FARM CREDIT ADMINISTRATION

12 CFR Part 612

RIN 3052–AC44

Standards of Conduct

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) is amending the its regulations governing standards of conduct (SOC) of directors and employees of Farm Credit System (System) institutions, excluding the Federal Agricultural Mortgage Corporation (Farmer Mac). The final rule requires each System institution to have or develop a Standards of Conduct Program based on core principles to put into effect ethical values as part of its corporate culture.

DATES: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Pursuant to 12 U.S.C. 2252(c)(1), we will publish a notification of the effective date in the **Federal Register**.

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SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this final rule are to:

- Establish principles for ethical conduct at System institutions;
- Enhance Standards of Conduct Programs using core principles;
- Require each System institution to adopt a Code of Ethics; and
- Encourage and enhance ethical behavior within the Farm Credit System.

II. Background

The Farm Credit Act of 1971, as amended, (Act) [1] establishes System institutions as federally chartered instrumentalities of the United States.[2] This status confers on System institutions additional responsibility to strive for high ethical standards and business practices. We believe that 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. Further, Congress explained in section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act) that disclosure of financial information and the reporting of potential conflicts of interest by System directors, officers, and employees helps enhances the financial integrity of the System.[3] This concept is also reflected in many of the provisions of the Sarbanes-Oxley Act of 2002.[4]

We published a proposed rule on June 15, 2018, to update FCA's standards of conduct regulations.[5] The 2018 proposed rule set forth core principles that would serve as the foundation for ethical conduct, including requiring each System institution to adopt a Code of Ethics and address the responsibilities of directors, employees, and Standards of Conduct Officials. Our intent in this rulemaking is to provide performance criteria in some areas while also setting safe and sound operational directions in others to provide for an effective safety and soundness framework. The final rule gives full consideration to the role our examinations play in ensuring safe and sound operations of the System.

The comment period for the 2018 proposed rule closed September 13, 2018.

III. Comments and Our Responses

We received 151 comment letters, all of which came from System institutions or persons affiliated with the System. Of the comment letters received, one came from the Farm Credit Council (Council) acting on behalf of its membership. Each of the four Farm Credit banks submitted a letter, with 15 directors or officers from AgFirst FCB also submitting letters (herein after collectively referred to as ''FC banks''). Additionally, 121 letters came from associations, or directors and officers of an association, which represents 34 associations, and another 10 letters were submitted on behalf of one service corporation and two unincorporated business entities. A total of 139 comment letters expressed support for the Council's letter, with eighty-two stating specific support, among which were the four FC banks. Of the comments received from associations and persons or entities affiliated with associations, a total of 44 letters stated support for the comments coming from the FC banks: 32 expressed support for comments made by AgFirst FCB, nine supported comments made by the Farm Credit Bank of Texas (FCB of Texas) and three expressed support for comments made by CoBank ACB. All 151 comment letters contained constructive comments, some supporting portions of the proposed rule, but most asking for changes. A few commenters requested we withdraw the proposed rule and keep the existing regulations in place. Several commenters expressed support for the proposed rule's principles-based approach, explaining it allows for greater flexibility.

In our response to comments we have made some changes on certain proposed provisions, including not finalizing some proposed items, and have provided explanations to further clarify the final rule, all of which are discussed below.

A. General Comments

The Council and several other commenters complained that the proposed changes would be administratively burdensome, require revisions of existing policies and procedures, amounting to a needless overhaul of existing System institution standards of conduct processes. Comments were also made questioning our Regulatory Flexibility Act (RFA) analysis and adherence to section 212 of the Farm Credit System Reform Act of 1996 (1996 Act).[6]

We received general comments that the preamble to the proposed rule discussed things that the regulatory text did not say. We have addressed a few of those comments by moving preamble discussions into the relevant provisions in the final rule as clarifying changes, but, for the most part, because the intent of this rule is to present general parameters for compliance and allow the System institution the flexibility to develop a Standards of Conduct Program that best suits its own needs, we provide guidance within the preamble without putting forth accompanying regulatory requirements.

1. Regulatory Burden and 1996 Act

Comments were made that the proposed rule presented items that were unnecessary, burdensome, or inconsistent with the 1996 Act. Section 212(b) of the 1996 Act requires us to continuously review our regulations to eliminate rules that are unnecessary,

[1] Public Law 92–181, 85 Stat. 583.

[2] *See, for example,* 12 U.S.C. 2011, 2071, 2091 and 2121.

[3] Public Law 102–552, 106 Stat. 4102, 4131.

[4] Public Law 107–204, July 30, 2002.

