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THE WHITE HOUSE

WASHINGTON

March 18, 1986

MEMORANDUM FOR ROBERT H. TUTTLE  
DEPUTY ASSISTANT TO THE PRESIDENT AND  
DIRECTOR OF PRESIDENTIAL PERSONNEL

FROM: RICHARD A. HAUSER *Original signed by RAH*  
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Acting Chairman for Newly-Created  
Farm Credit Administration Board

You have asked for our views on the effect of the resignation of Donald Wilkinson as Acting Chairman of the Farm Credit Administration. In particular, you have asked if a current PAS could be detailed to act as Chairman under the Vacancy Act, 5 U.S.C. § 3347. Although the issue is not free from doubt, we cannot recommend proceeding under the Vacancy Act in this instance.

Section 201 of the Farm Credit Amendments Act of 1985, Pub. L. 99-205, restructured the Farm Credit Administration. Under the old system the President appointed, by and with the advice and consent of the Senate, the members of the Federal Farm Credit Board, and that Board, in turn, appointed the Governor of the Farm Credit Administration. The Governor basically served as the chief executive officer of the Administration. Under the new system, the President appoints, by and with the advice and consent of the Senate, a three-member Farm Credit Administration Board, including a Chairman who serves as the chief executive officer of the Administration.

Congress specified in Section 402 of the Act that the Governor under the old system serve as Chairman under the new system until confirmation of the new Chairman (and serve as the new Board until confirmation of at least two members of the new Board). The last Governor, now serving as Chairman, has advised that he will resign effective March 28. Although nominations for the new Board and Chairman have been announced, it is unlikely that the Senate will act on them prior to March 28.

It is unclear whether the Vacancy Act applies to positions, such as that of the new Chairman of the Farm Credit Administration, that have never been filled. The Vacancy Act may be invoked when "the head of an Executive department...dies, resigns, or is sick or absent...." 5 U.S.C. § 3345. Since there has as yet never been a head of the restructured Farm Credit

Administration, it is difficult to see how this language applies to the present case.

In addition, Congress has specifically addressed the question of how to handle the interim period before a Chairman is confirmed. Under Section 402, the Governor under the old system serves until the new Chairman is in place. The President, however, does not appoint the Governor -- the old Board does. It is therefore doubtful that the President has the power under the Vacancy Act to appoint an Acting Governor, to serve as Acting Chairman.

The preferable course of action would be to follow the normal delegation order for succession to the position of Governor and have the individual that would normally succeed to the responsibilities of Governor by virtue of delegation from the current Governor, serve as Acting Chairman. We have discussed this with the General Counsel of the Farm Credit Administration, and this is the course of action they contemplate. (Since the next in line to succeed the Governor is Marvin Duncan, one of the pending nominees, he will probably be skipped over to avoid complicating his confirmation).

RAH/JGR:jmk  
cc: RAHauser  
✓JGRoberts  
subject  
chron.



# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1 / 1 / 1Name of Correspondent: Robert H. Tuttle☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Acting Chairman for Newly-Created Farm  
Credit Administration Board.

## ROUTE TO:

## ACTION

## DISPOSITION

| Office/Agency (Staff Name) | Action Code    | Tracking Date YY/MM/DD         | Type of Response | Code     | Completion Date YY/MM/DD       |
|----------------------------|----------------|--------------------------------|------------------|----------|--------------------------------|
| <u>CUHOLL</u>              | ORIGINATOR     | <u>86103110</u>                |                  |          | <u>1</u> / <u>1</u> / <u>1</u> |
|                            | Referral Note: |                                |                  |          |                                |
| <u>CUAT18</u>              | <u>R</u>       | <u>86103111</u>                |                  | <u>S</u> | <u>86103113</u>                |
|                            | Referral Note: |                                |                  |          |                                |
|                            |                | <u>1</u> / <u>1</u> / <u>1</u> |                  |          | <u>1</u> / <u>1</u> / <u>1</u> |
|                            | Referral Note: |                                |                  |          |                                |
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|                            | Referral Note: |                                |                  |          |                                |
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|                            | Referral Note: |                                |                  |          |                                |

## ACTION CODES:

A - Appropriate Action  
C - Comment/Recommendation  
D - Draft Response  
F - Furnish Fact Sheet  
to be used as Enclosure

I - Info Copy Only/No Action Necessary  
R - Direct Reply w/Copy  
S - For Signature  
X - Interim Reply

## DISPOSITION CODES:

A - Answered  
B - Non-Special Referral  
C - Completed  
S - Suspended

## FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer  
Code = "A"  
Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

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THE WHITE HOUSE

WASHINGTON

March 7, 1986

MEMORANDUM FOR RICHARD HAUSER

FROM: ROBERT H. TUTTLE *rt/mj*  
SUBJECT: ACTING CHAIRMAN FOR NEWLY-CREATED FARM CREDIT  
ADMINISTRATION BOARD

Would you please assess the implications of the attached resignation of Donald Wilkinson, which will become effective on March 28, 1986.

