, 5 U.S.C. § 5536 restricts a Federal employee from receiving additional pay where the employee's salary is set by statute: "An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance."

On its face, it appears 5 U.S.C. § 5536 applies to FCA Chairman and Board Members since their salaries are set by statute, and as presidential appointees, they fall under the definition of an "employee" under 5 U.S.C. § 2105(a)(1)(A)(for purposes of Title 5, an employee includes an individual who is appointed in the civil service by the President). Since section 5536 prohibits such employees from receiving additional pay unless specifically authorized by law, then it appears section 5536 would prohibit the FCA Chairman and FCA Board Members from receiving either the Agency's 401(k) plan automatic 1% contribution or any matching Agency contributions because these would increase these employees' compensation without specific statutory authority to do so.

A question arises, however, as to whether the Agency's contributions could be considered a "benefit" instead of compensation and whether this might impact application of section 5536. In its approval of the FCA 2015 Compensation Program, the FCA Board's approval of the new FCA 401(k) program characterized the new plan as a benefit program for the FCA. Case law, however, appears to indicate that courts generally consider retirement contributions to be compensation for Federal employees:

> While retirement pay is not actually disbursed during the time an individual is working for the Government, the amount of benefits to be received in retirement is based and computed upon the individual's salary and years of service. 5 U. S. C. § 8339(a). We have no difficulty concluding that civil service retirement benefits are deferred compensation for past years of service rendered to the Government. See, *e. g., Zucker* v. *United States*, 758 F. 2d 637, 639 (CA Fed.), cert. denied, 474 U.S. 842 (1985); *Kizas* v. *Webster*, 227 U. S. App. D. C. 327, 339, 707 F. 2d 524, 536, (1983), cert. denied, 464 U.S. 1042 (1984); *Clark* v. *United States*, 691 F. 2d 837, 842 (7th Cir. 1982). **<u>And because these benefits accrue to employees on account of their service to the Government, they fall squarely within the category of compensation for services rendered "as an officer or employee of the United States</u>**."

Davis v. Mich. Dep't of Treasury, 489 U.S. 803, 808 (1989)(addressing "taxation of pay or compensation for personal service as an officer or employee of the United States" under 4 U.S.C. § 111)(*emphasis added*)).

Another consideration is whether section 5536 only applies to compensation paid from appropriated funds. Compensation for FCA employees, including the FCA Chairman and Board Members is paid out of

FCA Administrative Expense Account which constitutes neither government nor appropriated funds. However, section 5536 does not appear to draw this distinction or otherwise limit application of the statute to salaries paid through appropriations. There is a reference to "disbursement of public money" in section 5536; however, it is describing a "service or duty" for which an employee cannot receive additional pay and does not appear to be a restriction on the types of funding addressed in the statute. Also, although section 5536 includes an exception that authorizes additional pay for employees where "specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance," this exception does not appear to apply to the FCA Chairman or Board Members. The reference to appropriations in this exception is not a limit on application of the statute. It indicates only that this exception to section 5536 does not apply unless a law specifically authorizes the additional payments **and** by law, funds have been authorized to pay the additional compensation.

With respect to the TSP, section 5536 has no impact on the FCA Chairman and Board Members' eligibility to participate in the TSP because there is specific statutory authority that authorizes their participation in the TSP. See 5 U.S.C. § 8401 et seq.[1]

In its approval of the FCA 2015 Compensation Program, the FCA Board's approval of the FCA 401(k) program included a recommendation stating: "Currently, the 401 K program does not extend to the FCA Board. Board members may be included in the program based on a complete legal and policy analysis, recommendation of the Trustees, and approval by the Board." FCA Board Notational Vote No. 14-26 (12/31/2014). OIG recommends that a complete legal analysis be completed, especially in light of the statutory limitations on salary augmentation, in order to ensure that the FCA Chairman and Board Members' participation in the FCA 401(k) plan is consistent with 5 U.S.C. § 5536.

If I may provide additional information, please let me know.

Elizabeth M. Dean
Inspector General

[1] If the FCA Chairman or Board Members are not participating in TSP matching, or are only receiving up to 2% in TSP matching contributions, then they could receive up to 3% in FCA contributions and/or matching from the Agency through the FCA's new 401(k) plan. This would be permitted because in doing so, they would not be receiving "additional" compensation, but simply the amount of compensation to which they are already entitled through existing and authorized TSP's matching provisions.