[5] 83 FR 27922. We last issued regulations on System standards of conduct May 13, 1994 (59 FR 24894).

[6] Public Law 104–105, 110 Stat. 162 (H.R. 2029).

unduly burdensome, costly, or not based on law. The 1996 Act specifies that we are to make these eliminations only if they would be consistent with law, safety, and soundness. Congress charged us to issue regulations to ensure the safety and soundness of the System. Congress explained in section 514 of the 1992 Act that reporting of potential conflicts of interest by System directors, officers, and employees helps ensure the financial viability of the Farm Credit System. This rule is consistent with the law and safety and soundness concerns.

2. Regulatory Flexibility Act (RFA)

The Council and a couple of others commented that the rule should not be exempt from the RFA as our analysis should focus on the individual impact of this rulemaking to each System institution and not consider financial affiliations between the FC banks and associations. Under the RFA, an agency must certify that a rulemaking will not have a significant economic impact on a substantial number of small entities. If the rulemaking will have such an impact, then the agency must conduct a regulatory flexibility analysis. The RFA definition of a ''small entity'' incorporates the Small Business Administration (SBA) definition of a ''small business concern,'' including its size standards. A small business concern is one independently owned and operated, and not dominant in its field of operation. The SBA explains that ''independently owned and operated'' is determined, in part, by the entity's affiliation with other businesses. Generally, an affiliate is one that is controlled by, or has control over, the entity. Businesses with ownership, management, and contractual relationships that make them economically dependent may also be affiliates.

For purposes of the RFA, the interrelated ownership, control, and contractual relationship between associations and their funding banks are sufficient to permit them to be treated as a single entity. Further, System institutions fall under the SBA ''Credit Intermediation and Related Activities'' size category for small business concerns and the ''All Other Non-Depository Credit Intermediation'' subcategory. This subcategory defines a small entity as one with average annual assets less than $6 million. As affiliates, the combined average annual assets of each Farm Credit bank and its affiliated associations exceed $6 million. Therefore, System institutions do not satisfy the RFA definition of ''small entities.'' Because System institutions are not small entities and the FCA regulations apply only to System operations, FCA regulations generally do not and will not have a substantial economic impact on small entities.

3. Organization

We proposed consolidating, renaming and assigning new regulatory section numbers to most existing provisions as well as removing other sections altogether. The Council and its supporters objected to the proposed reorganization of subpart A of part 612, asking us to retain existing rule numbering wherever possible. Fourteen commenters found the consolidation of director and employee provisions problematic, stating the existing separation in the rules makes them well-structured and easy to follow. In response to these concerns, we are finalizing some, but not all, of our proposed reorganization. Specifically, we are finalizing the proposed changes to section headings and the consolidation of provisions to remove separate sections on director and employee conduct matters. However, we are keeping most existing sections numbers for matters covering the same subject matter as what was proposed. We are also keeping the separate section for standards of conduct for agents but renumbering it as § 612.2180. We discuss later in this preamble content changes to the existing provisions on agents resulting from our proposals on the issue and comments received.

B. Specific Issues

1. Definitions. [§ 612.2130]

We proposed adding new terms, as well as either removing or modifying the meaning of some existing terms used in subpart A of part 612. Specifically, we proposed as new terms:

- Code of Ethics
- Preferential
- Reportable business entity
- Resolved
- Standards of Conduct Program

We proposed removing the terms ''controlled entity'', ''OFI'', ''officer'', ''relative'', and ''service corporation'' due to redundancy. We also proposed revising the following existing terms:

- Agent
- Conflict of Interest
- Employee
- Entity
- Family
- Financial interest
- Financially obligated
- Material
- Ordinary course of business
- Standards of Conduct Official
- System institution

As proposed, there would be a total of twenty terms in the definition section. The final rule contains twenty-one terms in § 612.2130 due to keeping the definition of ''officer.''

We received 129 comment letters on proposed changes to § 612.2130, including a letter each from the Council and three FC banks. Comments were directed at thirteen of the twenty terms contained in this section of the proposed rule, plus the removal of the term ''officer.'' Over half of the commenters objected to the proposed changes to the meaning of ''agent'' and ''family.'' One-third of the commenters sought changes to the terms ''conflict of interest'', ''employee'', and ''standards of conduct official.'' Less than a quarter of comments were on the term ''reportable business entity''. The remaining comments were on the terms: ''entity'', ''ordinary course of business'', ''resolved'', ''Code of Ethics'', ''material'', ''preferential'', and ''standards of conduct program.'' In addition, twenty-two commenters, including the Council, CoBank, and FCB of Texas, objected to removing the term ''officer.'' Two commenters expressed specific support for removing the term ''relative.''

