

## Response to Comments

The Council asserted that some associations interpreted the proposed regulation to require a change in their current method of nominating and electing directors because their stockholders have the option of voting by mail or in person at each association's annual meeting. Therefore, the Council requested that the proposed regulation be modified to permit associations that hold annual meetings in sectional sessions and conduct elections by mail ballot after the final sectional session to require in their bylaws that all floor nominations be made at the first sectional session. Section 4.15 of the Farm Credit Act of 1971 (Act), concerning the nomination of association directors, states "Nominations shall also be accepted from the floor." To comply with § 4.15 of the Act, associations must continue to afford a full, fair, and meaningful opportunity for members to make viable nominations from the floor. Section 620.21(d)(3) has been revised to emphasize this requirement.

The FCA believes allowing nominations at *any* session of an association annual meeting when mail balloting occurs after those sessions is the best method of ensuring members an opportunity to nominate candidates from the floor. Nevertheless, the FCA is aware that some associations may wish to retain bylaw provisions that provide for the acceptance of floor nominations only at the first session. The FCA is engaged in a continuing effort to reduce regulatory burden by eliminating regulations that prescribe specific operational or managerial practices<sup>1</sup> and amending regulations to provide flexibility, so long as the requirements of the Act are satisfied. Accordingly, the FCA has revised the final § 620.21(d)(3) to allow associations to prescribe that nominations from the floor will be accepted only at the first session. Further, the FCA notes that, if an association uses a combination of voting in person and voting by mail ballot, nominations from the floor can only be made at the first session so that every stockholder has the opportunity to vote on floor nominees.

One commenter suggested that the regulations be modified to expressly accommodate a pre-annual meeting mail balloting process. The commenter argued that it is impossible for associations employing a pre-annual meeting mail balloting process to comply with the floor nomination and

disclosure requirements of the proposed regulations because many stockholders have already voted by mail at the time a floor nomination is made. The commenter suggested that the FCA allow associations to accept nominations by mail. The suggestions were not incorporated in the final regulation for several reasons.

The FCA does not believe the use of mail ballots prior to an association's annual meeting is legally permissible. In addition to the slate of eligible candidates presented by the nominating committee, § 4.15 of the Act expressly requires associations to accept nominations "from the floor." A stockholder voting by mail prior to the annual meeting would not be able to vote for floor nominees because their candidacy would not be known until the meeting. In addition, a stockholder who has voted by mail prior to the annual meeting would not be able to revoke his or her mail ballot and vote in person at the meeting. Consequently, stockholders who vote by mail ballot prior to the annual meeting relinquish their rights to vote for candidates nominated from the floor at the meeting.

The FCA believes that accepting nominations solely by mail would discourage the borrowers' active participation in the management and control of System institutions. Mail nominations do not foster borrowers' active involvement in the director nomination and election process but rather may minimize the stockholders' role. Nominations by mail restrict stockholders' opportunity to discuss potential candidates for director positions. If nominations by mail were employed, the absence of consideration and discussion by members at the annual meeting would also inhibit the origination of viable nominations from the floor. Accordingly, the FCA has not modified the regulation to include a procedure to accept floor nominations by mail so that associations may conduct mail balloting prior to the annual meeting. The FCA notes that proxy voting in director elections is a permissible alternative voting method, although it is not specifically mandated by the Act.<sup>2</sup> A secret proxy ballot allows a stockholder who will be absent from the meeting to designate another person to cast his vote. Although proxies must be returned to the association prior to the start of the annual meeting, a stockholder attending the meeting can revoke his or her proxy prior to the

balloting at the annual meeting and vote in person for a floor nominee.

Commenters raised concerns about the appropriateness of the 10-day timeframe prescribed in proposed § 620.21(d)(5) for floor nominees to provide written disclosure information. Three commenters suggested that the 10-day period be shortened to 5 business days. Commenters argued that this would give floor nominees sufficient time to prepare and submit the required disclosure information without unduly delaying the mailing of ballots after the last sectional session. The Council stated that its members suggested a time period of 3 days or no more than 5 days, and it recommended that associations be allowed to set an appropriate timeframe in their bylaws. Consistent with its role as an arm's-length regulator, the FCA has revised the regulation to allow associations the latitude to prescribe in their bylaws the time period for floor nominees to submit the required disclosure. Associations should provide a sufficient time for floor nominees to compile the information necessary to comply with the regulatory requirements and ensure that the election process is completed expeditiously. Therefore, the time period for floor nominees to submit the required disclosure information was changed in the final rule from "within 10 days of nomination" to "within the time period prescribed by the association's bylaws." If the bylaws do not address this issue, the regulation requires that this information be submitted within 5 business days.

The Council also requested that the regulation, as proposed, be changed by adding the words "upon conclusion of all sessions" after "mail ballot" in § 620.21(d)(5). The FCA agrees that the suggested change clarifies the meaning of paragraph (d)(5) and modified the regulation accordingly.

The final regulation makes a technical correction to § 620.21(c)(3). (See 51 FR 8644, March 13, 1986). The technical correction deletes the words "during the last year fiscal year to date" and inserts the words "since the last annual meeting" to clarify that associations are required to disclose in the Statement any resignations by directors that stem from disagreements with the board that occurred during the time period between annual meetings.

### List of Subjects in 12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 620 of chapter VI, title 12

<sup>1</sup> The FCA Board's Policy Statement on Regulatory Philosophy (59 FR 32189, June 22, 1994).

<sup>2</sup> The rights of stockholders to vote by proxy is mandated by the Act in certain situations. See §§ 4.3A(c)(2), 7.8(a)(3), and 7.13(a)(3) of the Act.