



[6705-01-P]

FARM CREDIT ADMINISTRATION

12 CFR Part 612

RIN 3052-AC44

**Standards of Conduct and Referral of Known or Suspected
Criminal Violations; Standards of Conduct**

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) proposes to amend our regulations governing standards of conduct of directors and employees of Farm Credit System (FCS or System) institutions, excluding the Federal Agricultural Mortgage Corporation. The proposed rule would replace the original proposed rule, and would require every System institution to have or develop a Standards of Conduct Program based on core principles to put into effect ethical values as part of corporate culture.

DATES: You may send comments on or before [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or

through FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- E-mail: Send us an e-mail at reg-comm@fca.gov.
- FCA Web site: <http://www.fca.gov>. Select "Public Commenters," then "Public Comments" and follow the directions for "Submitting a Comment."
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments" and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted but, for technical reasons,

we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION, CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this proposed rule are to:

- Establish principles for ethical conduct and recognize each System institution's responsibility for promoting an ethical culture;
- Provide each System institution flexibility to develop specific guidelines on acceptable practices suitable for its business;
- Encourage each System institution to foster core ethical values and conduct as part of its corporate culture;

- Require each System institution to develop strategies and a system of internal controls to promote institution and individual accountability in ethical conduct, including by establishing a Standards of Conduct Program and adopting a Code of Ethics; and
- Remove prescriptive requirements that do not promote these objectives.

II. Background

Our standards of conduct regulations have not been significantly changed since their 1994 publication.¹ Over the past few years, there have been increasing concerns with governance, oversight, management practices and standards of conduct in the financial services industry. The proposed rule would update FCA's regulations in view of these concerns, and would address the ethical culture under which System institutions should operate.²

III. The Importance of Ethical Culture

¹ The original proposed regulation was published in the Federal Register on February 20, 2014, (79 FR 9649). The objective was to build on the existing standards of conduct rules by adding a few new provisions, clarifying or augmenting some current provisions, and providing additional flexibility for others. After receiving comments, FCA determined to use a different approach.

² "The Directors Role" booklet states that sound ethics and adherence to standards of conduct, among other things, are essential to effective oversight.

Public confidence in the integrity and ethical business practices of any financial institution is fundamental to its ongoing viability. Unethical or preferential business practices can damage a financial institution's reputation and lead to earnings and credit risk. Congress granted the Farm Credit System certain attributes that result in Government-sponsored enterprise (GSE) status. This status confers on System institutions additional responsibility to strive for high ethical standards and business practices.

IV. The Proposed Rule

This rule would establish core principles for ethical conduct. It would set forth basic tenets of ethical business practices to compel each System institution to foster a culture of loyalty, honesty, integrity and accountability. The proposed rule would set forth principles by which a System institution must do business. The System institution would be responsible for establishing and enforcing policies that expand on these principles, and for clearly communicating expectations for acceptable behavior to directors and employees. FCA believes that the proposed rule would promote ethical conduct. At the same time, because it is less prescriptive than the current rule, it could reduce regulatory burden.

A. Organization

The proposed rule would change the organization of the current rule. It would consolidate, rename and assign new numbers to some sections and remove other sections altogether. The following bullets summarize the changes:

- Proposed § 612.2136 would set forth the principles that serve as the foundation for the rule. It would substantively revise and rename current § 612.2135 "Director and employee responsibilities and conduct--generally".
- Proposed § 612.2137 "Elements of a Standards of Conduct Program," would consolidate current § 612.2160 "Institution responsibilities" and current § 612.2165 "Policies and procedures".
- Proposed § 612.2138 "Conflicts of interest, reporting of financial interests" would consolidate current "Director reporting" and current § 612.2155 "Employee reporting".
- Proposed § 612.2139 "Prohibited conduct" would consolidate current § 612.2140 "Directors--prohibited conduct" and § 612.2150 "Employees--prohibited conduct". It would also include the prohibitions in current § 612.2157 "Joint employees"

and current § 612.2270 "Purchase of System obligations".

- Proposed § 612.2137 would require that institutions develop policies and procedures with respect to agents to avoid conflicts of interests and would replace current § 612.2260 "Standards of conduct for agents".

B. Definitions [proposed § 612.2130]

The proposed rule would define "Code of Ethics," "resolved" and "Standards of Conduct Program". We would change the term "controlled entity and entity controlled by" to "reportable business entity" and modify the definition of "employee". We would omit the definitions of "officer" and "service corporation" as redundant with the definitions of "employee" and "System institution", respectively. We would omit the definition of "relative" as redundant with the definition of "family" in the current rule and "immediate family" in § 620.1(e). We would make the definition of System institutions more concise. These and other changes and clarifications are discussed below.

Agent. We would modify the definition of "agent" to clarify that an agent includes someone who currently represents a System institution as a fiduciary in contacts with third parties. The proposed rule adds the language "as

a fiduciary" to the definition of agent to explain that not all outside parties performing services for the System institution require the conflict of interest disclosure required of agents. For example, the contractor responsible for maintaining grounds would not be an agent. However, those with fiduciary responsibilities, such as lawyers, accountants, and those representing the System institution in contacts with third parties would be an agent. Each System institution should review the risks associated with its use of third parties and should expand or elaborate on the definition of agent, depending on the System institution's need for conflict disclosures in those relationships. Special consideration should be given to cyber security issues in third party relationships and information technology specialists should be subject to especially heightened ethical controls and confidentiality requirements.

Code of Ethics. The proposed rule would define "Code of Ethics" as a written statement of the principles and values the System institution follows to establish a culture of ethical conduct. The Code of Ethics directs professionalism and discourages misconduct so that the best interests of the institution and the System are advanced.

Conflict of interest. This definition would explain that a conflict can arise whenever a secondary or non-work-related interest might unduly influence or materially impact a director's or employee's work-related decision-making.

Employee. The proposed rule would define "employee" to mean any individual, including an officer, who works for the System institution. Every individual who works for the System institution, including temporary employees and interns, would be part of the ethical corporate culture, regardless of length or term of employment. System institutions should also consider whether and when third-party contractors should be included in the definition of employee or agent.

Entity. The proposed rule would add "sole proprietorship" to the definition of "entity" in the current rule and make other non-substantive changes.

Family. The proposed rule would include "significant others" in the definition of "family". The System institution could elaborate on this definition, and consider whether to include cousins or civil union partners.

