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September 13, 2018

To: Chairman, Board of Directors

 Each Farm Credit Bank and Association

From: Dallas P. Tonsager

 Chairman and Chief Executive Officer

Subject: Guidance on Farm Credit Bank and Association Nominating Committees

One of the most important contributions that a voting stockholder of a Farm Credit bank or association can render is serving as a member of his or her institution’s nominating committee. It is through this service that member-owners actively influence their institution’s commitment to good governance. The Farm Credit Administration (FCA) issued regulations at § [611.325](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.325.docx) to address the use of nominating committees. FCA regulations §§ [611.320](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.320.docx) and [611.340](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.340.docx) also impact operations of the nominating committee.

This bookletter, through a question-and-answer (Q&A) format, provides guidance on organizing the nominating committees of Farm Credit banks and associations. It also provides guidance on a nominating committee’s authority in selecting nominees for all open stockholder-elected director positions and the permissible activities of directors, officers, employees, and agents in working with nominating committees. FCA has also published a pamphlet, “The Role of Farm Credit System Nominating Committees,” to help stockholders and prospective nominating committee members understand their responsibilities. We encourage System institutions to make the pamphlet available at all headquarters and branch offices. It is also available on FCA’s Website at [www.fca.gov](https://www.fca.gov/).

**Organizing a Nominating Committee**

1. **How are nominating committees formed?**

FCA regulation § [611.325](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.325.docx) requires each bank and association board of directors to establish and maintain policies and procedures on its nominating committee describing the formation, composition, operation, resources, and duties of the committee. Effective policies and procedures will also address items such as the number of committee members, selection of alternate members, the general eligibility requirements for committee membership, and committee duties in response to interim board vacancies. Although the policies and procedures will address certain aspects of nominating committee authorities, also having a nominating committee charter is a best practice. A charter normally outlines the recusal procedures, oaths of office, confidentiality requirements, quorums, and similar meeting requirements. The nominating committee may be structured in a manner to ensure geographic or commodity representation; however, the voting stockholders of that institution must be allowed to vote for every nominating committee position.[[1]](#footnote-2)

1. **Who is eligible to serve on a nominating committee?**

While authorized representatives of a Farm Credit bank’s[[2]](#footnote-3) stockholder-associations serve on its nominating committee, only owners of voting stock at an association may serve on its nominating committee. This means that when a loan has more than one obligor, resulting in shared ownership of the voting stock, any one of those obligors may serve on the association’s nominating committee. Further, the shared ownership of the voting stock means service on an association’s nominating committee cannot be restricted to the obligor designated to cast the vote for all obligors on the loan. As an additional safeguard, only one of those persons sharing ownership of the voting stock may seek the opportunity and serve on the nominating committee within an election cycle. Generally, out-of-territory borrowers holding voting stock in an institution may serve on the nominating committee unless the institution has a bylaw provision prohibiting such service and written notice of the restriction was provided to the out-of-territory borrower at the time of loan closing. An employee, director, or agent of the institution may not be elected to, or serve on, that institution’s nominating committee.

1. **How are candidates for service on the nominating committee identified?**

A nominating committee is a committee of voting stockholders acting on behalf of the System institution’s stockholders. Election to the nominating committee is best treated as a competitive process in which stockholders may name themselves or other voting stockholders for election to the committee. Candidates for election to the nominating committee may also be identified from various methods, including by names submitted via an institution’s Web site (when other means are available that do not require electronic access), telephone, voice mail, electronic mail, or other procedures. In addition, System institutions may, but are not required to, allow floor nominations of nominating committee candidates. Also, the current nominating committee may be given responsibility for identifying a list of candidates for service on the next nominating committee. Directors and management of the System institution should not name candidates for, or appoint members to, the nominating committee.

1. **How is the election of nominating committee members conducted?**

Voting stockholders of the institution must be provided the opportunity to cast a vote on every position on the nominating committee. Our rule at § [611.325](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.325.docx)(b) provides that associations may use either in-person or mail balloting procedures to elect nominating committees, whereas Farm Credit banks must use weighted voting, with no cumulative voting permitted. Voting procedure rules contained in FCA regulation § [611.340](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.340.docx) are applicable when electing nominating committees.

1. **How frequently are nominating committee members elected?**

The nominating committees of associations are restricted to a duration of one year, after which a new committee must be formed. Generally, associations arrange to elect new nominating committees each year at their annual meetings. Associations may allow committee members to serve subsequent 1-year terms, but are encouraged to establish term limits for nominating committee members. The frequency of elections for nominating committee members at the Farm Credit banks is established in each bank’s nominating committee policies, procedures, and bylaws. Farm Credit banks are not required to annually elect a nominating committee, nor limit committee membership to a one-year term.

1. **May nominating committee members receive pay or reimbursement from the institution?**

System institutions may adopt policies that allow paying nominating committee members a reasonable fee or provide repayment for actual expenses (e.g., travel related to committee meetings). System institutions considering such payments are encouraged to address how the pay is determined within written policies and to ensure that payments are provided in a nondiscriminatory manner to all committee members. These policies should also be established well in advance of the nominating committee’s director-nominee selection activities to avoid the appearance of influencing the nominations.