What follows is a discussion of the comments on the definitions and our responses. If a term is not discussed, it is finalized as proposed.

1–a. Agent

As proposed, changes to the definition of agent would have explained that an agent is someone who currently represents the System institution as a fiduciary in contacts with third parties, including cyber-security and internet technology providers. We received 78 comments objecting to our proposed changes to this term. The Council and many other commenters remarked that the changes expand the reporting burden, with some commenters stating that those covered by the proposed definition may be prevented by other laws from filing conflict reports. Letters from the Council, FCB of Texas and several other commenters asked that the definition be confined to the legal meaning of ''agent'' where a fiduciary duty is included. Some commenters stated that an agent is more than someone with fiduciary duties, but also one with power to act for the institution. Some commenters remarked that the change was too broad and the term should exclude those already bound by a code of professional conduct. One commenter said it would be better to ensure those with fiduciary duties act in accordance with a Code of Ethics then extend the SOC program by changing definition of ''agent.'' Another commenter expressed concern with

liability in trying to control the conduct of third parties. The FCB of Texas and one other commenter stated the definition of ''agent'' is a longstanding issue and the proposed change does not improve the situation. These commenters added that merely adding the word 'fiduciary' to the definition serves to complicate compliance with proposed provisions regarding third party adherence to the standards of conduct program. These commenters agreed that using ''fiduciary'' clarifies an agent has a legal relationship, but the definition should include that the person has agreed to be an agent with fiduciary duties.

The Council, CoBank, FCB of Texas, and several other commenters specifically objected to identifying cyber security and information technology professionals as agents of a System institution. The Council, FCB of Texas and one other commenter stated these persons are not members of a profession having a generally recognized code of conduct as the other professions listed in the definition (*e.g.,* attorney, appraiser, accountant) and some commenters stated that System institutions will lose their best contractors. CoBank and several other commenters asked that we limit the meaning of agent to the legal meaning and manage vendors through contract and institution policies. Some commenters expressed concern with including vendors in the term ''agent'' when they clearly are not agents. FCB of Texas suggested that vendors like cyber security and information technology professionals be added as a subcategory of third parties subject to the institution's conduct policies.

We note that after issuance of the proposed rule and closure of the comment period, the Act was further amended by the Agricultural Improvement Act of 2018 (2018 Farm Bill).[7] Specifically, FCA's enforcement authorities were enhanced by adding section 5.31A (12 U.S.C. 2267a), which gives FCA enforcement jurisdiction over ''institution-affiliated parties''. The 2018 Farm Bill also modified section 5.35 of the Act (12 U.S.C. 2271) to define an ''institution-affiliated party,'' which definition includes both agents and independent contractors of System institutions as well as ''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.''

We considered all the comments made on the meaning of ''agent'' and the new authorities granted FCA in the 2018 Farm Bill. In general, the comments offered three suggestions:

- Keep the existing definition;
- Use the legal definition of ''agent''; or
- Remove vendors from the definition.

In response to commenters, we finalize the rule using all three key suggestions in a manner that preserves the policy objectives behind the proposed rule. The final rule uses the existing definition of ''agent'',[8] but removes references to any particular service being provided, and adds language to better reflect the basic legal meaning of the term, including fiduciary relationships. As a result, we finalize the term ''agent'' to mean any person who is not a director or employee of the institution but who has the power to act for the institution, by contract or apparent authority, in either a representational capacity or through provision of professional or fiduciary services.

1–b. Code of Ethics

A Code of Ethics was proposed to mean a written statement of the principles and values the System institution follows to establish a culture of ethical conduct for directors and employees. The FCB of Texas and a few others asked that Code of Ethics be referred to as ''code of conduct'' to avoid confusion with the existing financial disclosure code of ethics. FCB of Texas also suggested adding ''including, at a minimum, the core principles set forth in § 612.2136'' to the definition. We decline to change the name from a Code of Ethics and finalize its meaning as proposed, with one change. We agree that the Code of Ethics should have a connection to the core principles and have included the statement recommended by FCB of Texas.