Material. The definition of "material" in the proposed rule is not substantively different from the definition in

the current rule. Each System institution must set its own specific parameters for what would constitute a material financial interest or transaction. The dollar amount or value of material, in the context of a financial interest or transaction, should be determined by the System institution board. This should be based on the institution's needs for tracking and supervising the potentially conflicting business and financial activities of its directors and employees.

Ordinary course of business. We would clarify that an ordinary course of business transaction is one that is usual and customary "in the business in question", on terms that are not preferential. Each System institution must determine what activities and transactions are in the ordinary course of business. Generally, a person provides goods or services in the ordinary course of business if the transaction is usual or customary for the kind of business in which the seller or service provider is engaged or with the seller's or service provider's own usual or customary practices. So, for example, a borrower sells crop inputs (seed, fertilizer, etc.), and a System institution director or employee wishes to purchase the crop inputs. A transaction in the ordinary course of business would mean that the borrower sells the crop inputs at the price and

terms common to others in the industry. It would mean that the director or employee is typical of an ordinary purchaser of crop inputs in the industry. Also, the terms of the arrangement should be consistent with the other transactions, if any, between this borrower/seller and director or employee/buyer.

Another example involves services in the ordinary course of business, such as accounting, legal or medical. A System institution director may need a lawyer. The fact that the best lawyer is a borrower, does not preclude the director from engaging that lawyer for personal use, assuming no conflict, if the terms of the engagement are usual or customary practices in the legal field. The director must pay the lawyer at the going rate, the legal services must be of the kind the lawyer typically provides in the business, and the relationship cannot have any preferential terms or discounts.

Preferential. The proposed rule would not change the definition of "preferential" but would list it separately from the definition of "ordinary course of business".

Reportable business entity. The proposed rule would change the term "controlled entity and entity controlled by" and replace it with "reportable business entity". The proposed rule would provide that a reportable business

entity is an entity in which the reporting individual, directly or indirectly or acting through or in concert with one or more persons, owns a material percentage of the equity; owns, controls, or has the power to vote a material percentage of any class of voting securities; or has the power to exercise a material influence over management of policies of such entity. We would make this change to avoid confusion with the term "control" in the corporate context, and to allow the System institution discretion to determine how much interest represents a conflict. This determination may vary depending on whether the entity is private, public, profit, or not for profit. The intent of this provision is to require directors and employees to identify and report any business interest that is significant enough to create a conflict of interest or the appearance of a conflict of interest when considered from the perspective of an ordinarily prudent and reasonable person.

Resolved. We would define "resolved" to mean an actual or apparent conflict of interest that has been addressed with an action such as recusal, divestiture, approval or exception, job reassignment, employee supervision, employment separation or other action, with the result that a reasonable person with knowledge of the relevant facts would conclude that the conflicting interest is unlikely to

adversely affect the person's performance of official duties in an objective and fair manner and in furtherance of the interests and statutory purposes of the Farm Credit System.

Standards of Conduct Official. The proposed rule would modify the definition of Standards of Conduct Official (or Official). Because of the variety of institution sizes and resources, we do not require the Standards of Conduct Official to be a senior officer. However, the focus of this proposal is on accountability in ethical conduct; therefore, the Official must be an employee who is an officer appointed under § 612.2137(b), and must have the authority to report directly to the System institution board or designated board committee on standards of conduct matters. The Official should be an employee who is able to exert a positive influence in ethical matters on System institution directors and employees. The Official would be independent in his duties related to standards of conduct. It may be practical for some larger System institutions to appoint more than one Standards of Conduct Official.

Standards of Conduct Program. The proposed rule would define "Standards of Conduct Program" to mean the policies and procedures, internal controls, and other actions a System institution must implement to put into practice the

requirements of this rule. The Standards of Conduct Program is the totality of the policies and procedures, internal controls, audit, training, and other activities that promote ethical behavior.

C. Standards of Conduct--Core Principles [proposed § 612.2136]

As mentioned in Section A, we would substantively revise and rename current § 612.2135 "Director and employees responsibilities and conduct--generally" as proposed § 612.2136 "Standards of conduct--core principles." Proposed § 612.2136 would establish principles that directors and employees must follow in performing official duties. We specifically request comment on the effectiveness of the proposed principles in reaching the objective of fostering a culture of ethical conduct.

Paragraph (a) would establish core principles. Paragraph (b) would set forth certain basic minimum requirements to comply with the principles.

Proposed § 612.2136(a)(1) would set forth the first principle: to maintain the highest ethical standards of the financial banking industry, including standards of care, honesty, integrity and fairness. This principle establishes that these standards, important in the financial banking industry, are critical to the conduct expected of a GSE.

System institution directors and employees should consider ethical conduct beyond reproach a component of their job responsibilities.

System institution directors and employees must avoid self-serving practices and hold performance of their duties to the institution above personal concerns. They must not use their position for personal advantage. Proposed § 612.2136(a)(2) would set forth the principle that institution directors and employees must act in the best interest of the institution. Proposed § 612.2136(a)(3) would set forth the principle to preserve the reputation of the institution and the public's confidence in the Farm Credit System. Proposed § 612.2136(a)(4) would set forth the principle to exercise diligence and good business judgment in carrying out duties and responsibilities.

Proposed § 612.2136(a)(5) would state as a principle the responsibility to report, vet and make all reasonable efforts to resolve conflicts and the appearance of conflicts in business relationships and activities. As a corollary, proposed § 612.2136(a)(6) would set forth the principle that directors and employees must avoid self-dealing and acceptance of gifts or favors that may influence or have the appearance of influencing official actions or decisions. Proposed rules concerning acceptance

of gifts are set forth in proposed § 612.2137(d)(6).

Proposed § 612.2136(a)(7) would require directors and employees, if applicable, to fulfill fiduciary duties.

Proposed § 612.2136(b)(1) would require institution directors and employees to comply with their System institution's Standards of Conduct Program and Code of Ethics. Proposed § 612.2136(b)(2) would require institution directors and employees to comply with all applicable laws and regulations when carrying out official duties. Applicable laws and regulations would include all FCA regulations and Federal laws. Proposed § 612.2136(b)(3) would require institution directors and employees to participate in annual standards of conduct training, and to acknowledge participation with a written certification. Section 612.2136(b)(4) would require directors and employees to report, under § 612.2137(e), known or suspected illegal or unethical activities, and known or suspected violations of the institution's rules on standards of conduct and Code of Ethics. Reporting would be made to the Standards of Conduct Official or through the institution's hotline or other method consistent with the institution's procedures for anonymous reporting.

