Type: FCA Regulation

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

Subpart A – Standards of Conduct

§ 612.2130 Definitions

For purposes of this subpart, the following terms and definitions apply excepting that words like document, record, certify, report, sign, and write generally should be interpreted to permit their electronic equivalents:

(a) *Agent* means any person, other than a director or employee of the institution, with the power to act for the institution either by contract or apparent authority and who currently either represents the System institution in contacts with third parties or provides professional or fiduciary services to the institution.

(b) *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, including, at minimum, the core principles established under this subpart.

(c) C*onflicts of interest* means a set of circumstances or appearance thereof where a person has a financial interest in a transaction, relationship, or activity that could or does actually affects (or has the appearance of affecting) 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.

(d) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), trust (business or otherwise) or other business operation whether or not incorporated.

(e) *Family* means parents, spouses or civil union partners, children, siblings, uncles, aunts, nephews, nieces, grandparents, grandchildren, and the spouses of the foregoing, whether arising from biological, adoptive, marital, or other legal means (e.g., stepparents, stepchildren, half-siblings, in-laws). The term also includes anyone residing in the household or who is a legal or financial dependent, regardless of any familial relationship.

(f) *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.

(g) *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.

(h) *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.

(i) *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.

(j) *Officer* means the chief executive officer, president, chief operating officer, vice president, secretary, treasurer, general counsel, chief financial officer, and chief credit officer of the System institution, and any person not so designated but who holds a similar position of authority.

(k) _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.

(l) _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.

(m) _Relative_ means any member of the family as defined in paragraph (g) of this section.

(n) _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) Owens, 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 from his or her status as a partner, director, officer, or majority shareholder in the entity.

(o) _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 results 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.

(p) _Standards of Conduct Official_ or "SOCO" means a person appointed by the institution's board of directors pursuant to this subpart to administer and report on the institution's Standards of Conduct Program, as well as investigative allegations of misconduct by institution directors, employees or agents.

(q) _Standards of Conduct Program or SOC program_ means the policies and procedures, internal controls and other actions s System institution must implement to put into practice the requirements of this subpart.

(r) _Supervised institution_ is a term that only applies within the context of a Farm Credit bank and refers to each association supervised by that Farm Credit bank.

(s) _Supervising institution_ is a term that only applies within the context of an association or employee of an association and refers to the Farm Credit bank that supervises that association.

(t) _System institution_ and _institution_ means any Farm Credit System bank, association, or service corporation chartered under section 4.25 of the Act, and the Funding Corporation. It does not include the Federal Agricultural Mortgage Corporation.

[59 FR 24894, May 13, 1994, as amended at 69 FR 10906, Mar. 9, 2004; 71 FR 5762, Feb. 2, 2006; 78 FR 31834, May 28, 2013; 86 FR 50956, September 13, 2021]

§ 612.2135 Standards of conduct – core principles.

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

(1) Maintain high ethical standards, including high 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 judgement in carrying out official duties and responsibilities.

(5) Report to the Standards of Conduct Official conflicts of interest and circumstances or transactions that have the appearance of creating a conflict of interest involving yourself, your family, or your reportable business entity.

(6) Work with the Standards of Conduct Official to identify conflicts and resolve reported conflicts of interest and appearances of conflicts of interest.

(7) 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.

(b) *Responsibilities*. To achieve the high standards of conduct of this subpart, every institution director and employee must:

(1) Comply with the standards of conduct and Code of Ethics policies and procedures maintained at his or her institution.

(2) Comply with all applicable laws and regulations.

(3) Timely report to the Standards of Conduct Official, or use the institution's anonymous reporting procedures, any known or suspected:

(i) Illegal or unethical activity; or

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

(c) *Fiduciary duties*. Every officer or director of a System institution must fulfill his or her fiduciary duties to the institution and its stockholders.

[59 FR 24894, May 13, 1994, as amended at 69 FR 10906, Mar. 9, 2004; 86 FR 50956, September 13, 2021]

§ 612.2137 Elements of a Standards of Conduct Program.

Each System institution board of directors is ultimately responsible for the implementation, oversight of, and compliance with, the Standards of Conduct Program. In fulfilling these responsibilities, each System institution board of directors must do the following:

(a) *Establish a SOC program*. Each institution's board of directors must establish and maintain a Standards of Conduct Program that sets forth the core principles of § 612.2135 and meets the requirements of this subpart. The board must act to ensure SOC program has adequate resources for its implementation and operation. The SOC program must include maintaining conflicts of interest and other reports required under this subpart, along with and investigations, determinations, and supporting documentation, for a minimum of 6 years.