1–c. Conflict of Interest

We proposed to define a conflict of interest to mean a set of circumstances creating a risk that a secondary or non-work-related interest could unduly influence or materially impact a director's or employee's decision-making with respect to a primary interest. The Council, two FC banks and 32 others commented on this proposed definition. The Council, CoBank and some others commented that changes to this term are not customary, remarking on the ambiguity of using primary and secondary interests in the definition of a conflict of interest, with one commenter asking for more specificity. FCB of Texas and CoBank asked for explanation of what are primary and secondary interests. The Council and some other commenters objected to expanding the definition to cover activities which ''could'' materially impact someone's objectivity, stating the current scope of actual impact and appearance of impact are sufficient. The Council, CoBank and several others asked that proposed changes not be made, allowing the existing definition to remain. FCB of Texas stated no change to the existing definition was needed but offered a new definition it believed clarified what interests are primary in nature. FCB of Texas also asked that if the term was going to be expanded as proposed, that the companion term ''material'' be adjusted as well, and that guidance be given on when a set of circumstances would rise to a conflict. FCB of Texas also commented that the proposed definition implied that a financial interest was not the only circumstance that could give rise to a conflict.

In response to comments, we have made changes to the proposed definition of conflict of interest. The final rule keeps the existing definition of ''conflicts of interest.'' In regards to the commenters who objected to expanding the definition to cover activities which ''could'' materially impact someone's objectivity, we believe that potential conflicts of interest should remain in the definition because they can affect or give the appearance of affecting the impartiality of the director or employee and as such, need to be reported under § 612.2145. The final definition provides that a conflict of interest includes known circumstances or circumstances that appear to affect a person's ability to perform official duties and responsibilities in a totally impartial manner due to a financial interest in a transaction, relationship, or activity. System institutions should understand that the definition's use of a reasonable person's perspective is applied in a manner that gives full consideration to the cooperative structure of the System.

1–d. Employee

Changes to the definition of ''employee'' were proposed to ensure that everyone working at the System institution, including temporary employees, would be part of the ethical corporate culture, regardless of length of employment. The Council, two FC banks and twenty-two other commenters remarked upon this

[7] Public Law 115–334, 132 Stat. 4490.

[8] The existing term is defined as ''any person, other than a director or employee, who currently represents a System institution in contacts with third parties or who currently provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.''

proposal. The Council and some others asked that third-party contractors not be considered employees as was stated in the proposed rule preamble. The Council, CoBank and a few commenters also asked for exemptions to the definition for persons employed only temporarily, suggesting a 6-months or less timeframe, to recognize seasonal workers and summer interns. FCB of Texas requested that the current definition be retained, pointing out the current definition does not include contractors. CoBank asked that contractors be removed from the definition, stating its inclusion raises employment law issues. A few commenters asked that ''employee'' and ''officer'' be kept as separate terms since consolidating them creates confusion for training and reporting requirements. One commenter asked that the word ''working'' be replaced with ''employed'' to avoid including independent contractors.

In the final rule, we adopt the suggestion to replace ''employed'' with ''working'' within the definition of ''employee.'' We have also modified our proposed definition of ''employee'' in response to comments received to clarify the term does not include those persons not maintained on the institution's payroll, which we believe would include those for whom the institution withholds payroll taxes. In the final rule text, we specifically identify that independent contractors are not ''employees'' for purposes of the standards of conduct rules. Generally, an independent contractor can be identified: (1) By how he or she is paid, which distinguishes them from those on the payroll (*e.g.,* someone who receives an Internal Revenue Service (IRS) Form 1099–NEC or similar document from the institution) [9] and (2) if employee-type benefits are provided (*i.e.,* pensions, insurance, vacation pay) by the institution. We use the example of payroll versus an IRS form only to illustrate what would be a clear indicator of employment status, but it will not always be the deciding element. We also explain in this preamble that we consider an employee to be a person in the service of another under any contract of hire, express or implied, oral or written, where the employing institution has the power or right to control and direct the employee in the material details of how work is to be performed. Conversely, we consider an independent contractor to be someone who contracts to do a piece of work according to his or her own methods and who is subject to the contracting institution's control only as to the end product or final result of that work.

We are not exempting seasonal employees as suggested by commenters. We believe that temporary employees, including interns, regardless of how long employed, may have positions in the institution that put them in contact with sensitive information that could be used in misconduct. Therefore, we believe temporary and other short-term employees who are being paid by the institution should be held to the same standards of conduct as full- and part-time employees.

The proposed rule would have eliminated the definition of ''officer'' because officers are a type of employee. Commenters asked that we retain the part 612 definition of ''officer'' as the term is useful in differentiating prohibited actions and reporting requirements amongst general employees and those specific to officers. In response to this request, we are not removing the definition of ''officer'' as was proposed.