D. Elements of a Standards of Conduct Program [proposed § 612.2137]

The proposed rule would consolidate current § 612.2160 "Institution responsibilities" with current § 612.2165 "Policies and procedures," in proposed § 612.2137 "Elements of a Standards of Conduct Program." This section would require each System institution to establish a Standards of Conduct Program that incorporates the principles established in proposed § 612.2136 and provide resources for its implementation. A System institution may continue to use its existing Standards of Conduct Program if it incorporates the core principles and satisfies the requirements of this proposed rule.

The Standards of Conduct Program would set forth specific guidelines on acceptable and unacceptable business practices. Policies and procedures should include requirements and prohibitions as necessary to promote public confidence in the institution and the System, and further the objectives of the principles and this proposed rule. Each System institution should enhance these requirements with comprehensive rules as necessary to meet System institution goals. Each System institution would be required to allocate resources to administer the Standards of Conduct Program. This could include hiring personnel in addition to the Standards of Conduct Official, if necessary, to assist in responsibilities such as reviewing

reports, providing training, and conducting investigations. It could include use of outside counsel, especially if the Standards of Conduct Official is not an attorney, and whatever additional resources are necessary to implement the Standards of Conduct Program and promote the ethical culture of the System institution.

The System institution board is ultimately responsible for implementing the principles and for compliance and oversight of the Standards of Conduct Program. Proposed § 612.2137(a) would require each institution to establish a Standards of Conduct Program that sets forth the core principles in § 612.2136. Proposed § 612.2137(b) would require the board of directors to appoint a Standards of Conduct Official, defined as an employee, who would be responsible for carrying out the duties set forth in proposed § 612.2170. To carry out these responsibilities and promote the ethical culture required by the proposed rule, the Standards of Conduct Official should have a close relationship with the employees of the System institution and be in a position of authority and trust. Because the board of directors is ultimately responsible for compliance, the Standards of Conduct Official must have direct access to the board or designated board committee on standards of conduct matters. The Standards of Conduct

Official would be required to meet periodically with the board or designated board committee as proposed in § 612.2170(g).

Proposed § 612.2137(c) would require each System institution to adopt a written Code of Ethics that states the institution's principles and values and guides directors and employees in ethical conduct. These principles and values must include standards for appropriate professional conduct at the workplace and in matters related to employment. The Code of Ethics would be a component of the Standards of Conduct Program. To demonstrate commitment to its values and to provide transparency and accountability in ethical conduct, the proposed rule requires each System institution to post its Code of Ethics on the System institution's external (public) Web site.

Proposed § 612.2137(d) would require each System institution to establish policies and procedures to put into operation the Standards of Conduct Program and to comply with the provisions of this proposed rule.

Proposed § 612.2137(d)(1) would require each System institution to establish policies and procedures for reporting. At a minimum, these would include reporting requirements sufficient to identify any conflicts of

interest, actual or apparent; any business transactions with directors, employees, borrowers and agents that are not in the ordinary course of business; any gifts; names of family members; and reportable business entities (or other related party as determined by the System institution).

As defined in proposed § 612.2130, ordinary course of business means a transaction that is usual and customary in the business in question, on terms that are not preferential. We believe the System institution is in the best position to determine that which is an ordinary course of business transaction and that which is favorable or preferential in its region. Therefore, each System institution should develop policies and procedures to identify transactions that are preferential and not in the ordinary course of business and report the transactions pursuant to § 612.2137(d)(1)(ii).

Generally, ordinary course of business means business procedures and practices consistent with usual customs and practices in that line of business. Is the transaction of a type that other similar businesses and their customers would engage in as ordinary business? Is the transaction, and its terms, common in the specific industry? From an industry-wide perspective, is the transaction of the sort

commonly undertaken? The practices of others in the industry would be helpful in making the determination.

Another consideration is the parties' own past relationship and past practice. Is the transaction ordinary in the context of the relationship already existing between the parties? A review of the parties' prior conduct and practices would be helpful in making this determination.

Certain special situations bear discussion. Transactions between a director/employee and that director's/employee's loan officer should be specifically addressed, and the general nature of these transactions should always be reported because of the high potential for conflict, even if the transactions are in the ordinary course of business. System institution policies and procedures should require reporting for other ordinary course of business transactions that may have a high potential for conflict.

Compliance with proposed § 612.2137(d)(1) would require the System institution to develop a method to monitor related-party transactions and make sure that directors and employees do not transact business on preferential or favorable terms and do not take advantage of their employment or position with the Farm Credit System in their business affairs. The policies and procedures

should include specific dollar amounts as appropriate, and other criteria for pre-event versus post-event reporting. Reporting should include, at a minimum, financial transactions (recurring or one-time), and other relationships or arrangements (monetary or non-monetary) between directors, employees, agents or borrower/stockholders.

Proposed § 612.2137(d)(2) would require each System institution to establish policies and procedures to address how conflicts of interest would be resolved through an action such as recusal, divestiture, approval or exception, job reassignment, employee supervision, employment separation or other action. To resolve conflicts of interest, the director or employee should cooperate with the Standards of Conduct Official. Policies and procedures would include action taken in the event a conflict cannot be resolved. Compliance with proposed § 612.2137 requires that the System institution establish a process to report, vet, and resolve conflicts of interest effectively. It would be read in tandem with proposed § 612.2138, which speaks directly to directors and employees and sets forth their reporting requirements.

Agents, consultants and other third parties who represent the institution to the public, or upon whom the institution

relies for professional services, must be bound by the same ethical responsibilities to the System institution and its borrower/shareholders as directors and employees. Proposed § 612.2137(d)(3) would require each System institution to establish policies and procedures to make sure that agents file conflict of interest disclosures, and that agents, consultants and other third-party contractors avoid misconduct and conflicts of interests. These third parties must be notified that their engagement is conditioned upon their agreement to avoid misconduct and conflicts of interest. These policies and procedures should include a mechanism to report, vet and resolve any conflicts of interest between third parties representing the institution and the System institution itself or its directors and employees. The System institution should also consider having the agent or consultant acknowledge its Code of Ethics, depending on the relative importance of the agent or consultant services to the institution. Consideration should be given to the sensitivity of the services, for example third-party performers of Internet technology or cyber security services should be subject to a high degree of scrutiny. Consideration also should be given to whether the third party is covered by a professional code or standard that prescribes ethical conduct.