(b) *Appoint a Standards of Conduct Official*. Each institution must have a Standards of Conduct Official who is appointed pursuant to § 612.2170. An institution may use one of its officers to serve as SOCO or may use a chartered service corporation or third-party to provide the services of a SOCO. Institutions may also use another institution's SOCO or hire a SOCO under a shared contract with other System institutions when each institution has a separate confidential relationship with the person serving as SOCO.

(c) *Adopt a written Code of Ethics*. Each institution as part of its SOC program must adopt and maintain an up-to-date written Code of Ethics. The Code must establish the institution's values and expectations for the ethical conduct of directors and employees in business transactions and include a general statement of expectations for appropriate professional conduct. The entire Code of Ethics must be available to all directors, employees, agents, and shareholders of the institution. The institution must post on its external website a statement that it has adopted a professional Code of Ethics, summarizing what that Code is, and advising the public the entire Code of Ethics is available on request at no cost.

(d) _Establish Standards of Conduct policies and procedures_. Each institution's board of directors must adopt policies and procedures to implement the institution's SOC program. These policies and procedures must address all aspects of the SOC program, including, but not limited to, the following:

(1) Requiring conflicts of interest reporting from all directors and employees pursuant to § 612.2145. The frequency of conflicts of interest reporting and other disclosures must be addressed in SOC program policies and procedures using the institution's fiscal year calendar. At a minimum, each person must annually report to the SOCO known conflicts occurring in the current year. Pursuant to § 612.2145(c), the board must also require directors and officers to give the SOCO the disclosures required under § 620.06(a), (e), and (f) of this chapter, regardless of who else in the institution receives the disclosures.

(2) Explaining what constitutes SOC program compliance, including setting criteria for documentation submitted with conflicts of interest reports and providing instructions to help directors and employees identify and report on interest of circumstances that could give rise to an actual or apparent conflict of interest.

(i) The board must explain within the policies and procedures what transactions are likely to present real or potential conflicts, setting benchmarks and thresholds for both single and aggregate activities. The policies and procedures must also explain how transactions in the ordinary course of business are identified.

(ii) The board must explain within the policies and procedures, setting benchmarks and thresholds, how materiality of a conflict is identified. The materiality guidelines must be used when evaluating conflicts of interest reports filed by employees and directors. An exception for those matters affecting all shareholders or borrowers may be used in making the determination of materiality.

(3) Addressing the process by which real and apparent conflicts will be resolved. He procedures must also explain action(s) to be taken when a conflict cannot be resolved to the satisfaction of the institution. The procedures must explain the role and authorities of the SOCO in resolving conflicts.

(4) Addressing the conduct of third-party relationships. The board of directors at each institution must adopt conflict-of-interest policies for third-party relationships and develop safeguards for use in contractual obligations that require third-party service providers to perform services on behalf of the institution in an ethical manner. At a minimum, the policies for third-party relationships must set forth expectations for disclosing known conflicts of interest to the institution. The policies must also implement the requirements of § 612.2180 for agents of the institution.

(5) Setting criteria for accepting gifts that are not otherwise prohibited by this subpart. The criteria must explain the scope of application and may make appropriate exceptions for non-business events where the gift is not viewed by the institution as attempting to influence official institution business. The gift criteria must include de minimis dollar threshold for all permissible gifts, regardless of the gift giving reason. The thresholds must apply both per gift and in the aggregate per recipient, per year. The institution must also establish disclosure requirements for gifts received as well as procedures for disposing of impermissible gifts.

(6) Identifying the appropriate actions that may be taken against any director or employee who violates the standards of conduct policies and procedures, Code of Ethics, or regulations under this subpart. The board must also identify who is authorized to take which action and when. The board must address how the SOCO exercises his or her authority under § 612.2170 to investigate certain issues.

(7) Providing for anonymous reporting by individuals of known or suspected violations of the institution's Standards of Conduct Program and Code of Ethics, through a hotline or other venue.

(e) *Monitor the SOC program through internal controls*. Each institution's board of directors must establish a system of internal controls for its SOC program that includes, at a minimum, a process to:

(1) Protect against unauthorized disclosure of confidential information maintained by the institution.

(2) Conduct scheduled periodic reviews of the Standards of Conduct Program that determine the continued adequacy of the program. Each review must look for consistency with institution practices, financial services industry best practices, and Farm Credit Administration (FCA) regulations in this chapter, identifying any required updates.

