

Farm Credit Administration

§ 612.2130

the information statement, the terminating association shall furnish each borrower with the address and telephone number of the funding bank with instructions that the bank may be contacted in the future to determine the name and address of the association(s) that will serve the territory in the future.

(d) The terminating association shall provide credit and loan information to the association designated to serve the territory upon the borrower's request, in accordance with §§ 618.8300 through 618.8325, and take such other steps as are necessary to facilitate the transfer of the loan to the association.

[56 FR 3407, Jan. 30, 1991, as amended at 61 FR 67186, Dec. 20, 1996]

§ 611.1270 Continuation of borrower rights.

Terminating associations which maintain an OFI relationship with the Farm Credit bank shall comply with borrower rights provisions contained in part 614, subparts K, L, M and N of this chapter. The terminating association may not require a waiver of applicable borrower rights provisions as a condition of ownership interest in and continued financing by the successor institution.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

PART 612—STANDARDS OF CONDUCT

Sec.	
612.2130	Definitions.
612.2135	Director and employee responsibilities and conduct—generally.
612.2140	Directors—prohibited conduct.
612.2145	Director reporting.
612.2150	Employees—prohibited conduct.
612.2155	Employee reporting.
612.2157	Joint employees.
612.2160	Institution responsibilities.
612.2165	Policies and procedures.
612.2170	Standards of Conduct Official.
612.2260	Standards of conduct for agents.
612.2270	Purchase of System obligations.

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

SOURCE: 59 FR 24894, May 13, 1994, unless otherwise noted.

§ 612.2130 Definitions.

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

(a) *Agent* means any person, other than a director or employee, who represents a System institution in contacts with third parties or who provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.

(b) A *conflict of interest* or the appearance thereof exists when a person has a financial interest in a transaction, relationship, or activity that actually affects or has the appearance of affecting the person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the employing institution when viewed from the perspective of a reasonable person with knowledge of the relevant facts.

(c) *Controlled entity* and *entity controlled by* mean an entity in which the individual, directly or indirectly, or acting through or in concert with one or more persons:

(1) Owns 5 percent or more of the equity;

(2) Owns, controls, or has the power to vote 5 percent or more of any class of voting securities; or

(3) Has the power to exercise a controlling influence over the management of policies of such entity.

(d) *Director* means a member of a board of directors.

(e) *Employee* means any salaried officer or part-time, full-time, or temporary salaried employee.

(f) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution, except System institutions.

(g) *Family* means an individual and spouse and anyone having the following relationship to either: parents, spouse, son, daughter, sibling, step-parent, stepson, stepdaughter, step-brother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, and the spouses of the foregoing.

(h) *Financial interest* means an interest in an activity, transaction, property, or relationship with a person or

§612.2135

12 CFR Ch. VI (1-1-01 Edition)

an entity that involves receiving or providing something of monetary value or other present or deferred compensation.

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

(j) *Material*, when applied to a financial interest or transaction or series of transactions, means that the interest or transaction or series of transactions is of such 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 his or her official duties objectively and impartially and in the best interest of the institution and its statutory purpose.

(k) *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.

(l) *OFI* means other financing institutions that have established an access relationship with a Farm Credit Bank or an agricultural credit bank under section 1.7(b)(1)(B) of the Act.

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

(n) *Ordinary course of business*, when applied to a transaction, means: (1) A transaction that is usual and customary between two persons who are in business together; 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. 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 or employees of a System institution.

(o) *Person* means individual or entity.

(p) *Relative* means any member of the family as defined in paragraph (g) of this section.

(q) *Service organization* means each service organization authorized by section 4.25 of the Act, and each unincorporated service organization formed by one or more System institutions.

(r) *Standards of Conduct Official* means the official designated under §612.2170 of these regulations.

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

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

(u) *System institution* and *institution* mean any bank, association, or service organization in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, agricultural credit banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, the Federal Farm Credit Banks Funding Corporation, and service organizations.

§612.2135 Director and employee responsibilities and conduct—generally.

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

(b) To achieve these high standards of conduct, directors and employees shall observe, to the best of their abilities, the letter and intent of all applicable local, state, and Federal laws and regulations and policy statements, instructions, and procedures of the Farm Credit Administration and System institutions and shall exercise diligence and good judgment in carrying out

Farm Credit Administration

§ 612.2145

their duties, obligations, and responsibilities.