The rule provides specific authority to each System institution to monitor and enforce its standards of conduct rules and Code of Ethics. Violators should be subject to specific and appropriate action, as determined by the System institution. Proposed § 612.2137(d) (4) would require each System institution to establish policies and procedures for the enforcement of its Standards of Conduct Program. This would provide the mechanism by which the institution takes action against any person who violates the standards of conduct rules, Code of Ethics, or these regulations. This section places accountability for enforcing the ethical conduct outlined in this proposed rule and fundamental to the health and viability of the System institution directly with the System institution itself.

Proposed § 612.2137(d) (5) would require each System institution to establish policies and procedures to apply and enforce the prohibitions set forth in proposed § 612.2139 and any other provision in this subpart A.

Proposed § 612.2137(d) (6) would require policies and procedures to prohibit gifts. These should include a definition of gifts, and explanation of prohibited sources. Directors and employees are prohibited from accepting gifts or favors that could be viewed as offered to influence or

give the appearance to influence decision-making or official action or to obtain information. A System institution may determine that certain gifts, for example those valued at \$25.00 or less, are so low in value (de minimis) that they could not be perceived as influencing decision-making or official action. The System institution may allow its directors and employees to accept gifts of little or no value. However, it may do so only if it has policies and procedures in place that set forth controls that are consistent with the core principles established in this proposed rule and with the requirements of Federal laws including FCA regulations and the Federal Bank Bribery Act³. These policies and procedures would set forth the maximum value of any individual gift that a director or employee may accept, and the maximum value of gifts in the aggregate per year that a director or employee may accept. The policies and procedures would include reporting requirements for gifts and rules for disposing of impermissible gifts.

Proposed § 612.2137(e) would set forth minimum requirements for internal controls for all aspects of the System institution's Standards of Conduct Program.

³ See 18 U.S.C. 215 and 18 U.S.C. 20.

Proposed § 612.2137(e) (1) would require the System institution to maintain all reports generated under subpart A of the Standards of Conduct regulations including those required by § 612.2137(d) (1) and records on any ethics investigations and determinations, for a minimum of 6 years. Proposed § 612.2137(e) (2) would require internal controls to preserve the confidentiality of reports and other information maintained under the Standards of Conduct Program.

Proposed § 612.2137(e) (3) would require each System institution to establish a process for anonymous reporting of suspected standards of conduct or Code of Ethics violations. A reporting hotline is most effective when both internal parties (directors and employees) and external parties (agents, borrowers, shareholders, applicants, and others) can report a complaint, misconduct, or tip for corrective action without fear of retribution such as termination of employment, suspension, or other similar action.

Proposed § 612.2137(e) (4) requires periodic review of the Standards of Conduct Program for consistency with current practices at the System institution, financial banking industry best practices, and FCA regulations.

Internal controls to prevent self-dealing and conflict situations should be monitored and evaluated with an effective audit program. Proposed § 612.2137(e)(5) would require each System institution to arrange for periodic internal audits of the Standards of Conduct Program. The audit would identify weaknesses, review and measure the effectiveness of the Standards of Conduct Program, and prescribe necessary corrective actions. The audit would cover the entire System institution and include all activities conducted by the System institution including through an unincorporated business entity (UBE), such as those organized for the express purpose of investing in a Rural Business Investment Company pursuant to § 611.1150(b). The audit would test for compliance and recommend corrective action as necessary, and the results should be reported directly to the institution's board or designated board committee. The scope and depth of the audit would be determined by the needs of the institution. The System institution would document the audit process and results.

Proposed § 612.2137(f) would require each System institution to establish and provide standards of conduct training at least annually. This section should be read in tandem with § 612.2170. The institution's Standards of

Conduct Program and ongoing training would encourage directors and employees to obtain counsel from the Standards of Conduct Official prior to engaging in transactions that could be perceived as preferential or not in the ordinary course of business. The Standards of Conduct Official could then provide advice to the director or employee on the permissibility of the transaction under the institution's Standards of Conduct Program and these proposed rules, or prescribe actions that would be necessary before or following the transaction to resolve a conflict of interest or the appearance of a conflict of interest. Training must include updates, if any, to the Standards of Conduct Program and Code of Ethics, and discussion of the System institution's procedures for the anonymous reporting of violations. It must include education on prohibited conduct, conflicts of interest and reporting requirements. Training on fiduciary responsibilities would be required, although the System institution may elect to have that service performed by outside counsel.

E. Conflicts of Interest, Reporting of Financial Interests [new § 612.2138]

It is incumbent upon each System institution to adopt the standards of conduct core principles, to make them part

of the culture and lexicon of every director and employee. In addition, certain prescriptive rules directed to employees and directors are necessary to realize a baseline ethical standard. The baseline prescriptive requirements are set forth in proposed §§ 612.2138 and 612.2139, and each System institution should expand upon these prescriptive requirements as appropriate.

Section 612.2138 of the proposed rule would specifically address conflicts of interest and reporting of financial interests. This section would require directors and employees to take affirmative action to identify, report and resolve conflicts or potential conflicts of interest of which they are aware. It is intended to compel each director and employee to take ownership of and invest in ethical responsibilities.

Proposed § 612.2138(a) would require each director and employee to identify, report and resolve conflicts and potential conflicts. Proposed § 612.2138(b) would require that if a director or employee has a conflict of interest in a matter, transaction or activity that is subject to official action, or that is being considered by the board of directors, then that director or employee must disclose relevant non-privileged information including the existence, nature, and extent of his or her interests;

refrain from participating in the official action or board discussion on the matter, activity or transaction (§ 612.2138(b)(2)); and not vote on or influence the decision-making on the matter, transaction or activity (§ 612.2138(b)(3)). Working together with other provisions of the proposed rule, this section is intended to bolster loyalty to the System institution and to reinforce personal responsibility and accountability in avoiding conflicts and acting ethically.

Proposed § 612.2138(c) would require a director or employee to report conflicts of interest to the Standards of Conduct Official at year-end and at such other times as may be required by the institution. At a minimum, this section would require reporting of information sufficient for a reasonable person to make a conflict of interest determination on any business matter to be considered by the System institution. Reporting consistent with part 620 is also required.