(3) Perform internal audits of the Standards of Conduct Program. The board of directors, with the assistances of the SOCO and appropriate officers of the institution, must determine the scope and depth of the audit. The board is responsible for identifying who will conduct the internal audit. The audit findings must be given directly to the institution's board or designated board committee. The audit itself must be designed to:

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

(ii) Identify weaknesses;

(iii) Recommend and report necessary corrective actions; and

(iv) Cover the entire Standards of Conduct Program across the institution, including all activities conducted through a System institution unincorporated business entity (UBE) formed under § 611.1150(b) of this chapter, including UBEs organized for the express purpose of investing in a Rural Business Investment Company.

(f) *Train institution personnel*. Each institution's board of directors must establish a training program to administer periodic Standards of Conduct and Code of Ethics training to directors and employees. The training must be given by the SOCO and the board must address how the SOCO will exercise his or her training responsibilities under § 612.2170. The Standards of Conduct training must be administered under the following timeframes:

(1) Newly elected or appointed directors must receive Standards of Conduct training within 60 calendar days of the director assuming his or her position.

(2) New employees must receive Standards of Conduct training within 10 business days of beginning work.

(3) Periodic training for all directors and employees must occur at least annually but may be more frequent.

[86 FR 50956, September 13, 2021]

§ 612.2140 [Reserved]

[59 FR 24894, May 13, 1994, as amended at 69 FR 10906, Mar. 9, 2004; 86 FR 50956, September 13, 2021]

§ 612.2145 Disclosing and reporting conflicts of interest.

(a) *Responsibilities*. As a director or employee of a System institution you must identify, disclose, and report on any interest or circumstances that does or could constitute a conflict of interest and potential conflict of interest. You must carry out this responsibility to the best of your knowledge and belief. You must cooperate with, and provide information requested by the Standards of Conduct Official for use in determining the materiality of a conflict and to resolve conflicts of interest and conflicts of interest.

(1) If you have a conflict of interest in a matter, transaction, or activity subject to official action by the institution or before the board of directors then you must disclose it and refrain from participating in official action or board discussion of the matter, transaction, or activity. You must also avoid voting on or influencing any decision directed at the matter, transaction, or activity.

(2) You must report, either to the SOCO or by using the institution's anonymous reporting procedures, any known or suspected activity by a person affiliated with the institution that you suspect is illegal, unethical, or a violation of the institution's standards of conduct and Code of Ethics.

(b) *Reporting conflicts of interest*. As a director or employee of a System institution, you must file with the SOCO reports on any real or potential conflicts of interest. The reports must be filed at least annually and at such other times as may be required by your institution policies and procedures. The reports must be in sufficient detail for a reasonable person to make a conflict of interest determination and decide if the conflict is material. You must file a report with the SOCO that contains the disclosures required by the institution's SOC program policies and procedures. At a minimum, the report must be signed by you and include:

(1) Any interest you have in any business matter, including any loan or loan application, to be considered by the System institution, or supervised or supervising institution in the current year;

(2) All material financial interests, including those arising in the ordinary course of business, you have with any director, employee, agent, or borrower of your System institution, or a supervised or supervising institution;

(3) The name(s) of your reportable business entities that you know or have reason to know in the current year transacted business with:

(i) Your System institution;

(ii) Any supervised or supervising institution; or

(iii) A borrower that transacts business with your System institution, or any supervised or supervising institution.

(4) The name(s) of your family members you know or have reason to know transacted business with your System institution or any supervised or supervising institution in the current year.

(5) Reportable gifts received or disposed of under the institution's SOC program policies and procedures.

(c) *Other required disclosures for directors and officers*. If you are a director or officer at the institution, you must give the SOCO the disclosures required under § 620.06(a), (e), and (f) of this chapter, regardless of who else in the institution has been provided them. The timing and frequency of disclosing the information to the SOCO, or any updates to them, is determined by your institution's SOC program policies and procedures but must occur no less than annually and at issuance of the institution's Annual Meeting Information Statement.

[59 FR 24894, May 13, 1994, as amended at 69 FR 10906, Mar. 9, 2004; 77 FR 60596, Oct. 3, 2012; 86 FR 50956, September 13, 2021]

§ 612.2150 Prohibited conduct.

(a) *General*. If you are a System institution director or employee you must not act inconsistently with the Standards of Conduct core principles set forth in this subpart. You also must not act in the following manner:

(1) *Use your position for personal gain or advantage*. Do not participate in deliberations on, or the determination of, any matter affecting your financial interest either directly or indirectly. Matters affecting your financial interest include financial interests of family or reportable business entities. You also may not use your position as a director or employee of the institution to obtain special advantage or favoritism for yourself, your family, or a reportable business entity. However, you may participate in matters of general applicability affecting shareholders or borrowers of a particular class if your participation occurs in a nondiscriminatory way.