I have been informed that the Farm Credit Amendments Act of 1985 has no provisions for this occurrence. Our candidates for this Board are still in clearance, and chances are slim that they can be confirmed by that time.

Please advise us, if, under the Emergency Act, we could detail a current PAS to the Farm Credit Administration as acting Chairman, and what kind of conflicts we need to be aware of.

Thank you.

3/16/86

to type

is he is going to be Chairman  
after he leaves on 3/28/86 - if  
the new folks are not confirmed  
and appointed?

Farm Credit Drive  
Manassas, Virginia 22102-5090  
883-4000

BOB,



Mark Sullivan  
& Susan Phillips  
have copies  
of this resignation.

There is no  
provision in the  
act to cover  
this event.  
I am checking  
meanwhile if the  
Emergency act  
can be used to  
designate a  
sitting PAS.

Kahja

Don Guslar

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

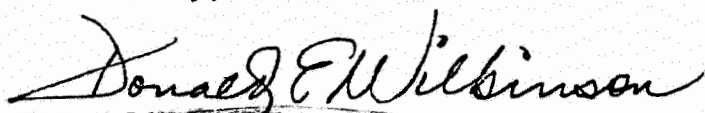
The Farm Credit Amendments Act of 1985 signed into law on December 23, 1985, provides for a 3-member full-time policy board appointed by the President with the Chairman serving as the Chief Executive Officer of the Farm Credit Administration. ~~Further authorized the President to designate the Acting Chairman until appointed to the board are made and confirmed by the Senate.~~

With the transitional responsibilities progressing very satisfactorily and the appointment and confirmation of the board anticipated in the near future, ~~I respectfully inform you of my resignation as Acting Chairman effective on or before Friday, March 28, 1986.~~

It has been my privilege to serve as the Chief Executive Officer of this regulatory agency for nine years, a period of extraordinary change within the agricultural credit sector. The new authorities granted the agency in the Amendments of 1985 provide the new board and the agency's very competent staff the opportunity to examine and regulate the borrower-owned Farm Credit System in a manner designed to ensure safe and sound financial practices to stockholders and investors as well as the public interest.

I pledge my continuing cooperation to achieving a smooth change of leadership within this agency.

Sincerely,

  
~~Donald E. Wilkinson~~  
~~Acting Chairman~~



12 USC 2241

c 2242

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~~\_\_\_\_\_~~

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~~Sch. # 10, page 4.~~~~other pit + liquidity~~

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A quorum shall consist of two members of the Board. The Board shall hold at least one meeting each month and such additional meetings at such times and places as it may fix and determine. Such meetings shall be held on the call of the Chairman or any two Board members. The Board shall adopt such rules as it deems appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

~~"(2) The members of the Board shall devote their full time and attention to the business of the Board. The Chairman of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5 of the United States Code. Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5 of the United States Code. Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the member's official duties without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States Government."~~  
This subsection shall be subject to the provisions of section 5.11 of this Act.

"SEC. 5.9. POWERS OF THE BOARD; CIVIL PROCEEDINGS.—The Board shall manage and administer, and establish policies for, the Farm Credit Administration. It—

"(1) shall approve the rules and regulations for the implementation of this Act not inconsistent with its provisions;

"(2) shall provide for the examination of the condition of, and general regulation of the performance of the powers, functions, and duties vested in, each institution of the Farm Credit System;

"(3) shall provide for the performance of all the powers and duties vested in the Farm Credit Administration; and

"(4) may require such reports as it deems necessary from the institutions of the Farm Credit System.