Proposed § 612.2138(c)(1) would require directors and employees to report any interest that they may have in any business matter before the System institution. This would include any interest in a loan, or in an entity making a loan application, or any other direct or indirect interest

in a matter that pertains to the business of the System institution.

Proposed § 612.2138(c) (2) would require directors and employees to report the names of any family member who has transacted or is currently transacting business with the System institution. The System institution should determine how best to capture reporting of current transactions, and should consider whether to require a director or employee to report the name of a family member who has engaged in a transaction in the past.

Proposed § 612.2138(c) (3) would require directors and employees to report all material financial interests with any director, employee, agent, borrower or business affiliate of the System institution, supervised institution or supervising institution.

Proposed § 612.2138(c) (4) would require directors and employees to report any matter required to be disclosed by § 620.6 of this chapter, in accordance with System institution policies and procedures.

Proposed § 612.2138(c) (5) would require directors and employees to report the names of reportable business entities.

Proposed § 612.2138(c) (6) would require directors and employees to report the names of any person residing in the

home if such person transacts business with the System institution, or any institution supervised by the System institution.

All the reporting in this section would be based on information the reporting individual knows or has reason to know.

F. Prohibited Conduct [proposed § 612.2139]

As stated in Section A, we would consolidate current § 612.2140 "Directors--prohibited conduct" with current § 612.2150 "Employees--prohibited conduct," in proposed § 612.2139 "Prohibited conduct." We would also incorporate current § 612.2157 "Joint employees" and current § 612.2270 "Purchase of System obligations" requirements in this section. Most of our revisions to the prohibited conduct rules are straightforward and provide clarification of an intended prohibition. For example, we would clarify that lending transactions with a party related to the System institution such as a director, employee or a borrower is permitted, but only if on terms that are not favorable or preferential. We would also add a new provision that would prohibit directors and employees from acting inconsistently with the core principles.

Proposed § 612.2139(a) would set forth the general prohibitions and their related exceptions for directors and

employees, and proposed § 612.2139(b) would set forth additional prohibitions specifically for employees with their related exceptions.

Proposed § 612.2139(a)(1) would prohibit acting inconsistently with the core principles in proposed § 612.2136.

Proposed § 612.2139(a)(2) restates the director and employee prohibitions on participation in matters affecting financial interests in current §§ 612.2140(a) and 612.4150(a), respectively.

Proposed § 612.2139(a)(3) restates the director and employee prohibitions on use of information in current §§ 612.2140(b) and 612.4150(b), respectively.

Proposed § 612.2139(a)(4) would prohibit directors and employees from soliciting, obtaining or accepting, directly or indirectly, any gift, fee or other compensation that could be viewed as offered to influence decision-making, or official action or to obtain information. The System institution may determine that a gift that has an insignificant value would not trigger this prohibition, and may develop rules under which directors and employees may accept de minimis gifts. However, these System institution rules must be consistent with Federal rules and regulations including FCA rules and the Federal Bank Bribery Act. De

minimis gifts may be accepted only as set forth under the institution's properly established policies and procedures (see § 612.2137(d)(6)).

Proposed § 612.2139(a)(5) would provide that, among other things, a director or employee may not knowingly purchase or otherwise acquire, directly or indirectly, unless through inheritance, any interest (including mineral interests) in any real or personal property that is currently owned, or within the 12 past months was owned, by the System institution, supervising institution or any supervised institution as a result of foreclosure, deed in lieu, or similar action. Like the current rule, the proposed rule would allow a director to purchase such property only through public auction or similar open, competitive bidding. By open competitive bidding, we mean bidding that is both competitive, allowing involvement of all interested parties, and open and unsealed. Open competitive bidding affords all interested parties an opportunity to counter-bid. The advantage to open bidding is that it discourages unethical behavior or favoritism. A public auction can be accomplished on-line only if there is an opportunity for all who may be interested in the auction to participate in the bidding process. A director may purchase acquired property through open competitive bidding

only if the director did not participate in the decision to foreclose or dispose of the property, including setting the sale terms, and did not receive information that could provide an advantage over other potential bidders or purchasers of the property.

The proposed acquired property prohibitions do not reflect a substantive change from the current rule. We made revisions because the scope of misunderstanding and misapplication of the original provision warranted further clarification of the current rule's intent. The prohibition would apply to collateral acquired by a System institution, including collateral acquired directly or through use of an acquired property UBE. This provision of the rule does not change or alter any rights a borrower may have under title IV, part C of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199-2202, or FCA regulations promulgated thereunder.

Proposed § 612.2139(a)(6) would provide that a director or employee must not directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the System institution, supervising institution, or supervised institution or a borrower or loan applicant of the System institution. This section prohibits a director or employee from entering into a lending or borrowing transaction with

those who may have a financial relationship with the System institution. Lending and borrowing relationships include providing loan guarantees or stand-by letters of credit and similar forms of financial obligation.

FCA recognizes that there are many situations in which a director or employee may enter into lending transactions or business relationships that involve other directors, employees, agents, borrowers, or loan applicants in the ordinary course of business. Financing in the ordinary course of business, as discussed earlier, is not a prohibited lending transaction. Each System institution should develop policies and procedures governing ordinary course of business transactions that include rules for reporting.

The proposed rule requires every System institution to develop policies and procedures for directors and employees to identify, vet, and resolve any lending transactions with prohibited sources that are on preferential terms. Evidence of a director or employee engaging in a preferential business arrangement with a borrower or other party related to the System institution would be a safety and soundness concern and might be evidence of non-compliance.

Proposed § 612.2139(a)(7) restates the prohibitions in current § 612.2270 on purchasing System obligations; and

§ 612.2165(b) (14) on purchasing or retiring preferred stock in advance of the release of material non-public information.

Proposed § 612.2139(b) (1) restates the prohibition in current § 612.2150(d) on serving as an officer or director of an entity other than a System institution, except that the proposed revisions would not include the exception in current § 612.2150(d) that allows an employee of a Farm Credit Bank or association to serve as a director of a cooperative that borrows from a bank for cooperatives. This exception has been dropped because of the conflicts that would arise as a result of merger activity. Proposed § 612.2139(b) (2) and (b) (3) restate the prohibitions in current § 612.2150(j) on acting as a real estate agent or broker; and current § 612.2150(k) on acting as an agent or broker; respectively. Proposed § 612.2139(b) (4) restates the prohibition in current § 612.2157 on joint employees, but allows an employee of a bank to serve as an officer of a supervised association in its district in an extraordinary situation if: both boards authorize the service, the duties and compensation at each institution are set forth in writing, and reasonable notice prior to the assumption of duties is provided to FCA.