(2) *Divulge confidential information*. Do not make use of or disclose any fact, information, or document not generally available to the public that you acquired by virtue of your position as a director or employee of the institution. You may use confidential information in the performance of your official duties.

(3) *Accept prohibited gifts*. Do not solicit, obtain, or accept (directly or indirectly), any gift fee, or other compensation that is offered or requested based on your position as a director or employee of an institution if it could be viewed as being offered to influence your decision-making, an official action, or to obtain information related to your institution's operations.

(4) *Purchase property owned by the institution*. Do not knowingly purchase or otherwise acquire (directly or indirectly) 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 institution, your supervising institution, or institutions supervised by your institution as a result of foreclosure, deed in lieu, or similar action. The prohibition in this paragraph (a)(4) extends to property held or sold by a chartered service corporation or a System unincorporated business entity. The prohibition does not apply in the following situations:

(i) You acquire the property by inheritance.

(ii) You are exercising your rights of first refusal under section 4.36 of the Act.

(iii) If you are a director of the institution, you may purchase property from a System institution when the property is sold through public auction or similar open, competitive bidding process. The exception in this paragraph (a)(4)(iii) only applies if you did not participate in the decision to foreclose upon the property nor did you participate in deciding how the institution would dispose the property. Participating in these decisions includes setting the sale terms or receiving information as a result of your position with the institution that could give you an advantage over other potential bidders or purchasers of the property.

(5) *Enter into 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 institution, your supervising institution, or institution supervised by your institution. You are also prohibited from directly or indirectly borrowing, lending to, or becoming financially obligated with or on behalf of a borrower or loan applicant of your institution. The transaction prohibition does not apply to:

(i) Transactions with family members.

(ii) Transactions that occur in the ordinary course of business as determined and documented by the written policies and procedures of your institution.

(iii) Transactions undertaken in an official capacity and in connection with the institution's discounting, lending, or participation relationships with other financing institutions (OFIs) and other lenders.

(6) *Purchase System obligations*. 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 you either purchase it through a dealer or dealer bank affiliated with a member of the selling group designated by the Funding Corporation or purchase it in the secondary markets.

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

(ii) If you are a director or employee of the 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) *Employees only*. In addition to the prohibitions under paragraph (a) of this section, if you are an institution employee you must not:

(1) *Serve as a director or employee of certain entities*. Do not serve as a director or employee of any commercial bank, savings and loan, or other non-System financial institution. You may not serve as a director or employee of a non-System entity that transacts business with a System institution within your institution's district unless specifically allowed in this paragraph (b). For the purpose of this paragraph (b)(1), "transacts business" does not include loans by a System institution to a family-owned entity or a reportable business entity; service on the board of directors of the Federal Agricultural Mortgage Corporation; transactions with non-profit entities; or transactions with entities in which the System institution has an ownership interest. The prohibition in this paragraph (b)(1) does not apply in the following situations:

(i) You may serve as a director or employee of an employee credit union.

(ii) You may serve as a director of a cooperative that borrowers from the System under the Act's Title III authorities if you are not employed at an institution with Title III lending authority and your employing institution approves your service on the cooperative's board.

(2) *Act as a real estate agent or broker*. Do not at as a real estate agent or broker unless you are buying or selling real estate for your own use or for family.

(3) *Act as an insurance agent or broker*. Do not act as 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*. Do not serve as an employee for your supervising institution if you are an officer at your association. Do not serve as an employee for a supervised institution if you are an officer at your Farm Credit bank. The prohibition in this paragraph (b)(4) does not apply in the following situations:

(i) You may be both a non-officer employee at a Farm Credit bank and a supervised association if the employment expenses are appropriately reflected in each institution's financial statements.

(ii) If you are currently employed with a Farm Credit bank as other than an officer, in extraordinary circumstances, FCA may approve your serving as an officer of a supervised association. This requires the boards at both institutions to agree to the joint service and for the duties and compensation at each institution to be delineated in the board approval documents. The board documents, along with the request, must be sent at least 10 business days before the effective date to the Director of Regulatory Policy, Farm Credit Administration.

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§ 612.2155 [Reserved]

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§ 612.2157 [Reserved]

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§ 612.2160 [Reserved]

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§ 612.2165 [Reserved]

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§ 612.2170 Standards of Conduct Official.

(a) *Authority*. The Standards of Conduct Official must be appointed by the board of directors for the institution and the board of directors must empower the appointed SOCO with all of the following:

(1) Direct access to the board (or designated board committee) for the purpose of discussing and reporting on matters related to the institution's Standards of Conduct Program and Code of Ethics;

(2) Authority to carry out the responsibilities set forth in this section;

(3) Accessibility to all directors, employees, and agents to the institution;

(4) Legal authority to receive confidential SOC, program communications from all directors, employees, and agents of the institution; and

(5) Resources adequate for implementing a successful Standards of Conduct Program.

