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INFORMATIONAL MEMORANDUM



February 4, 2021

To: Chairman, Board of Directors  
Chief Executive Officer  
Each Farm Credit System bank, association, and service corporation

From: Kevin J. Kramp, Director  
Office of Regulatory Policy

Subject: Maintaining and using stockholder lists

The Farm Credit Administration is issuing this informational memorandum to provide Farm Credit System institutions with guidance on maintaining stockholder lists and using these lists to establish who should receive voting and financial information.

Stockholder lists are used for many purposes, such as distributing reports, serving as a resource for the nominating committee, or identifying who has voting rights. Institutions are also required to provide the main stockholder list to equity holders upon request, provided they are to be used for a permissible purpose.<sup>1</sup>

### **Stockholder lists**

*1. Is a list of all stockholders required? If so, what must it contain?*

Each Farm Credit bank and association is required by [section 4.12A](#) of the Farm Credit Act of 1971, as amended, to maintain a current list of all stockholders of the institution ("stockholder list"). The term "stockholder" is defined in FCA regulation § [619.9320](#) as encompassing all equity holders. The term is derived from the statutory definition of "stock" contained in [section 4.3A\(a\)\(2\)](#) of the Farm Credit Act.

As stated in FCA regulation § [618.8310](#), a stockholder list must identify by name all those owning an equity interest in the System institution, whether separately or jointly.<sup>2</sup> In the case of an entity stockholder, the list would include the entity's name and contact person(s). For each person or entity named, the list must state the address and the type of stock (equity interest) held.<sup>3</sup>

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<sup>1</sup> "Permissible purpose" is defined in § 618.8310(b)(3).

<sup>2</sup> Pursuant to FCA regulation § [611.1136\(a\)](#), this provision also applies to service corporations.

<sup>3</sup> For example, the list must indicate whether the person or entity owns voting, nonvoting, preferred stock, participation certificates, or allocated equities.

*2. How current does my institution's stockholder list have to be?*

Section 4.12A of the Farm Credit Act requires Farm Credit banks and associations to provide a current list of all stockholders within seven calendar days of a stockholder request for the list. Since a stockholder can request a stockholder list at any time, a current stockholder list should always be readily available. To meet this requirement, your institution ideally should update the list weekly.

*3. How does the accuracy of the stockholder list affect my institution's operations?*

The cooperative structure of the System relies on owner control and participation, supported by accurate and timely information to owner-stockholders and to their directors, who act on the stockholders' behalf.<sup>4</sup> In addition, the validity of elections and other shareholder votes are dependent on accurate lists. This is why it is so important to ensure that the stockholder list is accurate.

*4. How should my institution structure its stockholder list?*

You have some discretion in how you structure your list as long as only objective factors are used to sort the list. For example, to make your list easy to use, you could sort it by class of stock held; then — within each class — you could sort the list alphabetically or geographically. However, you must not include any loan-specific information or other protected data in the list maintained under § 618.8310 since it must be provided, unaltered, to any equity holder when requested. Your institution must also provide an unaltered list to your nominating committee as an essential resource.<sup>5</sup>

*5. May my institution use the stockholder list that it maintains under § 618.8310 for internal monitoring actions?*

Your institution may want to use its § 618.8310 stockholder list as the starting point in creating other lists for its internal operations. For example, an association may want to use it to create such lists as the following:

- The points of contact on loans having more than one obligor
- Individuals who have been designated to vote on behalf of joint obligors and entity borrowers
- Individuals who have consented to electronic communications<sup>6</sup>

An association could also use the stockholder list as a starting point for creating a list of young, beginning, or small farmers or ranchers.

These other lists must be clearly separated from the main list required by § 618.8310 to avoid misuse or inadvertent disclosures. These other lists would likely contain protected

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<sup>4</sup> Final rule, "Amendments to Regulations Governing the Farm Credit System," dated February 2, 2006 (preamble at [71 FR 5740 \(PDF\)](#)).

<sup>5</sup> FCA regulation § [611.325\(e\)](#). Also see [FCA booklet 043](#), updated September 13, 2018.

<sup>6</sup> These examples show information that is protected loan data, so it would not be on the main stockholder list created under § 618.8310. Also, these examples are similar in that they can change at any time upon a borrower's request.

data that may not be provided to your institution's equity holders. Lists containing protected data should only be used for the institution's internal operations.<sup>7</sup>

*6. Are there any other required stockholder lists?*

FCA regulations require the creation of a "record date list" for each voting event.<sup>8</sup> We define a record date list as "the list of names, addresses, and classes of stock held by stockholders in the Farm Credit institution who are eligible to vote as of a specific voting record date."<sup>9</sup> We define a voting record date as "the official date set by a Farm Credit institution whereby a stockholder must own voting stock in that institution in order to cast a vote."<sup>10</sup> Notably, a record date list is not the same as the main stockholder list discussed in § 618.8310 because it is used exclusively for voting events and does not include all equity holders.

*7. Why must my institution have a record date list in addition to the main stockholder list?*

One benefit of being a member-borrower of the System is the opportunity to elect the directors who will lead the institution. Another benefit is to vote on the capitalization bylaws for the institution and on certain significant organizational matters, such as a merger of institutions. These voting actions are restricted to stockholders owning voting stock as of a certain record date. This is why you are required to maintain a separate and distinct list of stockholders with voting rights as of the record date set for any voting event ("record date list").