1–e. Entity

The term 'sole proprietorship' was proposed as an addition to the definition of ''entity''. FCB of Texas and one other commenter asked that we remove 'sole proprietorships' from the definition as those businesses are normally understood to be other than an entity. FCB of Texas suggested that we include businesses owned by one or more individual in the definition, such as unincorporated business entities, limited liability companies, or limited partnerships. The final rule addresses these comments by adding explanatory parentheticals for 'partnerships' and 'trusts' and by removing 'sole proprietorships' from the definition. The explanatory parentheticals address comments on capturing unincorporated businesses by explaining a partnership can be general or limited and a trust can be formed for business or otherwise. Also, the term 'sole proprietorships' is moved to the definition of ''person'' to ensure that type of operation is captured.

1–f. Family

As proposed, the phrase ''significant other'' would have been added to the definition of family. The Council, three FC banks, and 83 other commenters remarked on this proposal. The Council, FCB of Texas, three commenters from AgFirst FCB, and many other commenters objected to the proposed use of ''significant other'' in the definition, with some asking for its removal or replacing it with ''civil union partner''. Many commenters stated the expanded definition was burdensome for reporting purposes and unreasonable because it created the expectation that institutions make the determination as to the seriousness of an individual's relationship status. CoBank and some other commenters asked that the use of ''significant other'' in the definition be removed as it is a vague term and several commenters explained that there is no common understanding of the phrase. Some commenters specifically remarked that ''significant other'' needed to be defined. One commenter supported adding ''significant other'' to the definition.

The Council, CoBank and FCB of Texas suggested that instead of quantifying relationships under the definition of ''family'' by using specific titles, we should use the description applied in the Standards of Conduct regulations for Farmer Mac regarding households and financial dependence.[10] Specifically, they suggested we define ''family'' as all persons residing in the household or who are otherwise legal dependents. The Council and some others also suggested keeping the existing § 612.2130 definition of ''family'' as it has a clearer means of identifying who is covered by standards of conduct requirements. FCB of Texas and two other commenters suggested limiting the scope of ''family'' to immediate family as is done under 12 CFR part 620 regulations for annual reports. A few commenters agreed it was important to include those seen as family but preferred to limit it to those living in the household or the immediate family. AgFirst FCB observed that the proposed definition of ''family'' does not require a legal relationship in all cases.

Additionally, the individual commenters from the FC banks and several commenters expressed concern with expanding the definition to include cousins, as was discussed in the proposed rule preamble. Some commenters said that would create a broad burden as there was no accompanying limit on if only first cousins were contemplated or more lineal remote cousins. These commenters asked that the term not include cousins, but if it does, then it should be put in the regulatory text. These commenters also asked that if cousins were included, it be limited to first cousins and to only those first

[9] IRS Form 1099–NEC is used by payers to report payments made in the course of a trade or business to others for services. If you paid someone who is not your employee $600 or more for services provided during the year, a Form 1099–NEC is issued January 31 of the year following payment.

[10] 12 CFR 651.22.

cousins a director or employee has reason to know is conducting business with the System.

The final meaning of ''family'' has been revised from what was proposed to incorporate most of the comments received. First, reference to significant others has been replaced with a reference to civil union partners. Second, cousins have not been added to the definition. Next, highly specific relationships are replaced with more gender-neutral terms and accompanying language that those terms apply whether the relationship arises from biological, adoptive, martial, or other legal means. This action also brings the definition closer to that of ''immediate family'' used in 12 CFR part 620 as requested by some commenters. Finally, persons residing in the household or who are legal/financial dependents, regardless of familial relationships, have been added as requested. This change makes the definition similar to the existing Farmer Mac guidance found at § 651.22(a) and harmonizes it with other areas of the law.

1–g. Material

No substantive changes to this definition were proposed. However, the FCB of Texas asked that the current definition be retained without change. The commenter then suggested that if the intent was to expand the definition to include personal interests that the rule clearly state that, adding that a parallel change should be made to the definition of conflict of interest. The term is finalized as proposed. We have not made the suggested changes to the definition as we do not believe they are necessary.

In the preamble to the proposed rule, we discussed that something that is material in one context or geographic area may not be material in a different context or geographical area. We also discussed our expectation that each System institution would develop its own guidelines on that which is material, possibly including a dollar threshold for what would not be material. We continue to believe the System institution board should be accountable for, and involved in approving, these guidelines as required in § 612.2137.

1–h. Ordinary Course of Business

Changes proposed to the definition of ''ordinary course of business'' would separate out the existing definition for ''preferential'' and define ''ordinary course of business'' as:

- A transaction that is usual and customary in the business in question on terms that are not preferential, or
- 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.