**Nominating Committee Duties and Authority**

1. **What is the primary duty of the nominating committee?**

It is the responsibility of each nominating committee to identify, evaluate, and nominate candidates for stockholder election to a System institution’s board of directors. The committee is expected to nominate at least two individuals for each board seat listed on the ballot. The nominated individuals are those whom the committee determines meet eligibility requirements to run for open director positions and best address desired director qualifications. The nominating committee should strive to nominate director-candidates representing its institution’s borrowing base.

1. **How does a nominating committee find two nominees for an open stockholder-elected director position?**

Each nominating committee is to be provided a current list of stockholders in the institution. This stockholder list is the one described in § [618.8310](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/618.8310.docx)(b). A nominating committee is expected to use the stockholder list and other resources to find willing director-candidates from all areas of the System institution’s territory and, as nearly as possible, all types of agriculture practiced within the territory. If requested by the nominating committee, management may provide a list of the institution's advisory committee members or any other persons with grassroots connections to the institution from which the nominating committee may identify potential director-candidates. Also, institutions may allow use of their Web sites, telephone message center, or other similar resources to collect names of individuals interested in becoming directors.

1. **What if a nominating committee is having trouble finding two nominees for an open stockholder-elected director position?**

While at least two nominees for each open stockholder-elected director position is expected, it may not always be possible. In those situations, the nominating committee must provide a written explanation to the institution’s board, describing the committee’s efforts to find at least two willing director-candidates and the reason(s) for disqualifying any director-candidate. The institution then must include a summary of this explanation in the voting information provided to stockholders.

1. **Who is eligible to serve as a stockholder-elected director?**

At Farm Credit Banks, only authorized representatives from the stockholder-associations may serve as stockholder-elected directors.[[3]](#footnote-4) At associations, only those owning voting stock in the association may serve as stockholder-elected directors of that association. For joint or entity borrowers, any one of the obligors sharing ownership of voting stock in the association may, on behalf of all the stock’s owners, seek election to the association’s board. In joint stockowner situations, only one person acting on behalf of all the stockowners may serve on the board and that person is not restricted to the obligor designated to cast votes on behalf of the borrower. If an entity is the sole owner of the stock, then the entity must identify whom from its operation may seek election to the association’s board on behalf of that entity. Preferably, the individual selected by the entity would hold a vested interest in the success of the association as well as the borrowing entity he or she represents.

1. **What factors affect eligibility for service as a director?**

The Act and FCA regulations set forth the following eligibility requirements for service on a System institution’s board of directors:

1. No employee of an association, whether the owner of voting stock or not, may serve on the association’s board of directors;
2. No person who was an employee or officer of either a Farm Credit bank or association within 1-year of the date when board service would begin may serve on the board;
3. No member of the nominating committee may seek election to the board during the same election cycle as the nominating committee is identifying director candidates;
4. No person who is legally incompetent may serve on a System institution’s board of directors;
5. No individual may, without FCA consent, serve on a System institution’s board of directors if that person has been convicted of any criminal offense involving dishonesty or a breach of trust; and
6. Out of territory borrowers holding voting stock in the association may serve on the association board of directors unless prohibited by the association’s bylaws.

A System institution may have additional standards for service on its board of directors that are contained within its bylaws or part of its Director Qualifications Policy.[[4]](#footnote-5) Eligibility and qualification standards apply to all persons seeking election to the board, including incumbents.

1. **How does the nominating committee know whether a director-candidate satisfies the director eligibility requirements of the Act and FCA regulations?**

FCA regulation § [611.330](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.330.docx) requires director-nominees to disclose specific information regarding eligibility or face disqualification. This regulation, combined with § [611.320](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.320.docx)(e), creates the expectation that every director-nominee will self-certify as to eligibility for service. Institutions do not have to place the name of any director-nominee on the ballot who has failed to self-certify that he or she is eligible to serve as a director of that institution. Additionally, the nominating committee may remind director-candidates of eligibility requirements and qualification standards established by regulation or institution policy.

1. **May the nominating committee access the institution’s records on individual director-candidates?**

A nominating committee is a committee of stockholders: it is not a board committee. As such, the nominating committee is not authorized access to information specific to a director-candidate that is not also available to all stockholders of the institution. In addition, FCA regulation § [618.8320](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/618.8010.docx)(a) prohibits institution staff from revealing data regarding “the character, credit standing, and property of borrowers and applicants for loans” absent a named exception. The nominating committee is not among the named exceptions in § [618.8320](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/618.8010.docx). Thus, nominating committees must not have access to protected information for any candidate or nominee.

