

# **Supplement to the FCA Informational Memorandum Providing Guidance for System Institutions Affected by the COVID-19 Pandemic**

## **2021 annual meeting and election activities**

The Farm Credit Administration issued an [informational memorandum on January 5, 2021, \(PDF\)](#) to provide updated guidance to Farm Credit System (System) institutions on issues related to the COVID-19 pandemic. The memorandum includes guidance regarding operational issues affecting System institutions during the COVID-19 pandemic. It also states that we will provide additional guidance in the form of supplements to the informational memorandum.

This is the second supplement to the January 5 informational memorandum. It discusses matters related to association annual meetings and elections during the 2021 calendar year. The guidance contained in this supplement reflects changes from the guidance on 2020 annual meetings contained in the previous supplement on the same subject and attached to the [May 4, 2020, informational memorandum \(PDF\)](#). This supplement is effective through December 31, 2021.

### **1. May an annual meeting be held exclusively in an online meeting space?**

Under § 611.110, an association may use an online meeting space when holding its annual meeting but not exclusively so. An association must always provide a physical meeting space for floor nominations and those not choosing to use electronic delivery of business communications. During the COVID-19 pandemic, FCA is allowing the requirement for a physical meeting space to be met through telephonic means (distinguishing telephonic means from communications involving computers in accordance with § 611.100(d)).

As provided in § 611.110(c), associations may use online meetings where appropriate safeguards are in place. To conduct online meetings, System institutions must have policies and procedures in place addressing how participants will access and use the online meeting space. (For the definition of an “online meeting” and “online meeting space,” see § [611.100](#)(d) and (e)). Any online meeting activity must also comply with part 609 of FCA regulations on conducting business communications electronically. For more information on electronic notices, see [Electronic delivery of borrower rights notices \(PDF\)](#), another supplement to the January 5 informational memorandum.

### **2. How may an association satisfy the “in-person” requirement of § 611.110(a) during the COVID-19 pandemic?**

Because of government restrictions limiting the size of gatherings during the COVID-19 pandemic, FCA will continue to temporarily treat the use of teleconferencing as complying with the in-person requirement of FCA regulation § [611.110](#)(a) for 2021 annual meetings.

All existing requirements related to floor nominations, voter security, and voter confidentiality continue to apply throughout the 2021 election process.

### **3. Who may attend an annual meeting?**

Annual meetings are open to all persons holding stock in the institution hosting the meeting. Stock ownership includes all forms of equity ownership as defined in section 4.3A(a)(2) of the Farm Credit Act of 1971, as amended (Farm Credit Act). To ensure no equity holder is mistakenly excluded, institutions are encouraged to verify participation using the stockholder list maintained under § 618.8310.

### **4. When offering an online meeting space, may an association require registration?**

An association may employ a registration process for online meeting access but should do so in a manner that does not prevent equity holders from joining the meeting, even if they decide to do so at the last moment. Because annual meetings are open to all the equity holders of an institution, the registration process should be able to accommodate all equity holders agreeing to use e-commerce. Associations should provide equity holders with information on accessing the meeting through both virtual and nonvirtual means.

### **5. May associations send reminders of an annual meeting only to those intending to participate through an online meeting space?**

Associations may not discriminate in favor of or against those choosing to participate in the electronic delivery of business communications. If a reminder of the meeting is sent, it must be sent to all equity holders. An association may only send electronic reminders to those who have consented to e-commerce.

### **6. When must the 2021 annual meeting and election activities occur?**

Each association schedules its annual meeting and related elections in accordance with its bylaws and policies. These activities usually occur within 12 months of the last annual meeting.<sup>1</sup>

In calendar year 2020, FCA allowed each association until December 31, 2020, to complete its annual meeting and election activities even if the meeting occurred more than 12 months after the 2019 annual meeting. We provided this leniency after the president declared a national emergency on March 13 for the COVID-19 pandemic, which led to an immediate nationwide six-week stay-at-home order. As a result of this order, several associations were unable to hold their 2020 annual meetings within 12 months of their 2019 annual meetings. In addition, some associations required extra time in 2020 to develop virtual meeting platforms after government authorities issued restrictions on in-person gatherings.

We recognize that the time extension we provided for holding 2020 annual meetings may impact scheduling plans for 2021 annual meetings. When an association establishes its 2021 meeting date, we do not believe it appropriate to hold the association to a 2020 meeting date that it may have chosen only because of the COVID-19 pandemic. As a result, FCA will not criticize the timing of an association's 2021 annual meeting if the association uses this

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<sup>1</sup> Section 4.15 (12 U.S.C. 2203) of the Farm Credit Act and our regulation at § 611.110(a) require associations to hold an annual stockholder meeting (i.e., a meeting held once every 12 months).

year to return to a normal annual meeting and election schedule. Specifically, each association may choose from one of the following options without being cited for failing to hold its 2021 annual meeting within 12 months of the last meeting:

- To hold its 2021 meeting using the scheduled timeframe of its 2020 meeting, provided it uses that schedule for future years also
- To revert to its pre-2020 annual meeting schedule
- To set a new annual meeting schedule for 2021 and subsequent years<sup>2</sup>

Each association is expected to keep its FCA examiner-in-charge informed of its 2021 annual meeting and election activities.

#### **7. How will the date chosen for the 2021 annual meeting and election activities affect term limits for directors and the nominating committee?**

If an association chooses a 2021 annual meeting schedule under question 6 that is more than 12 months after the 2020 annual meeting date, the institution may temporarily extend the service of an incumbent director occupying a seat up for election in 2021 to match the 2021 annual meeting date. Several associations may already have bylaw provisions allowing a director to stay in office until his or her replacement is elected.

Also, nominating committees ordinarily have a mandatory one-year term. However, if the option an association chooses under question 6 leads to more than 12 months between the 2020 and the 2021 annual meetings, the association may temporarily extend the services of its current nominating committee until the 2021 annual meeting date.

#### **8. Whom do I contact for more information?**

If you have any questions regarding this supplement, please email them to [ORPMailbox@fca.gov](mailto:ORPMailbox@fca.gov), or contact Jason Moore, Accountant, Office of Regulatory Policy, at (703) 883-4256.

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<sup>2</sup> We recognize that a System institution has corporate authority to establish within its bylaws the date of its annual meeting and related election activities, as long as it is consistent with law. Refer to sections 1.5(9), 2.2(16), 2.12(8), and 3.1(9) of the Farm Credit Act. According to the relief provided in this supplement, an association will not have to use, unless it so chooses, the 2020 annual meeting date for future annual meetings solely because of the annual (12-month) time constraint contained in law and regulation. In 2021, we are providing associations the one-time opportunity to re-establish a regular annual meeting schedule unconstrained by last year's meeting date.