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### **Fact Sheet on Standards of Conduct: Notice of Proposed Rulemaking**

The Farm Credit Administration Board adopted a proposed rule on Jan. 9, 2014, to revise its regulations in 12 CFR Part 612, Subpart A, governing standards of conduct of directors, employees, and agents of Farm Credit System (System or FCS) institutions, excluding the Federal Agricultural Mortgage Corporation.

#### **Summary of Changes**

The proposed rule would add new provisions, clarify or augment some current provisions, and provide additional flexibility for others, as discussed below.

**§ 612.2130—Definitions:** The proposed rule would add to the current definition of “family” associations or relationships that are in the nature of family relationships. This modernizes the definition of family to include adopted children and nontraditional relationships.

**§ 612.2136—Conflicts of interest:** This new provision requires directors, employees, and agents to disclose conflicts of interest and, if necessary, to recuse themselves in situations where conflicts exist. The disclosure and recusal requirements apply not only to employees, directors, and agents, but also to consultants who are hired to give expert advice.

**Proposed §§ 612.2140/612.2150—Director/Employee reporting:** This section requires each director/employee to report all material financial interests with directors, employees, agents, or borrowers of the employing, supervised, and supervising institution. Nonmaterial financial interests would not have to be reported.

**§ 612.2157—Joint employees:** The proposed rule would allow for joint bank/association employee relationships under certain circumstances:

- The standards-of-conduct official provides written approval.
- The bank board determines that the interests of both System institutions outweigh the potential for conflict.
- The bank provides FCA written notice prior to when the joint relationship begins. FCA may object to the joint employee relationship within 10 calendar days of receiving the notice.

**§ 612.2160—Institution responsibilities:** The proposed rule adds new requirements to ensure that institutions remain accountable in overseeing the standards-of-conduct program. These requirements include the following:

- Dedicating resources that will aid the standards-of-conduct official in administering the standards-of-conduct program.
- Notifying FCA of any “material” standards-of-conduct violations.
- Establishing internal controls over the standards-of-conduct program that include a periodic audit of the program as part of its risk assessment process.

**§ 612.2165—Code of Ethics, policies and procedures:** The proposed rule would require a “code of ethics” that applies to directors, employees, and agents. The code of ethics must be signed by directors and employees. Agents must adhere to industry or professional ethics standards, and agents not subject to industry or professional ethics standards must sign the institution’s code-of-ethics provisions applicable to agents. Guidelines for establishing a code of ethics are also provided in this section.

In addition, under this section, institutions would be allowed to establish policies and procedures that allow the board to make written exceptions to certain standards-of-conduct regulations. The exceptions would provide institutions with more flexibility while holding the board of directors accountable. Exceptions may be granted for the following:

- Conflicts-of-interest recusal requirements.
- Director and employee reporting requirements.
- Director and employee prohibitions on disclosure of information not generally available to the public.
- Employee prohibitions on serving as an officer of a non-System entity in the district or of a non-System financial institution.
- Prior approvals for lending transactions.
- The 5 percent threshold for defining a controlled entity.

The exceptions would be based on the standards-of-conduct official's recommendation and supported by his or her written determination that the specific standards-of-conduct regulatory requirement is not necessary to avoid a conflict or appearance of a conflict or to ensure impartiality, objectivity, and public confidence in the System institution. Institutions would be required to document the exceptions. The institution’s determination would be subject to FCA’s examination.

**Proposed § 612.2170—Standards-of-Conduct Official:** According to the proposed rule, the standards-of-conduct official must, among other things—

- Be an employee at the institution.
- Report directly to the board on standards-of-conduct issues.
- Oversee standards-of-conduct training.

In addition, the rule states that the official may use outside counsel or consultants to assist in the performance of standards-of-conduct duties.

**Proposed § 612.2180—Standards of conduct for agents:** The proposed rule would require agents representing a System institution or consultants providing professional services to review and acknowledge receipt of the institution's code of ethics.

It would also require the agent or consultant to adhere to his or her industry or professional ethics standards, and if there are none, it would require the agent or consultant to abide by the provisions of the institution's code of ethics that apply to agents. Also, agents would be prohibited from purchasing property acquired by an institution due to foreclosure or similar action until 12 months after the property is transferred out of the ownership of the System institution or after the agent relationship is terminated, whichever occurs first.

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