(b) *Program administration*. The Standards of Conduct Official must implement the institution's Standards of Conduct Program as determined by the written policies and procedures of his or her institution and FCA regulations in this chapter. This may include, but is not limited to, the following:

(1) Providing guidance and information to directors and employees on conflicts of interest, including aiding in the identification of reportable conflicts of interest and reportable financial interest in accordance with this subpart;

(2) Receiving reports required under this subpart from directors, employees, and agents;

(3) Receiving from directors and officers the disclosures required under § 620.06(a), (e), and (f) of this chapter for treatment as a supplement to an individual's conflicts of interest report;

(4) Reviewing and acting upon all SOC program reports and disclosures, including documenting resolved and unresolved conflicts of interest that are material, and making written determinations on how conflicts of interest will be resolved;

(5) Maintain all SOC program records for the required period of time, including documentation that explains how conflicts are being handled;

(6) Conducting investigations as either authorized under this subpart or by the institution's SOC program policies and procedures;

(7) Reporting promptly to the institution's board of directors (or designated board committee) those SOC program or Code of Ethics matters required by the institution's SOC program policies and procedures or FCA regulations in this chapter; and

(8) Reporting to the institution's board of directors those activities investigated pursuant to paragraph (d) of this section.

(c) *Training duties*. The Standards of Conduct Official must give standards of conduct training to all directors and employees at the institution. The training must comply with the requirement of

§ 612.2137 and the institution's Standards of Conduct policies and procedures. In addition to other matters, periodic training must cover updates or revisions to the institution's SOC program and Code of Ethics. The SOCO must obtain written participation certifications from every director and employee taking the training.

(d) *Investigative duties*. The Standards of Conduct Official is responsible for investigating complaints alleging misconduct or possible criminal behavior by the institution, its directors, or its employees.

(1) At a minimum, the Standards of Conduct Official must investigate, or cause to be investigated, all cases involving:

(i) Possible violations of criminal statues;

(ii) Possible violations of director or employee prohibited conduct regulations in § 612.2150, and the applicable institution policies and procedures;

(iii) Complaints of misconduct received against directors and employees of the institution;

(iv) Possible violations of other provisions of this part; and

(v) Suspected activities of a sensitive nature which could affect continued public confidence in the Farm Credit System.

(2) The SOCO serves as the reporting official for all cases investigated under subpart B of this part (criminal referrals). In this capacity, the SOCO must report to both the institution's board and the Farm Credit Administration's Office of General Counsel all cases where:

(i) A preliminary investigation indicates that a Federal criminal statue may have been violated;

(ii) An investigation results in the removal of a director or discharge of an employee; or

(iii) A violation may have an adverse impact on continued public confidence in the System or any of its institutions.

[59 FR 24894, May 13, 1994, as amended at 69 FR 10906, Mar. 9, 2004; 86 FR 50956, September 13, 2021]

§ 612.2180 Standards of Conduct for agents.

(a) *Agents*. Agents of System institutions must maintain high standards of honesty, integrity, and impartiality in order to ensure the proper performance of System business and continued public confidence in the System and all its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) *Institutions*. Each institution must use safe and sound business practices in the engagement, utilization, and retention of agents. These practices shall provide for the selection of qualified and reputable agents. The institution is responsible for the administration of relationships with its agents and must take appropriate investigative and corrective action in the case of a breach of fiduciary duties by an agent or failure of an agent to carry out other duties as required by contract, FCA regulations in this chapter, or law.

(c) *Control*. System institutions are responsible for exercising special diligence and control, through good business practices, to avoid or control situations that have inherent potential for sensitivity, either real or perceived. These areas include:

(1) The employment of agents who are related to directors or employees of the institution;

(2) The solicitation and acceptance of gifts, contributions, or special considerations by agents; and

(3) The use of System and borrower information obtained in the course of the agent's work with the institution.

(d) *Enforcement*. Agents of System institutions are "institution-affiliated parties" as that term is defined in the Act and therefore subject to certain FCA enforcement authorities contained in the part C of title V of the Act. An "institution-affiliated party" is:

(1) A director, officer, employee, shareholder, or agent of a System institution;

(2) An independent contractor (including an attorney, appraiser, or accountant) who knowingly or recklessly participates in:

(i) A violation of law (including regulations) that is associated with the operations and activities of one or more System institutions;

(ii) A breach of fiduciary duty; or

(iii) An unsafe practice that causes or is likely to cause more than a minimum financial loss to, or a significant adverse effect on, a System institution; or

(3) Any other person, as determined by the Farm Credit Administration (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of a System institution.