The FCB of Texas and seven others commented on the proposed change to the meaning of ''ordinary course of business.'' FCB of Texas asked that we keep the current definition because the proposed changes are confusing and too subjective for consistent application. The other six commenters asked that we keep the current term since the proposed changes go beyond what is ordinary, potentially causing common business negotiations to be reported to the *Standards of Conduct Official* (SOCO). One commenter asked that we leave the existing term alone, stating it does not need to be changed. Another commenter observed that there is little meaningful difference between the first and second paragraphs of the proposed definition.

This term is being finalized as proposed. We do not find the proposed definition confusing or subjective. The current definition applies to transactions that are usual and customary, as does our proposed definition. The current definition also applies to transactions with a person who is in the business of offering the goods or services that are the subject of the transaction, as does our proposed definition. Additionally, we do not agree with the commenters' concerns regarding the first and second paragraphs. The first paragraph applies to a transaction that is usual and customary in a business but is not necessarily with a person in that business. The second applies to a transaction with a person in the business that is the subject of the transaction. In either case, the rule does not allow a director or employee to trade on their position within the System institution to get a special deal or preferential treatment for goods and services.

1–i. Preferential

In the proposed rule, the definition of ''preferential'' currently contained within the definition for ''ordinary course of business'' would be a separate term. Only the FCB of Texas commented on the proposed change, suggesting we include a reference to the institution's policies and procedures in the regulatory definition of preferential. This term is being finalized as proposed. Although we decline the suggestion to add a reference to institution policies and procedures because we believe the addition would be overly prescriptive, a System institution can include a discussion of preferential in its SOC program policies and procedures for business transactions.

1–j. Reportable Business Entity

We proposed changing the term ''controlled entity'' to ''reportable business entity'', defining it as an entity in which a person owns, controls, or has power to vote a material percentage of the equity. The intent behind this proposed change was to avoid confusion with the term 'control' in the corporate context, and to allow the System institution discretion to determine when an interest in a business entity may present a conflict and therefore should be reported to the institution.

The Council, two FC banks and 15 other commenters remarked on this proposal. The Council, CoBank and one other commenter stated the revisions to this definition do not align clearly with how ''affiliated organizations'' is used in 12 CFR part 620. The Council pointed out that the part 620 disclosures for some directors and senior officers are taken directly from standards of conduct reports and it is difficult to understand how the two sets of regulations will work together with the new term ''reportable entity'' only used in one of the rules. The Council asked for the two rules to be reconciled or that FCA otherwise state if the proposed change in part 612 means a separate process for part 620 disclosures is now expected. FCB of Texas said the proposed definition is an improvement over ''controlled entity'' but disagrees with replacing the 5% ownership threshold with the less specific ''material percentage'' language. The FCB of Texas also remarked that it was unreasonable to ask an institution's board to set a dollar threshold for materiality in different situations, instead suggesting we keep the specific ownership threshold but raise it 25%. The same commenter also suggested changing language on the power to exercise ''material influence'' to ''controlling influence.'' In the alternative, the commenter recommended replacing the definition entirely with that used to define ''affiliated organization'' in § 620.1. CoBank supported removing the 5% ownership language. Fourteen commenters stated support for the term ''reportable business entity'' but would like it used with the existing definition of ''controlling entity'' because it reflects numerical ownership of an entity, which does not always mean control of that entity.

We appreciate that it would be easier to comply with this provision if we simply used a bright line percentage

threshold. However, as mentioned previously, our intent in this rulemaking is to provide performance criteria using a principles-based approach. The final definition provides flexibility based on each institution's definition and support for what it considers material without setting specific percentages or dollar amounts. As we explained in the proposed rule preamble, we avoid using specific measurements to allow a System institution discretion to determine what constitutes a conflict of interest.

Commenters also asked that we use the definition of affiliated organization in § 620.1(a).[11] However, the reporting requirements of the Standards of Conduct regulations have a purpose that is more expansive than that used for making annual disclosures to shareholders and requires consideration of more than affiliated organizations as that term is defined in part 620. The Standards of Conduct use of ''reportable business entity'' serves to put the System institution on notice that a director or employee with an interest in a business entity that is significant enough that the interest may give rise to a conflict, or an appearance of a conflict, with that director's or employee's responsibilities to the System institution under certain circumstances requires reporting to the institution.