G. Standards of Conduct Official [proposed § 612.2170]

The proposed rule would enhance the role of the Standards of Conduct Official. The System institution board of directors is responsible for creating and fostering the institution culture, and for development of the Standards of Conduct Program. The institution board is also responsible for compliance with the Standards of Conduct Program. Proposed § 612.2170(a) would require that the Standards of Conduct Official must implement the Standards of Conduct Program. The Standards of Conduct Official is the authority to whom directors, employees, agents and consultants turn for advice on conflict of interest situations. Proposed § 612.2170(b) would require the Standards Conduct Official to provide guidance and information to directors and employees on conflicts of interest.

Proposed § 612.2170(c) should be read in tandem with proposed § 612.2137(f) and would require the Standards of Conduct Official to provide annual and new director and employee training. The training would review the institution's standards of conduct rules and the Code of Ethics and discuss any updates; review and discuss the anonymous reporting hotline or other reporting procedure; prohibited conduct; directors' and employees' fiduciary duties (this training could be separate from the training

of employees who do not have fiduciary duties); the importance of identifying conflicts of interests and reporting of financial interests; and annual and ongoing reporting requirements.

The proposed rule would require the Standards of Conduct Official to report periodically to the board of directors or designated board committee on the Standards of Conduct Program and Code of Ethics matters. Proposed § 612.2170(d) would require the Standards of Conduct Official to help directors and employees identify conflicts of interest and report financial interests, in accordance with proposed § 612.2138. The Official would make written determinations on conflicts of interest and determine how to resolve them including by recusal, divestiture, approval or exception, job reassignment, employee supervision, employment separation, or other action consistent with the institution's Standards of Conduct Program as provided in proposed § 612.2170(e). Proposed § 612.2170(f) would require the Standards of Conduct Official to document all resolved and unresolved material or significant conflicts of interest. The Standards of Conduct Official would be required to maintain documentation that explains how conflicts are handled.

Proposed § 612.2170(g) would require the Standards of Conduct Official to report to the institution's board of directors or designated board committee any instance of non-compliance with the System institution's standards of conduct rules or Code of Ethics. It would also require periodic reporting on the administration of the Standards of Conduct Program. These reports would include a review of the Standards of Conduct Program required under proposed § 612.2137.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, banking, Conflict of Interests, Crime, Investigations, Rural areas.

For the reasons stated in the preamble, part 612 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 612--STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

1. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

2. Subpart A, consisting of §§ 612.2130 through 612.2270, is revised to read as follows:

Subpart A--Standards of Conduct

Sec.

612.2130 Definitions.
612.2135 [Reserved]
612.2136 Standards of conduct--core principles.
612.2137 Elements of a Standards of Conduct Program.
612.2138 Conflicts of interest, reporting of financial interests.
612.2139 Prohibited conduct.
612.2140 - 612.2165 [Reserved]
612.2170 Standards of Conduct Official.
612.2260 - 612.2270 [Reserved]

Subpart A--Standards of Conduct

§ 612.2130 Definitions.

For purposes of this section, the following terms are defined:

Agent means any person, other than a director or employee, who currently represents a System institution as a fiduciary in contacts with third parties or who currently provides professional services to a System institution, such as legal, accounting, appraisal, cyber-security, Internet technology and other similar services.

Code of Ethics means a written statement of the principles and values the System institution follows to establish a culture of ethical conduct for directors and employees.

Conflicts of interest means a set of circumstances that creates a risk that actions or judgments regarding a primary interest will be unduly influenced by a secondary interest. A conflict of interest (or the appearance of a conflict of interest) may exist when a person has a financial interest in a transaction, relationship, or activity that could materially impact that person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the institution, when viewed from the perspective of a reasonable person with knowledge of the relevant facts.

Employee means any individual, including an officer, working part-time, full-time, or on a temporary basis for the System institution.

Entity means a corporation, company, association, firm, joint venture, partnership, sole proprietorship, trust or other organization whether or not incorporated.

Family means spouse or significant other and anyone having the following relationship to either: parent, spouse, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, and the spouses of the foregoing.

Financial interest means an interest in an activity, transaction, property, or relationship with a person that involves receiving or providing something of monetary value or other present or deferred compensation.

Financially obligated with means having a legally enforceable joint obligation with, being financially obligated on behalf of (contingently or otherwise), having an enforceable legal obligation secured by property owned by another person, or owning property that secures an enforceable legal obligation of another.

Material, when applied to a financial interest or transaction (including a series of transactions viewed in the aggregate), means that the interest or transaction is of sufficient magnitude that a reasonable person with knowledge of the relevant facts would question the ability

of the person who has the interest or is party to such transaction(s) to perform the person's official duties objectively and impartially and in the best interest of the institution and its statutory purpose.

Mineral interest means any interest in minerals, oil or gas, including but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed or royalty conveyance.

Ordinary course of business, when applied to a transaction, means:

(1) A transaction that is usual and customary in the business in question on terms that are not preferential; or

(2) A transaction with a person who is in the business of offering the goods or services that are the subject of the transaction on terms that are not preferential.

Person means individual or entity.

Preferential means that the transaction is not on the same terms as those prevailing at the same time for comparable transactions for other persons who are not directors, employees or agents of a System institution.

Reportable business entity means an entity in which the reporting individual, directly or indirectly, or acting through or in concert with one or more persons:

- (1) Owns a material percentage of the equity;
- (2) Owns, controls, or has the power to vote a material percentage of any class of voting securities; or
- (3) Has the power to exercise a material influence over the management of policies of such entity.

Resolved means an actual or apparent conflict of interest that has been addressed with an action such as recusal, divestiture, approval or exception, job reassignment, employee supervision, employment separation or other action, with the result that a reasonable person with knowledge of the relevant facts would conclude that the conflicting interest is unlikely to adversely affect the person's performance of official duties in an objective and impartial manner and in furtherance of the interests and statutory purposes of the Farm Credit System.

Standards of Conduct Official means a System institution employee who is appointed as an officer under § 612.2137(b), and who reports directly to the board of directors or designated board committee on Standards of Conduct and Code of Ethics matters.