*8. When should the record date be set for a voting event?*

The type of voting event should determine when a record date is set. Each voting event has its own time parameters, so our regulations do not always set a time limit on the record date list. Instead, as we explained in a 2015 rulemaking, your institution should set a record date as close as possible to the specific voting event.<sup>11</sup> This will minimize the instances where stockholders who joined the institution after the record date are excluded, and it will minimize the instances where stockholders who left the institution after the record date are included.

*9. Is there a recommended record date that my institution should use for elections?*

In a director election, the record date should be as close as possible to the date you issued your Annual Meeting Information Statement (AMIS). You are required to distribute the AMIS at least 10 days, but not more than 30 days, before the annual meeting date (or election date for elections held outside an annual meeting).<sup>12</sup> The AMIS must disclose the record date established for director elections,<sup>13</sup> and since most institutions use mail ballots, additional time passes before the ballots are issued (usually 5 to 15 days). At this point, the

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<sup>7</sup> Nominating committee activities are considered not internal operations for purposes of this informational memorandum.

<sup>8</sup> FCA regulations §§ [611.340](#), [611.1122](#), [611.1126](#), [611.1210](#), [611.1240](#), [611.1280](#), and [620.21](#).

<sup>9</sup> FCA regulation § [611.100\(j\)](#).

<sup>10</sup> FCA regulation § [611.100\(i\)](#).

<sup>11</sup> Proposed rule, "Revisions to Requirements for Mergers of Banks and Mergers of Associations," dated January 20, 2015 (preamble at [80 FR 2614 \(PDF\)](#)).

<sup>12</sup> FCA regulation § [620.20\(a\)\(1\)](#).

<sup>13</sup> FCA regulation § [620.21\(a\)\(2\)](#).

record date list may be as little as 15 days old or as much as 45 days old under the timeframes mentioned above. If you set a record date for director elections further away from the AMIS issue date, you will increase the number of new stockholders who will not be able to vote in their first director election, and you will increase the number of ballots mailed to former stockholders who are no longer allowed to vote on institution business.

*10. How should my institution set record dates for other voting events?*

For a merger voting event, it may be more appropriate to set a record date that is farther out than we recommend for a director election. In a merger, voting is only done in person or by proxy, which eliminates time concerns associated with mail balloting. Also, the complexity of a merger and the frequent use of proxies (which are submitted before the actual voting event) create a stronger argument for setting a record date further out. For this reason, we do not recommend setting a merger record date until you have received our preliminary approval for the merger. We also suggest that you do not rely on a standard timeframe for setting a merger record date because we may, as part of our preliminary approval, require informational meetings before the merger vote, which could delay the voting event.

Also, please note that there is a specific regulatory timeframe for setting a record date for voting on the termination of your status as a System institution. In this case, the record date must be within 70 days of the stockholder meeting where the termination vote will occur.<sup>14</sup>

## **Distribution of financial reports**

*11. To whom is my institution required to distribute financial reports?*

The Farm Credit Act requires System institutions to distribute financial information to their stockholders in the form of reports.<sup>15</sup> The distribution list for these reports is the list of all stockholders maintained under § 618.8310. For joint stockholders known to be living in the same household, multiple mailings of financial reports are not required. However, both the envelope and correspondence must be addressed to all the joint stockholders at that address.

FCA regulation § [620.1\(o\)](#) defines a “report” as the annual and quarterly financial reports, as well as notices issued under [part 620](#) (e.g., material events disclosures) and the AMIS. As such, the AMIS is included among these reports because it updates previously issued financial information.<sup>16</sup> Therefore, you must send the AMIS to *all* stockholders, regardless of voting status, using the current list maintained under § 618.8310. Nonvoting stockholders are equity holders of an institution and should be made aware of the board of director nominees and financial updates provided in the AMIS, even though those equity holders do not have voting rights in director elections.

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<sup>14</sup> FCA regulation § [611.1240\(b\)](#).

<sup>15</sup> [Section 5.17\(a\)\(8\)](#) of the Farm Credit Act.

<sup>16</sup> The AMIS is called an information statement in [§ 620.20\(a\)\(1\)](#), which is consistent with its title, “Annual Meeting Information Statement.”

*12. May my institution distribute financial reports to stockholders using electronic delivery?*

[Part 609](#) of FCA regulations allows institutions to use electronic delivery for all financial reports but only to those stockholders who have voluntarily consented to using electronic communications. You must use nonelectronic distribution for those stockholders who have not consented to receiving the reports electronically. When a loan has multiple obligors, each recipient of the communication must individually consent to using electronic delivery because no one recipient can bind another recipient to using electronic delivery. As a result, you may end up using electronic delivery with some parties to the loan, but not others.

Before using electronic delivery, your institution must have policies and procedures establishing safeguards for electronic commerce (e-commerce).<sup>17</sup> For additional guidance on using e-commerce, see [this supplement \(PDF\)](#) to the January 5, 2021, informational memorandum.

If you have any questions regarding this informational memorandum, 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>17</sup> FCA regulation § [609.930](#).