"SEC. 5.10. CHAIRMAN; RESPONSIBILITIES; GOVERNING STANDARDS.—(a) The Chairman of the Board shall be the executive officer of the Board and the chief executive officer of the Farm Credit Administration. The Chairman shall be responsible for directing the implementation of the policies and regulations adopted by the Board and the execution of all of the administrative functions and duties of the Farm Credit Administration. The Chairman shall be the spokesman for the Board and the Farm Credit Administration and shall represent the Board and the Farm Credit Administration in their official relations within the Government. Under policies adopted by the Board, the Chairman shall consult on a regular basis with the Secretary of the Treasury in connection with the exercise by the System of the powers conferred under section 4.2 of this Act, with the Board of Governors of the Federal Reserve System in connection with the effect of System lending activities on national monetary policy, and with the Secretary of Agriculture in connection with the effect of System policies on farmers and the agricultural economy.

"(b) In carrying out responsibilities under this Act, the Chairman of the Board shall be governed by general policies adopted by the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make and, as to third persons, all acts of the Chairman of the Board shall be conclusively presumed to be in compliance with such general policies and regulatory decisions, findings, and determinations.

no  
Devotion to duty

Salary

"

listed

listed



"(c) The Chairman of the Board shall enforce the rules, regulations, and orders of the Board. Except as provided in section 518 of title 28 of the United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman shall represent the Farm Credit Administration in any civil proceeding or civil action brought in connection with the administration of conservatorships and receiverships. Attorneys designated by the Chairman may represent the Farm Credit Administration in any other civil proceedings or civil action when so authorized by the Attorney General under provisions of title 28.

"SEC. 5.11. ORGANIZATION OF THE FARM CREDIT ADMINISTRATION.—The Chairman of the Board, in carrying out the powers and duties now or hereafter vested in the Chairman by this Act and acts supplementary thereto, may establish and fix the powers and the duties of such divisions or other units as the Chairman may deem necessary to the efficient functioning of the Farm Credit Administration and the successful execution of the powers and duties vested in the Board and the Farm Credit Administration. The Chairman of the Board shall appoint such personnel as may be necessary to carry out the functions of the Farm Credit Administration. Officers and employees of the Farm Credit Administration shall be subject to the Ethics in Government Act of 1978 and shall be considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of title 18 of the United States Code. Officers and employees of the Farm Credit Administration shall be subject to section 5373 of title 5 of the United States Code. The powers of the Chairman as chief executive officer of the Farm Credit Administration may be exercised and performed by the Chairman through such other officers and employees of the Farm Credit Administration as the Chairman shall designate. The operations of the Farm Credit Administration, and the salaries of members of the Board and employees of the Administration, shall be funded and paid for from the fund created under section 5.15 of this Act.

"SEC. 5.12. ADVISORY COMMITTEES.—The Chairman of the Board may establish one or more advisory committees in accordance with the Federal Advisory Committee Act and may appoint to such committee or committees individuals who are members of the Federal Farm Credit Board when such Board is terminated by the Farm Credit Amendments Act of 1985.":

- ✓(2) striking out section 5.13;
- ✓(3) redesignating section 5.14 as section 5.13, and, in section 5.13, as so redesignated, striking out "Governor" and inserting in lieu thereof "Board";
- ✓(4) redesignating section 5.15 as section 5.14, and, in the second sentence of section 5.14, as so redesignated, striking out "section 5.16(b)" and "section 5.16(a)" and inserting in lieu thereof "section 5.15(b)" and "section 5.15(a)", respectively;
- ✓(5) redesignating section 5.16 as section 5.15;
- ✓(6) redesignating section 5.17 as section 5.16, and, in section 5.16, as so redesignated—
  - (A) striking out "section 5.15" in the first sentence and inserting in lieu thereof "section 5.14";
  - (B) striking out "Federal Farm Credit" in paragraph (2) of the first sentence; and
  - (C) striking out "section 5.16" and inserting in lieu thereof "section 5.15"; and

THE WHITE HOUSE

WASHINGTON

March 25, 1986

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*  
SUBJECT: Farm Credit Conflicts Question

You asked that I handle a conflicts question that Fred Medero, General Counsel of the Farm Credit Board, raised with you. Medero wanted to know if Fran Ferguson, who sits on the Continental Bank board of directors, could be appointed to the Capital Corporation created by the Farm Credit Amendments Act of 1985, Public Law 99-205.

I raised the question with Jane Ley of the Office of Government Ethics. Jane advised that she saw no legal problems, since Capital Corporation officers or employees are, by law, not considered officers or employees of the Federal Government, see Section 4.28 G(c), Pub. L. 99-205, and, according to Ley, Ferguson is not a Government employee by virtue of his service on the Continental board (though the FOIC could have vetoed his nomination). I relayed this opinion to Medero.