§ 612.2140 Directors—prohibited conduct.

A director of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the director, any relative of the director, any person residing in the director's household, any business partner of the director, or any entity controlled by the director or such persons (alone or in concert), except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminatory way, e.g., a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of serving on the board of a System institution.

(c) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Use the director's position or information acquired in connection with the director's position to solicit or obtain, directly or indirectly, any gift, fee, or other present or deferred compensation or for any other personal benefit on behalf of the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(e) Accept, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered

to influence official action or to obtain information that the director has access to by reason of serving on the board of a System institution.

(f) Knowingly acquire, directly or indirectly, except by inheritance or through public auction or open competitive bidding available to the general public, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and that had been acquired by any such institution as a result of foreclosure or similar action; provided, however, a director shall not acquire any such interest in real or personal property if he or she participated in the deliberations or decision to foreclose or to dispose of the property or in establishing the terms of the sale.

(g) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution, unless:

(1) The transaction is with a relative or any person residing in the director's household;

(2) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) The Standards of Conduct Official determines, pursuant to policies and procedures adopted by the board, that the potential for conflict is insignificant because the transaction is in the ordinary course of business or is not material in amount and the director does not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way.

(h) Violate an institution's policies and procedures governing standards of conduct.

§ 612.2145 Director reporting.

(a) Annually, as of the institution's fiscal year end, and at such other times as may be required to comply with

§612.2150

12 CFR Ch. VI (1–1–01 Edition)

paragraph (c) of this section, each director shall file a written and signed statement with the Standards of Conduct Official that fully discloses:

(1) The names of any immediate family members as defined in §620.1(e) of this chapter, or affiliated organizations, as defined in §620.1(a) of this chapter, who had transactions with the institution at any time during the year;

(2) Any matter required to be disclosed by §620.5(k) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each director shall, at such intervals as the institution's board shall determine is necessary to effectively enforce this regulation and the institution's standards-of-conduct policy adopted pursuant to §612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulations and such policy. At a minimum, these requirements shall include:

(1) The name of any relative or any person residing in the director's household, business partner, or any entity controlled by the director or such persons (alone or in concert) if the director knows or has reason to know that such individual or entity transacts business with the institution or any institution supervised by the director's institution; and

(2) The name and the nature of the business of any entity in which the director has a material financial interest or on whose board the director sits if the director knows or has reason to know that such entity transacts business with:

(i) The director's institution or any institution supervised by the director's institution; or

(ii) A borrower of the director's institution or any institution supervised by the director's institution.

(c) Any director who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards

of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) Unless a disclosure as a director candidate under part 620 of this chapter has been made within the preceding 180 days, a newly elected or appointed director shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after the election or appointment and thereafter shall comply with the requirements of this section.

§612.2150 Employees—prohibited conduct.

An employee of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, or any entity controlled by the employee or such persons (alone or in concert), except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminating way, e.g. a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of employment with a System institution.

(c) Use the employee's position to obtain or attempt to obtain special advantage or favoritism for the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Serve as an officer or director of an entity that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institution, except employee credit

Farm Credit Administration

§ 612.2155

unions. For the purposes of this paragraph, “transacts business” does not include loans by a System institution to a family-owned entity, service on the board of directors of the Federal Agricultural Mortgage Corporation, or transactions with nonprofit entities or entities in which the System institution has an ownership interest. With the prior approval of the board of the employing institution, an employee of a Farm Credit Bank or association may serve as a director of a cooperative that borrows from a bank for cooperatives. Prior to approving an employee request, the board shall determine whether the employee’s proposed service as a director is likely to cause the employee to violate any regulations in this part or the institution’s policies, e.g., the requirements relating to devotion of time to official duties.

(e) Use the employee’s position or information acquired in connection with the employee’s position to solicit or obtain any gift, fee, or other present or deferred compensation or for any other personal benefit for the employee, any relative of the employee, any person residing in the employee’s household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(f) Accept, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information the employee has access to by reason of employment with a System institution.

(g) Knowingly acquire, directly or indirectly, except by inheritance, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and that had been acquired by any such institution as a result of foreclosure or similar action.