Standards of Conduct Program means the policies and procedures, internal controls and other actions a System institution must implement to put into practice the

requirements of this rule and the System institution's Code of Ethics.

Supervised institution is a term that only applies within the context of a System bank or employee of a System bank and refers to each association supervised by that System bank.

Supervising institution is a term that only applies within the context of an association or employee of an association and refers to the System bank that supervises that association.

System institution and institution means any Farm Credit System bank, association, or service corporation chartered under section 4.25 of the Act, and the Federal Farm Credit Banks Funding Corporation. It does not include the Federal Agricultural Mortgage Corporation.

§ 612.2135 [Reserved]

§ 612.2136 Standards of conduct--core principles.

(a) If you are a System institution director or employee, you must:

(1) Maintain the highest ethical standards of the financial banking industry, including standards of care, honesty, integrity, and fairness.

(2) Act in the best interest of the institution.

(3) Preserve the reputation of the institution and the public's confidence in the Farm Credit System.

(4) Exercise diligence and good business judgment in carrying out official duties and responsibilities.

(5) Report, vet, and work with the Standards of Conduct Official to resolve conflicts of interest and the appearance of conflicts of interest in System business relationships and activities.

(6) Avoid self-dealing and acceptance of gifts or favors that may be deemed as offered, or have the appearance of being offered, to influence official actions or decisions.

(7) Fulfill your fiduciary duties, as applicable.

(b) To comply with core principles, all System institution directors and employees must:

(1) Comply with the institution's standards of conduct and Code of Ethics.

(2) Comply with all applicable laws and regulations.

(3) Certify, in writing, participation in the institution's annual standards of conduct training.

(4) Timely report to the Standards of Conduct Official or through the institution's reporting procedures under § 612.2137(e) (3) known or suspected:

(i) Illegal or unethical activities; and

(ii) Violations of the institution's standards of conduct and Code of Ethics.

§ 612.2137 Elements of a Standards of Conduct Program.

The System institution board is ultimately responsible for the implementation and oversight of, and compliance with, the Standards of Conduct Program. Each System institution board of directors must:

(a) Establish a Standards of Conduct Program that sets forth the core principles in § 612.2136 and provide adequate resources for its implementation.

(b) Appoint a Standards of Conduct Official. Provide the Standards of Conduct Official:

(1) Authority to carry out responsibilities set forth in this subpart A; and

(2) Direct access to the System institution board of directors or designated board committee on standards of conduct matters.

(c) Adopt a written Code of Ethics that establishes the System institution's values and expectations for the ethical conduct of directors and employees. Include standards for appropriate professional conduct at the workplace and in matters related to employment. Post the Code of Ethics on the institution's external Web site with access for the public.

(d) Establish policies and procedures to:

(1) Institute requirements for directors and employees to comply with the Standards of Conduct Program, including at a minimum, annual and interim reporting of:

(i) Actual or apparent conflicts of interest;

(ii) Transactions not in the ordinary course of business;

(iii) Names of family members;

(iv) Reportable business entities; and

(v) Gifts under paragraph (d) (6) of this section.

(2) Address how conflicts will be resolved, and provide action(s) to be taken when a conflict cannot be resolved to the satisfaction of the System institution;

(3) Address third-party relationships. Include policies and procedures to:

(i) Require agents to disclose conflicts of interest and act in a manner consistent with the ethical standards of the System institution; and

(ii) Notify agents, consultants and other third parties who represent the institution, or who provide expert or professional services to the System institution that their engagement is conditioned upon their agreement to avoid misconduct and conflicts of interest;

(4) Enforce and monitor the System institution's Standards of Conduct Program. Take appropriate action against any director or employee who violates the standards of conduct rules, Code of Ethics or the regulations under this subpart A;

(5) Apply and enforce the prohibited conduct rules set forth in § 612.2139 and any other Farm Credit Administration rules in this subpart A; and

(6) Set forth rules prohibiting gifts. If the System institution allows directors and employees to accept de minimis gifts, establish a de minimis threshold dollar amount per gift and an aggregate amount per year consistent with applicable laws. Establish rules for disposing of impermissible gifts.

(e) Provide for Standards of Conduct Program internal controls to include at a minimum, a process to:

(1) Maintain conflicts of interest and other reports required under this subpart A, including paragraph (d)(1) of this section, along with any investigations, determinations and supporting documentation, for a minimum of 6 years.

(2) Protect against unauthorized disclosure of confidential information maintained by the institution, pursuant to this subpart A.

(3) Report anonymously known or suspected violations of the institution's Standards of Conduct Program and Code of Ethics, through a hotline or other reporting procedure.

(4) Periodically review the Standards of Conduct Program to ensure continued adequacy and consistency with changes in institution practices, financial banking industry best practices and Farm Credit Administration regulations.

(5) Perform internal audits of the Standards of Conduct Program to:

(i) Review the effectiveness of advancing the core principles,

(ii) Identify weaknesses;

(iii) Recommend and report necessary corrective actions directly to the institution's board or designated board committee; and

(iv) Cover the entire Standards of Conduct Program across the System institution and include all activities conducted through a System institution unincorporated business entity (UBE), including UBES organized for the express purpose of investing in a Rural Business Investment Company pursuant to § 611.1150(b) of this chapter. The System institution must determine and document the scope and depth of the audit.

(f) Establish periodic standards of conduct training required under § 612.2170(c) at least annually.

§ 612.2138 Conflicts of interest, reporting of financial interests.

(a) If you are a director or employee of a System institution you must, to the best of your knowledge and belief:

(1) Identify conflicts of interest and potential conflicts of interest;

(2) Report conflicts of interest and potential conflicts of interest in any matters, transactions or activities pending at the System institution to the Standards of Conduct Official; and

(3) Cooperate with and provide information requested by the Standards of Conduct Official to resolve conflicts of interest and potential conflicts of interest.

(b) If you are a director or employee of a System institution and you have a conflict of interest in a matter, transaction or activity subject to official action, or before the board of directors then you must, to the best of your knowledge:

(1) Disclose relevant information including:

(i) The existence, nature, and extent of your interest; and

(ii) The facts known to you as to the matter, transaction or activity under consideration;

(2) Refrain from participating in the official action or board discussion of the matter, transaction or activity; and

(3) Not vote on, or influence the vote on, the matter, transaction or activity.