1. **When should nominating committee members recuse themselves?**

The policies and procedures of the System institution should identify recusal situations and the process by which recusals are accomplished. Generally, nominating committee members would recuse themselves whenever their participation in committee activities presents a conflict of interest or the appearance thereof. For example, a nominating committee member who has a family member that is seeking election to the board may have to recuse him or herself from the nomination process. Recusals may leave the institution with fewer than the required minimum three committee members, so establishing alternate members or increasing the size of the committee beyond the minimum 3 members is encouraged.

1. **Do incumbent directors seeking re-election go through the nominating committee process?**

Incumbent directors are not exempt from the nomination process, nor may System institutions require their nominating committees to nominate incumbents. The nominating committee’s task is to nominate those whom it decides best meets the needs of the stockholders, the board of directors, and the institution overall. Incumbent directors, when expressing interest in running for reelection, may either submit their own names to the nominating committee (in the same manner as other stockholders) or be nominated from the floor.

1. **Do floor nominees for open director positions go through the nominating committee process?**

Floor nominations are the only exception to the nominating committee process. However, FCA regulation § [611.326](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.326.docx) provides that floor nominees must still satisfy director eligibility requirements and make the required director nominee disclosures of § [611.330](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.330.docx) before voting takes place.

1. **Does a nominating committee have a role to play when a board is downsized?**

When an institution’s board agrees to a downsizing plan, the plan must continue to provide for the election of at least one stockholder-director each year. It remains the responsibility of the nominating committee to select the nominees for any open elected stockholder-director position, and this decision may not be transferred to the board. Boards may also involve the nominating committee when identifying which seats to eliminate during a downsizing.

1. **When must a nominating committee identify director nominees for mid-term board vacancies?**

If a mid-term vacancy results in the board’s composition having fewer than 60 percent stockholder-elected directors, filling the vacancy will likely require a special election. Just as in the annual director elections, the nominating committee identifies the director-nominees for special elections. This is because the institution may not fill a vacant seat through an appointed director when the number of stockholder-elected directors is fewer than 60 percent of the board. As noted in Q&A 16, this does not prevent an eligible stockholder from seeking a floor nomination independent of the nominating committee.

**Activities of Directors, Officers, Employees, and Agents in the Director Nomination Process**

1. **What role may an institution’s board of directors have in the nomination process?**

Directors may discuss with the nominating committee their views on the role of the board and, if permitted in the institution’s policies, discuss the functions of the board, needed skills and expertise, time requirements to serve on the board, minimum attendance at board meetings, and mandatory training required of directors. Directors may also attend local gatherings to promote the benefits and rewards of board service and encourage voting stockholders to make themselves available as potential director-candidates or to serve on the nominating committee. In addition, directors may suggest names of potential candidates for director positions to the nominating committee. However, the board should avoid activities that could be construed as influencing the nominating committee's vote on its slate of nominees, particularly those directors seeking re-election to the board. For example, no director may be present when the nominating committee deliberates or votes on its slate of nominees.

1. **May an institution, its officers, employees, or agents assist the nominating committee in its duties?**

FCA regulation § [611.325](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.325.docx)(e) requires each Farm Credit bank and association to provide its nominating committee certain core documents. In addition, System institution staff may provide administrative support to the committee, such as setting up meeting spaces, setting appointments for the committee to speak with candidates, and collecting standard candidate information. Policies and procedures adopted under §§ [611.320](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.320.docx) and [611.325](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.325.docx) may also allow institution staff to provide names of potential director candidates to the nominating committee, but this opportunity must be available to any employee and not be confined to senior officers. The cooperative nature of System institutions means the voting stockholders determine who is qualified to serve on the board. FCA regulations at § [611.320](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/611.320.docx)(b) and (d) require institution staff to remain impartial in director elections and prohibits them from directly or indirectly influencing the nomination and election of directors.[[5]](#footnote-6) An institution’s impartiality in election policies should instruct staff to avoid activities that could be construed as intended to influence the nominating committee's vote on its slate of director-nominees. These activities include substituting the judgment of the nominating committee for that of the officer, employee or agent. Also, no staff or agent of the institution may be present when the committee deliberates or votes on its slate of nominees.

Copy to: The Chief Executive Officer of each Farm Credit Bank and Association

 Federal Farm Credit Banks Funding Corporation

 Section 4.25 Service Corporations

1. If representational positions are structured into the committee, System institutions should ensure out-of-territory borrowers are “assigned” an area. Otherwise, out-of-territory borrowers would be restricted to “at-large” positions. [↑](#footnote-ref-2)
2. CoBank, ACB, also has voting stockholders that are other than System associations and may, therefore, have nominating committee members that are representatives of the voting stockholder associations or other voting stockholders. [↑](#footnote-ref-3)
3. CoBank, ACB has separate Title III authority regarding its board composition. [↑](#footnote-ref-4)
4. These additional standards may not violate law or regulations and should be designed to preserve the member-owned, member-controlled cooperative structure of the System. [↑](#footnote-ref-5)
5. This does not affect the authority of any institution staff holding voting stock in the institution to cast a vote. [↑](#footnote-ref-6)