The final rule modifies the proposed definition of ''reportable business entity'' by adding to the third and last listed item, the phrase ''. . . from his or her status as a partner, director, officer, or majority shareholder in the entity.'' This addition comes from 12 CFR 620.1 and is made in response to comments asking us to reconcile the term with that of ''affiliated organization'' in part 620. We also point out that if a System institution is concerned about picking up all § 620.1(a) affiliated organizations in its standards of conduct disclosures, it can provide, through its own policies and procedures, that all § 620.1(a) affiliated organizations be treated as reportable business entities when making conflicts of interest reports.

1–k. Resolved

We proposed adding a new term ''resolved.'' One commenter remarked on this proposal, asking that we remove the term since not all conflicts are resolved. The commenter instead suggested leaving it to each institution to identify how conflicts are addressed. This term is being finalized as proposed as we believe it is important that there be a common understanding and application of the term. We agree that each institution should identify how conflicts are to be addressed and allow the institution that opportunity in its policies and procedures. The rule requires the institution to address the process by which real and apparent conflicts will be resolved and explain action(s) to be taken when a conflict cannot be resolved to the satisfaction of the institution in its policies and procedures as part of its standards of conduct program.

1–l. Standards of Conduct Official (or SOCO)

Changes proposed to the definition of a Standards of Conduct Official (SOCO) would have required the SOCO to be an employee of the System institution and have the authority to report to the institution board of directors or designated board committee on standards of conduct matters. The Council, one FC bank, and 37 individuals from several associations commented upon this proposal. The Council and several other commenters specifically disagreed with limiting the SOCO to an employee of the institution while supporting the SOCO having direct access to the institution's board of directors. The Council asked that if the proposed limitation is finalized, FCA make clear the SOCO's employment reporting relationship is within the organizational structure, not a direct supervisory relationship with the board. One commenter suggested defining the SOCO as either an employee or agent of the institution with direct access to the institution's board of directors.

FCB of Texas and some other commenters strongly disagreed with limiting the SOCO to employees of an institution explaining there is validity in using someone from the outside, especially for smaller associations. One commenter stated it saw the benefit of limiting the position to employees and another saw value in multiple SOCOs. Both said there should be flexibility to outsource. Other commenters expressed strong belief in allowing each institution to decide who should serve as the SOCO. These same commenters explained the value of outside sources for the SOCO, stating there is greater confidentiality and file protection.

In response to commenters, the final rule incorporates commenter suggestions but in a manner that preserves the policy objectives behind the proposed rule. Some of the suggested changes are reflected in the definition of SOCO and others are captured in the rule sections on SOC program elements and the SOCO duties and responsibilities, both discussed later in this preamble. In the definition section of the final rule, and in response to comments, the SOCO is defined as a person appointed by the institution's board of directors to administer and report on the standards of conduct program, as well as investigate allegations of misconduct. We clarify in this preamble that the Standards of Conduct Official must be in a position to be independent and impartial in order to discharge his or her duties but does not have to be an employee. We also agree with comments that the institution is in the best position to know its needs and resources, including the person who would best satisfy the SOCO role in light of those needs and the program in place, whether such person is employed by the institution or is an outside resource.

1–m. Standards of Conduct Program

As proposed, the Standards of Conduct Program would be defined to mean the policies and procedures, internal controls, and other actions a System institution must put into practice to meet the requirements of this rule. Only the FCB of Texas commented on this term, suggesting that the definition include ''specific guidelines and comprehensive rules.'' The definition explains that the Standards of Conduct Program includes the policies and procedures, internal controls, audit, training, and other activities that promote ethical behavior. Therefore, we are not making the suggested change, preferring to keep the principals-based approach of the rule. Further, as was explained in the proposed rule, we reiterate that the Standards of Conduct Program is the totality of the policies, procedures, internal controls, audit, training, and other activities used to promote ethical behavior at a System institution.

2. Standards of Conduct—Core Principles. [§ 612.2135]

We proposed substantially revising current rule § 612.2135 to set forth the core principles we believe are essential to fostering an ethical culture within the System. We also proposed certain basic minimum requirements for compliance as well as requiring cooperation between employees, directors, and the SOCO. We received 23 comment letters on this section, including one from the Council and two FC banks. Most of these same commenters asked us to retain the existing rule instead of what was proposed, stating the proposed

[11] The term ''affiliated organization'' is defined in 12 CFR 620.1 as ''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.'' The term as defined only applies to 12 CFR part 620.

changes were not an improvement. FCB of Texas generally supported the proposed core principles but asked for a few changes in the language and in the organization of the section. Specifically, FCB of Texas suggested listing all the proposed provisions sequentially.