(h) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing,

supervising, or a supervised institution or a borrower or loan applicant of the employing institution, unless:

(1) The transaction is with a relative or any person residing in the employee’s household;

(2) The transaction is undertaken in an official capacity in connection with the institution’s discounting, lending, or participation relationships with OFIs and other lenders; or

(3) The Standards of Conduct Official determines, pursuant to policies and procedures adopted by the board, that the potential for conflict is insignificant because the transaction is in the ordinary course of business or is not material in amount and the employee does not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way.

(i) Violate an institution’s policies and procedures governing standards of conduct.

(j) Act as a real estate agent or broker; provided that this paragraph shall not apply to transactions involving the purchase or sale of real estate intended for the use of the employee, a member of the employee’s family, or a person residing in the employee’s household.

(k) Act as an agent or broker in connection with the sale and placement of insurance; provided that this paragraph shall not apply to the sale or placement of insurance authorized by section 4.29 of the Act.

§ 612.2155 Employee reporting.

(a) Annually, as of the institution’s fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each senior officer, as defined in § 620.1(o) of this chapter, shall file a written and signed statement with the Standards of Conduct Official that fully discloses:

(1) The names of any immediate family members, as defined in § 620.1(e) of this chapter, or affiliated organizations, as defined in § 620.1(a) of this chapter, who had transactions with the institution at any time during the year;

§612.2157

(2) Any matter required to be disclosed by §620.5(k) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each employee shall, at such intervals as the Board shall determine necessary to effectively enforce this regulation and the institution's standards-of-conduct policy adopted pursuant to §612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulation and such policy. At a minimum, these requirements shall include:

(1) The name of any relative or any person residing in the employee's household, any business partner, or any entity controlled by the employee or such persons (alone or in concert) if the employee knows or has reason to know that such individual or entity transacts business with the employing institution or any institution supervised by the employing institution; and

(2) The name and the nature of the business of any entity in which the employee has a material financial interest or on whose board the employee sits if the employee knows or has reason to know that such entity transacts business with:

(i) The employing institution or any institution supervised by the employing institution; or

(ii) A borrower of the employing institution or any institution supervised by the employing institution.

(c) Any employee who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) A newly hired employee shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after accepting an offer for employment and thereafter shall comply with the requirements of this section.

12 CFR Ch. VI (1-1-01 Edition)

§612.2157 Joint employees.

No officer of a Farm Credit Bank or an agricultural credit bank may serve as an employee of an association in its district and no employee of a Farm Credit Bank or an agricultural credit bank may serve as an officer of an association in its district. Farm Credit Bank or agricultural credit bank employees other than officers may serve as employees other than officers of an association in its district provided each institution appropriately reflects the expense of such employees in its financial statements.

§612.2160 Institution responsibilities.

Each institution shall: (a) Ensure compliance with this part by its directors and employees and act promptly to preserve the integrity of and public confidence in the institution in any matter involving a conflict of interest, whether or not specifically addressed by this part or the policies and procedures adopted pursuant to §612.2165;

(b) Take appropriate measures to ensure that all directors and employees are informed of the requirements of this regulation and policies and procedures adopted pursuant to §612.2165;

(c) Adopt and implement policies and procedures that will preserve the integrity of and public confidence in the institution and the System pursuant to §612.2165;

(d) Designate a Standards of Conduct Official pursuant to §612.2170; and

(e) Maintain all standards-of-conduct policies and procedures, reports, investigations, determinations, and evidence of compliance with this part for a minimum of 6 years.

§612.2165 Policies and procedures.

(a) Each institution's board of directors shall issue, consistent with this part, policies and procedures governing standards of conduct for directors and employees.

(b) Board policies and procedures issued pursuant to paragraph (a) of this section shall reflect due consideration of the potential adverse impact of any activities permitted under the policies and shall at a minimum:

Farm Credit Administration

§612.2170

(1) Establish such requirements and prohibitions as are necessary to promote public confidence in the institution and the System, preserve the integrity and independence of the supervisory process, and prevent the improper use of official property, position, or information. In developing such requirements and prohibitions, the institution shall address such issues as the hiring of relatives, political activity, devotion of time to duty, the exchange of gifts and favors among directors and employees of the employing, supervising, and supervised institution, and the circumstances under which gifts may be accepted by directors and employees from outside sources, in light of the foregoing objectives;

(2) Outline authorities and responsibilities of the Standards of Conduct Official;