(c) If you are a director or employee, at least annually and at such other times as may be required by your institution policies and procedures, you must report to the Standards of Conduct Official, in sufficient detail for a reasonable person to make a conflict of interest determination, the following information to the best of your knowledge or belief:

(1) Any interest you have in any business matter to be considered by the System institution;

(2) The names of your family members who have transacted or are currently transacting, business with the System institution;

(3) All material financial interests with any director, employee, agent, borrower or business affiliate of your System institution, or supervised or supervising institution;

(4) Any matter you are required to disclose under § 620.6(f) of this chapter;

(5) The names of entities that are reportable business entities to you; and

(6) The name of any person residing in your home if, you know or have reason to know, such person transacts business with your System institution, or any institution supervised by the System institution.

§ 612.2139 Prohibited conduct.

(a) If you are a System institution director or employee you must not:

(1) Act inconsistently with the core principles. You must follow the core principles set forth in § 612.2136.

(2) Use your position for personal gain or advantage. Do not participate in deliberations on, or the determination of, any matter affecting your financial interest. Matters affecting your financial interest include financial interests of a family member, a person residing in your home, or a reportable business entity. You may participate in matters of general applicability affecting shareholders/borrowers of a particular class in a nondiscriminatory way.

(3) Divulge confidential information. Do not make use of any fact, information or document not generally

available to the public that you acquired by virtue of your position. You may use confidential information in the performance of your official duties.

(4) Accept gifts. Do not solicit, obtain, or accept, directly or indirectly, any gift, fee or other compensation that could be viewed as offered to influence your decision-making, or official action, or to obtain information.

(5) Purchase property owned by the institution. Do not knowingly purchase or otherwise acquire, directly or indirectly except through inheritance, any interest (including mineral interests) in any real or personal property that currently is owned, or within the past 12 months was owned, by your employing or supervising institution, or any supervised institution as a result of foreclosure, deed in lieu, or similar action. Exceptions: As a director, in addition to the inheritance exception, you may purchase such property if you:

(i) Purchase the property through public auction or similar open, competitive bidding process;

(ii) Did not participate in the decision to foreclose or dispose of the property, including setting the sale terms; and

(iii) Have not received information as a result of your position that could give you an advantage over other potential bidders or purchasers of the property.

(6) Enter into loan transactions with prohibited sources. Do not directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of your employing or supervising institution, supervised institution, or a borrower or loan applicant of the employing institution. Exceptions: You may enter into transactions with family members and transactions in the ordinary course of business as determined and documented by the written policies and procedures of your institution.

(7) Purchase System obligations.

(i) Do not purchase any obligation of a System institution, including any joint, consolidated or System-wide obligation, unless such obligation is part of an offering available to the public; and purchased through a dealer or dealer bank affiliated with a member of the selling group designated by the Federal Farm Credit Banks Funding Corporation or purchased in the secondary market.

(ii) Do not purchase or retire any stock in advance of the release of material non-public information concerning the institution to other stockholders;

(iii) If you are a director or employee of the Federal Farm Credit Banks Funding Corporation, do not purchase or otherwise acquire, directly or indirectly, except by inheritance, any obligation or equity of a System institution, including any joint, consolidated or System-wide obligations, unless it is a common cooperative equity as defined in § 628.2 of this chapter.

(b) In addition to the prohibitions under paragraph (a) of this section, if you are a System institution employee you must not:

(1) Serve as a director or employee of certain entities. Do not serve as a director or employee of an entity that transacts business with your institution, another System institution in the district, or of any commercial bank, savings and loan or other non-System financial institution. For the purpose of this paragraph, "transacts business" does not include System institution loans to a reportable business entity; service on the board of directors of the Federal Agricultural Mortgage Corporation; or transactions with non-profit entities; or entities in which the System institution has an ownership interest. Exceptions: You may serve as a director or employee of an employee credit union, and you may serve as

an employee of another System institution as permitted under paragraph (b) (4) of this section.

(2) Act as a real estate agent or broker. Do not act as a real estate agent or broker, unless you are buying or selling real estate for your own use or for a family member or a person living in your home.

(3) Act as an insurance agent or broker. Do not act as an insurance agent or broker for the sale and placement of insurance, unless authorized by section 4.29 of the Act.

(4) Serve as a joint employee.

(i) If you are currently employed as an officer with a System bank, you cannot serve as an employee of a supervised association.

(ii) If you are currently employed with a bank, but not as an officer, you may be an officer of a supervised association only if:

(A) Both boards authorize such service in an extraordinary situation;

(B) The duties and compensation at each institution is delineated in the board's approval; and

(C) Reasonable prior notice is provided to the Farm Credit Administration.

(iii) You may be both a non-officer employee at a System bank and a supervised association, if employee

expenses are appropriately reflected in each institution's financial statements.

§§ 612.2140 - 612.2165 [Reserved]

§ 612.2170 Standards of Conduct Official.

The Standards of Conduct Official must:

(a) Implement and enforce the institution's Standards of Conduct Program.

(b) Provide guidance and information to directors and employees on conflicts of interest.

(c) Administer periodic, but at a minimum, annual standards of conduct training to directors and employees that includes:

(1) Procedures for the review of and recommendation for any revisions to the institution's standards of conduct rules and Code of Ethics;

(2) Procedures for reporting anonymously known or suspected violations of standards of conduct, Code of Ethics and unethical conduct;

(3) Rules for prohibited conduct;

(4) Fiduciary duties;

(5) Conflicts of interest and apparent conflicts of interest;

(6) Reporting requirements; and

(7) New director training within 60 calendar days before the beginning of the director's election or term; and new employee training within 5 business days of the beginning of employment.

(d) Help all directors and employees identify conflicts of interest and report financial interests in accordance with § 612.2138.

(e) Make written determinations on how conflicts of interest will be resolved consistent with your institution's Standards of Conduct Program.

(f) Document resolved and unresolved conflicts of interest that are material or significant. Maintain documentation that explains how conflicts are being handled.

(g) Report to your institution's board of directors or designated board committee:

(1) Instances of standards of conduct or Code of Ethics non-compliance, promptly upon completion of any investigation or determination; and

(2) Administration of the Standards of Conduct Program, periodically as determined by the written policies and procedures of your institution.

§§ 612.2260 - 612.2270 [Reserved]

Dated: June 12, 2018. Dale L. Aultman,
Secretary,
Farm Credit Administration Board.

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