[86 FR 50956, September 13, 2021]

§ 612.2260 [Reserved]

[59 FR 24894, May 13, 1994, as amended at 69 FR 10906, Mar. 9, 2004; 86 FR 50956, September 13, 2021]

§ 612.2270 [Reserved]

[59 FR 24894, May 13, 1994, as amended at 69 FR 10906, Mar. 9, 2004; 86 FR 50956, September 13, 2021]

Type: FCA Regulation
PART 620 – DISCLOSURE TO SHAREHOLDERS
Subpart A – General

§ 620.1 Definitions.

For the purpose of this part, the following definitions shall apply:

(a) *Affiliated organization* means any organization, other than a Farm Credit organization, of which a director, senior officer or nominee for director of the reporting institution is a partner, director, officer, or majority shareholder.

(b) *Association* means any of the associations as described in § 619.9050 of this chapter.

(c) *Bank* means any of the Farm Credit banks as described in § 619.9140 of this chapter.

(d) *Direct lender association* means any association that is a direct lender as described in § 619.9135 of this chapter.

(e) *Immediate family* means spouse, parents, siblings, children, mothers- and fathers-in-law, brothers- and sisters-in-law, and sons- and daughters-in-law.

(f) *Institution* means any bank or association chartered by the Act.

(g) *Loan* means any extension of credit or lease that is recorded as an asset of a reporting institution, whether made directly or purchased from another lender. The term "loan" includes, but is not limited to, loans originated through direct negotiations between the reporting institution and a borrower; purchased loans or interests in loans, including participation interests, retained subordinated participation interests in loans sold, interests in pools of subordinated participation interests that are held in lieu of retaining a subordinated participation interest in loans sold; contracts of sale; notes receivable; and other similar obligations and lease financings.

(h) *Material*. The term *material*, when used to qualify a requirement to furnish information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance in making shareholder decisions or determining the financial condition of the institution.

(i) *Normal risk of collectibility* means the ordinary risk inherent in the lending operation. Loans that are deemed to have more than a normal risk of collectibility include, but are not limited to, any adversely classified loans.

(j) *Permanent capital* shall have the same meaning as set forth in § 615.5201 of this chapter.

(k) *Protected borrower capital* means eligible borrower stock as defined in § 615.5260 of this chapter.

(l) *Related association* means an association within the reporting bank's chartered territory that generates loans for the bank or whose operations the bank funds.

(m) *Related bank* means a reporting association's funding bank or the bank for which it generates loans.

(n) *Related organization* means any Farm Credit institution that is a shareholder of the reporting institution or in which the reporting institution has an ownership interest.

(o) *Report* refers to the annual report, quarterly report, notice, or information statement, regardless of form, required by this part unless otherwise specified.

(p) *Signed*, when referring to paper form, means a manual signature, and, when referring to electronic form, means marked in a manner that authenticates each signer's identity.

(q) *Significant event* means any event that is likely to have a material impact on the reporting institution's financial condition, results of operations, cost of funds, or reliability of sources of funds. The term "significant event" includes, but is not limited to, actual or probable noncompliance with the regulatory minimum permanent capital standards or capital adequacy requirements, stock impairment, the imposition of or entering into enforcement actions, execution of financial assistance agreements with other institutions, collateral deficiencies that impact a bank's ability to obtain loan funds, or defaults on debt obligations.

[51 FR 8656, Mar. 13, 1986, as amended at 51 FR 42086, Nov. 21, 1986; 53 FR 3337, Feb. 5, 1988; 56 FR 29421, June 27, 1991; 56 FR 42649, Aug. 28, 1991; 58 FR 48791, Sept. 20, 1993; 59 FR 37406, July 22, 1994; 62 FR 15092, Mar. 31, 1997; 63 FR 39229, July 22, 1998; 67 FR 16633, Apr. 8, 2002; 70 FR 35357, June 17, 2005; 71 FR 5764, Feb. 2, 2006; 75 FR 18744, Apr. 12, 2010]

§ 620.3 Accuracy of reports and assessment of internal control over financial reporting.

(a) *Prohibition against incomplete, inaccurate, or misleading disclosures*. No institution and no employee, officer, director, or nominee for director of the institution shall make any disclosure to shareholders or the general public concerning any matter required to be disclosed by this part that is incomplete, inaccurate, or misleading. When any such person makes disclosure that, in the judgment of the Farm Credit Administration, is incomplete, inaccurate, or misleading, whether or not such disclosure is made in disclosure statements required by this part, such institution or person shall make such additional or corrective disclosure as is necessary to provide shareholders and the general public with a full and fair disclosure. Unless otherwise determined by the Farm Credit Administration (FCA), the appropriate use of the limited disclosure authorized by § 628.62(c) of this chapter does not create an incomplete disclosure.