(3) Establish criteria for business relationships and transactions not specifically prohibited by this part between employees or directors and borrowers, loan applicants, directors, or employees of the employing, supervised, or supervising institutions, or persons transacting business with such institutions, including OFIs or other lenders having an access or participation relationship;

(4) Establish criteria under which employees may accept outside employment or compensation;

(5) Establish conditions under which employees may receive loans from System institutions;

(6) Establish conditions under which employees may acquire an interest in real or personal property that was mortgaged to a System institution at any time within the preceding 12 months;

(7) Establish conditions under which employees may purchase any real or personal property of a System institution acquired by such institution for its operations. Farm Credit institutions must use open competitive bidding whenever they sell surplus property above a stated value (as established by the board) to their employees.

(8) Provide for a reasonable period of time for directors and employees to terminate transactions, relationships,

or activities that are subject to prohibitions that arise at the time of adoption or amendment of the policies.

(9) Require new directors and new employees involved at the time of election or hiring in transactions, relationships, and activities prohibited by these regulations or internal policies to terminate such transactions within the same time period established for existing directors or employees pursuant to paragraph (b)(8) of this section, beginning with the commencement of official duties, or such shorter time period as the institution may establish.

(10) Establish procedures providing for a director's or employee's recusal from official action on any matter in which he or she is prohibited from participating under these regulations or the institution's policies.

(11) Establish documentation requirements demonstrating compliance with standards-of-conduct decisions and board policy;

(12) Establish reporting requirements, consistent with this part, to enable the institution to comply with §620.5 of this chapter, monitor conflicts of interest, and monitor recusal compliance; and

(13) Establish appeal procedures available to any employee to whom any required approval has been denied.

[59 FR 24894, May 13, 1994, as amended at 64 FR 43048, Aug. 9, 1999]

§612.2170 Standards of Conduct Official.

(a) Each institution's board shall designate a Standards of Conduct Official who shall:

(1) Advise directors, director candidates, and employees concerning the provisions of this part;

(2) Receive reports required by this part;

(3) Make such determinations as are required by this part;

(4) Maintain records of actions taken to resolve and/or make determinations upon each case reported relative to provisions of this part;

(5) Make appropriate investigations, as directed by the institution's board; and

(6) Report promptly, pursuant to part 617 of this chapter, to the institution's

§ 612.2260

board and the Office of General Counsel, Farm Credit Administration, all cases where:

(i) A preliminary investigation indicates that a Federal criminal statute 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.

(b) The Standards of Conduct Official shall investigate or cause to be investigated all cases involving:

(1) Possible violations of criminal statutes;

(2) Possible violations of §§ 612.2140 and 612.2150, and applicable policies and procedures approved under § 612.2165;

(3) Complaints received against the directors and employees of such institution; and

(4) Possible violations of other provisions of this part or when the activities or suspected activities are of a sensitive nature and could affect continued public confidence in the Farm Credit System.

(c) An association board may comply with this section by contracting with the Farm Credit Bank or agricultural credit bank in its district to provide a Standards of Conduct Official.

§ 612.2260 Standards of conduct for agents.

(a) Agents of System institutions shall 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) System institutions shall utilize safe and sound business practices in the engagement, utilization, and reten-

12 CFR Ch. VI (1-1-01 Edition)

tion of agents. These practices shall provide for the selection of qualified and reputable agents. Employing System institutions shall be responsible for the administration of relationships with their agents, and shall take appropriate investigative and corrective action in the case of a breach of fiduciary duties by the agent or failure of the agent to carry out other agent duties as required by contract, FCA regulations, or law.

(c) System institutions shall be responsible for exercising corresponding 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 the employment of agents who are related to directors or employees of the institutions; the solicitation and acceptance of gifts, contributions, or special considerations by agents; and the use of System and borrower information obtained in the course of the agent's association with System institutions.

§ 612.2270 Purchase of System obligations.

(a) Employees and directors of System institutions, other than the Federal Farm Credit Banks Funding Corporation, may only purchase joint, consolidated, or Systemwide obligations that are:

(1) Part of an offering available to the general public; and

(2) 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.

(b) No director or employee of the Federal Farm Credit Banks Funding Corporation may purchase or otherwise acquire, directly or indirectly, except by inheritance, any joint, consolidated, or Systemwide obligation.