

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

Electronic delivery of borrower rights notices

The Farm Credit Administration issued an [informational memorandum on January 5 \(PDF\)](#) to provide updated guidance to Farm Credit System (System) institutions on issues related to the COVID-19 pandemic. Unless otherwise stated, this January informational memorandum covers the period beginning January 1, 2021, and ending on June 30, 2021, or 60 days after termination of the COVID-19 national emergency, whichever is later. The memorandum includes guidance for working with borrowers affected by the pandemic. It also states that we will provide additional guidance in the form of supplements to the informational memorandum.

This is the sixth supplement to the January 5 informational memorandum. It discusses matters related to electronic delivery of borrower rights notices. The guidance contained in this supplement is unchanged from the guidance contained in the previous supplement on the same subject and attached to the [May 4 informational memorandum \(PDF\)](#).

1. May a System institution use electronic delivery for borrower rights notices?

FCA regulation [§ 617.7005](#) and all of [part 609](#) allow use of electronic delivery for certain borrower rights notices. However, the recipient must first affirmatively agree to use electronic communications. Also, before using electronic delivery, each System institution must have electronic commerce (e-commerce) policies and procedures establishing safeguards for e-commerce transactions in accordance with [§ 609.930](#). See also [§ 609.940](#) on internal systems and controls.

System institutions engaging in electronic communications with their customers must follow the e-commerce requirements of part 609 of FCA regulations.

2. Which borrower rights notices may not be sent electronically?

When a primary residence secures a loan, System institutions may not use electronic communications to send certain notices involving debt recovery actions, including those discussing collection actions, default, loan acceleration, a right to cure, distressed loan servicing, or foreclosure. This extends to loans with cross-collateral provisions, so an institution should be sure to determine whether a primary residence is involved.

3. How may a System institution obtain the consent of a borrower while practicing social distancing under the COVID-19 pandemic?

A borrower's consent to using electronic communications must be both affirmatively given and voluntary. An institution may ask for consent in writing (paper or email) or over the telephone. When the institution receives verbal agreement, it must confirm the borrower's consent, either by paper letter or email.

Consent must specify which business communications may be conducted electronically (e.g., election materials, payment information, interest rate disclosures, loan documents, reports). The institution may not require a borrower to receive information electronically. If a borrower does not consent to electronic communications, the institution must provide information in hard copy. The institution should also take reasonable measures to determine whether the borrower has the technology to receive the electronic communications that the institution sends.

When an institution asks borrowers for their consent to receive electronic communications, we expect the institution to also inform its borrowers that they can withdraw consent at any time. In addition, the institution should post a message prominently on its website reminding borrowers of their right to both participate in and withdraw from electronic communications with the institution. The institution should also explain that electronic communications do not have to be used for all subject matters and can be limited to only those a borrower chooses.

In accordance with [§ 609.940](#), the institution must have an adequate system of internal controls to verify the borrower's identity, to confirm that the borrower has the access needed to conduct business, and to ensure the security of the institution. We also recommend that the institution send all electronic communications in a way that allows the institution to confirm delivery and to verify that the communications have been seen — in case they go to a “junk,” “clutter,” or similar spam folder.

4. When a loan has multiple obligors, is consent required from all parties to the loan?

Each recipient of the communication must individually consent to using electronic delivery because no one recipient can bind (or prohibit) another recipient from using electronic delivery. As a result, an institution may end up using electronic delivery with some parties to the loan, but not others.

5. How is a certified mailing requirement satisfied under e-commerce?

The underlying law for e-commerce transactions specifically allows sending notices electronically even when another statute requires certified or registered mailings. The electronic equivalent of a certified mailing requires verifying or providing acknowledgment of receipt of electronic delivery in a documented manner that can be verified after the fact. See [15 U.S.C. 7001\(c\)\(2\)\(B\)](#).

6. Whom do I contact for more information?

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