(b) *Signatures*. The name and position title of each person signing the report must be printed beneath his or her signature. If any person required to sign the report has not signed the report, the name and position title of the individual and the reason(s) such individual is unable or refuses to sign must be disclosed in the report. All reports must be dated and signed on behalf of the institution by:

(1) The chief executive officer (CEO);

(2) The chief financial officer (CFO), or if the institution has no CFO, the officer responsible for preparing financial reports; and

(3) A board member formally designated by action of the board to certify reports on behalf of individual board members.

(c) *Certification of financial accuracy*. The report must be certified as financially accurate by the signatories to the report. If any signatory is unable to, or refuses to, certify the report, the institution must disclose the individual's name and position title and the reason(s) such individual is unable or refuses to certify the report. At a minimum, the certification must include a statement that:

(1) The signatories have reviewed the report,

(2) The report has been prepared in accordance with all applicable statutory or regulatory requirements, and

(3) The information is true, accurate, and complete to the best of signatories' knowledge and belief. If the report contains the limited disclosure authorized by § 628.62(c) of this chapter, the statement may be modified to explain that the completeness of the report was determined in consideration of § 628.62(c).

(d) *Management assessment of internal control over financial reporting*. Annual reports of those institutions with over $1 billion in total assets (as of the end of the prior fiscal year) must include a report by management assessing the effectiveness of the institution's internal control over financial reporting. The assessment must be conducted during the reporting period and be reported to the institution's board of directors. Quarterly and annual reports for those institutions with over $1 billion in total assets (as of the end of the prior fiscal year) must disclose any material change(s) in the internal control over financial reporting occurring during the reporting period.

[71 FR 76119, Dec. 20, 2006, as amended at 74 FR 28599, June 17, 2009; 86 FR 54347, October 1, 2021]

§ 620.6 Disclosures in the annual report to shareholders relating to directors and senior officers.

(a) *General*.

(1) List the names of all directors and senior officers of the institution, indicating the position title and term of office of each director, and the position, title, and date each senior officer commenced employment in his or her current position.

(2) Briefly describe the business experience during the past 5 years of each director and senior officer, including each person's principal occupation and employment during the past 5 years.

(3) For each director and senior officer, list any other business interest where the director or senior officer serves on the board of directors or as a senior officer. Name the position held and state the principal business in which the business is engaged.

(b) *Compensation of directors*. Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and noncash compensation). Noncash compensation with an annual aggregate value of less than $5,000 does not have to be reported. State the total cash and reportable noncash compensation paid to all directors as a group during the last fiscal year. For the purposes of this paragraph, disclosure of compensation paid to and days served by directors applies to any director who served in that capacity at any time during the reporting period. If applicable, describe any exceptional circumstances justifying the additional director compensation as authorized by § 611.400(c) of this chapter. For each director, state:

(1) The number of days served at board meetings;

(2) The total number of days served in other official activities, including any board committee(s);

(3) Any additional compensation paid for service on a board committee, naming the committee; and

(4) The total cash and noncash compensation paid to each director during the last fiscal year. Reportable compensation includes cash and the value of noncash items provided by a third party to a director for services rendered by the director on behalf of the reporting Farm Credit institution. Noncash compensation with an annual aggregate value of less than $5,000 does not have to be reported.

(c) *Compensation of senior officers*. Disclose the information on senior officer compensation and compensation plans as required by this paragraph. The institution must disclose the total amount of compensation paid to senior officers in substantially the same manner as the tabular form specified in the Summary Compensation Table (Compensation Table), located in paragraph (c)(3) of this section.

(1) For each of the last 3 completed fiscal years, report the total amount of compensation paid and the amount of each component of compensation paid to the institution's chief executive officer (CEO), naming the individual. If more than one person served in the capacity of CEO during any given fiscal year, individual compensation disclosures must be provided for each CEO.

(2) For each of the last 3 completed fiscal years, report the aggregate amount of compensation paid, and the components of compensation paid, to all senior officers as a group, stating the number of officers in the group without naming them.

(i) If applicable, when any employee who is not a senior officer has annual compensation at a level that is among the five highest paid by the institution during the reporting period, include the highly compensated employee(s) in the aggregate number and amount of compensation reported in the Compensation Table. However, exclude any such employee from the Compensation Table if the employee would be considered highly compensated solely because of payments related to or change(s) in value of the employee's qualified pension plan provided that the plan was available to all similarly situated employees on the same basis at the time the employee joined the plan.

(ii) The report containing the aggregate compensation disclosure must include a statement that disclosure of information on the total compensation paid during the last fiscal year to any senior officer, or to any other employee included in the aggregate, is available and will be disclosed to shareholders of the institution and shareholders of related associations (if applicable) upon request. This statement must be located directly beneath the Compensation Table.

(3) The institution must complete the Compensation Table, or something substantially similar, according to the following instructions:

Type: Statute

PART B – FARM CREDIT ADMINISTRATION ORGANIZATION

Date Created: 12/17/2012

Date Modified: 1/13/2023

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12 U.S.C. 2252

SEC. 5.17. ENUMERATED POWERS.

(a) The Farm Credit Administration shall have the following powers, functions, and responsibilities in connection with the institutions of the Farm Credit System and the administration of this Act:

(8) Regulate the preparation by System institutions and the dissemination to stockholders and investors of information on the financial condition and operations of such institutions, except that the requirements of the Farm Credit Administration governing the dissemination to stockholders of quarterly reports of System institutions may not be more burdensome or costly than the requirements applicable to national banks, and the Farm Credit Administration may not require any System institution to disclose in any report to stockholders information concerning the condition or classification of a loan—

(A) to a director of the institution—

(i) who has resigned before the time for filing the applicable report with the Farm Credit Administration; or

(ii) whose term of office will expire no later than the date of the meeting of stockholders to which the report relates; or

(B) to a member of the immediate family of a director of the institution unless—

(i) the family member resides in the same household as the director; or

(ii) the director has a material financial or legal interest in the loan or business operation of the family member.

NOTE: The amendments made by section 5407 of Public Law 110-246 became effective on January 1, 2010.

Type: Statute
SAFETY AND SOUNDNESS ACT OF 1992
Date Created: 12/18/2012
Date Modified: 1/8/2015

TITLE V—MISCELLANEOUS

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SEC. 514. FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST REPORTING BY DIRECTORS, OFFICERS, AND EMPLOYEES OF FARM CREDIT SYSTEM INSTITUTIONS.

(a) FINDINGS. Congress finds that—

(1) the disclosure of the compensation paid to, loans made to, and transactions made with a Farm Credit System institution by, directors and senior officers of the institution provides the stockholders of the institutions with information necessary to better manage the institutions, provides the Farm Credit Administration with information necessary to efficiently and effectively regulate the institutions, and enhances the financial integrity of the Farm Credit System by making the information available to potential investors;

(2) the reporting of potential conflicts of interest by directors, officers, and employees of institutions of the Farm Credit System benefits the stockholders of the institutions, helps to ensure the financial viability of the institutions, provides information valuable to the Farm Credit Administration in periodic examinations of the institutions, and therefore enhances the safety and soundness of the Farm Credit System; and

(3) the directors, officers, or employees of some Farm Credit System institutions may not be subject to the regulations of the Farm Credit Administration requiring the disclosure of the financial information and the reporting of the potential conflicts of interest.

(b) PURPOSE. It is the purpose of this section to ensure that the information reported by the directors, officers, and employees of Farm Credit System institutions under regulations of the Farm Credit Administration requiring the disclosure of financial information and the reporting of potential conflicts of interest –

(1) provides the stockholders of all Farm Credit System institutions with information to assist the stockholders in making informed decisions regarding the operation of the institutions;

(2) provides investors and potential investors with information necessary to assist them in making investment decisions regarding Farm Credit System obligations or institutions; and

(3) provides the Farm Credit Administration with information necessary to allow the Farm Credit Administration to effectively and efficiently examine and regulate all Farm Credit System institutions and thus enhance the safety and soundness of the Farm Credit System.

(c) REVIEW. Not later than 120 days after the date of enactment of this Act, the Farm Credit Administration shall complete a review of the current regulations of the Farm Credit Administration regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of Farm Credit System institutions. Consistent with the purpose of this section as provided in subsection (b), the review shall address whether the regulations –

(1) are adequate to fulfill the purpose of this section and such other purposes as the Farm Credit Administration determines to be consistent with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and other applicable law, and to be otherwise necessary or appropriate;

(2) currently require the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of all Farm Credit System institutions; and

(3) currently require the disclosure or reporting of the information by all of the appropriate directors, officers, or employees of Farm Credit System institutions.

(d) IMPLEMENTATION. Not later than 360 days after the date of enactment of this Act, the Farm Credit Administration shall amend its current financial disclosure and conflict of interest regulations as the Administration determines necessary to carry out the purpose of this section and to address any deficiencies in the regulations that the Farm Credit Administration determines necessary pursuant to the review conducted under subsection (c).