We finalize this section substantially as proposed but make some changes in response to comments that we discuss in the subsections below. We also make small changes to improve readability and align the format of the rule, such as adding headings to main paragraphs and clarifying language on fulfilling the core principles. At the request of commenters, we are retaining the numbering of this section as § 612.2135.

2–a. Compliance With Ethical Standards

In paragraph (a) we proposed increasing the ethical standard to ''the highest ethical standards of the financial banking industry, including standards of care, honesty, integrity, and fairness.'' The Council and most other commenters to this section objected to raising the standard from ''high'' to ''highest'' and using the financial banking industry as the guide. The Council and six others said the highest standard is ambiguous, leading to uncertainty, and recommended keeping the existing high standard. The Council, FCB of Texas, and twenty other commenters stated the current high standard does not need to be replaced, with FCB of Texas suggesting use of a more focused approach directed at the System's reputation and mission. CoBank and one other commenter expressed support for maintaining the highest ethical standards but characterized it as an aspirational goal rather than a requirement. The Council, CoBank, and seven other commenters remarked that the financial banking industry is an inappropriate guide because commercial banks are not subject to the same conduct rules as the System. Commenters asked that reference to financial banking industry be removed. CoBank suggested keeping the current language of § 612.2135(a) and one other commenter suggested replacing proposed financial banking industry with ''financial services industry''.

In response to comments, we retain the current rule's language requiring ''high'' ethical standards and remove the proposed reference to the financial banking industry. We also replace proposed language asking employees and directors to ''vet'' conflicts of interest with the SOCO to clarify that the provision requires identification and reporting conflicts of interest as well as resolving those conflicts. We make this change in direct response to FCB of Texas and fourteen other commenters stating the verbiage ''vet'' was confusing. To further clarify this provision, the final rule lists reporting to the SOCO conflicts of interest involving a director or employee (or family and reportable business entities thereof) separately from the requirement to work with the SOCO to identify conflicts and resolve any conflict reported.

FCB of Texas suggested that we add to proposed paragraph (a)(5) the words ''between an individual's personal interests and official duties'' before the words ''in System business relationships and activities'' to make clear where conflicts of interest actually arise. We are not making the changes suggested by FCB of Texas. The suggested language by FCB of Texas was designed to clarify the provision. We believe we have achieved the requested clarity through other changes made to this provision.

2–b. Compliance With Fiduciary Duties

We proposed requiring directors and employees to fulfill fiduciary duties, as applicable. FCB of Texas asked that we insert ''as a director or employee'' when talking about fiduciary duties instead of the phrase ''as applicable.'' Five commenters remarked that the proposal would extend fiduciary duties beyond those currently in law, causing a significant burden for all concerned. One of these commenters also remarked that the proposal would change director and senior officer disclosures made under 12 CFR 620.6, significantly expanding them beyond directors and senior officers and adding no benefit. The commenters asked that the provision only apply to directors and senior officers or be removed entirely. Commenters expressed that not all employees have fiduciary duties and that the phrase ''as applicable'' is confusing and should be clarified or eliminated.

FCA expects System institution directors to acknowledge their fiduciary duties. Additionally, most officers have fiduciary duties, whether they are senior officers or not. To distinguish established fiduciary duties from other conduct requirements, the final rule moves the provision on fulfilling fiduciary duties to § 612.2135(c) and adds clarifying language that these responsibilities apply to officers and directors of the institution. We continue to believe there are fiduciary responsibilities held by non-officer employees in the financial sector. However, we are not currently regulating it for all employees as a System institution is in the best position to determine which employees have fiduciary duties based on job responsibilities. We expect each institution to address these responsibilities within the Standards of Conduct policies and procedures.

2–c. Compliance With Law

As proposed, directors and employees would be required to comply with all applicable laws and regulations. One commenter expressed that this provision should also include violations of state or local laws in determining a standards of conduct violation. The final rule at § 612.2135(b) does not add the distinction requested by the commenter but does contain clarification that compliance with an institution's standards of conduct means following the SOC policies and procedures as well as law and regulation. We believe that ''all applicable laws'' would include state and local laws and therefore, it is unnecessary to make it a condition in this final rule. However, a System institution may specifically address state and local laws in its policies and procedures if it wishes. We also clarify in § 612.2135(b) that the provision on reporting known or suspected activities refers to anonymous reporting procedures.

2–d. Compliance With Training

We proposed to require directors and employees to certify participation in the institution's annual standards of conduct training. The FCB of Texas suggested that this provision belongs in the section that would establish the standards of conduct training as part of the Standards of Conduct Program. We agree with this comment and have relocated the provision to the section on standards of conduct training. We renumber the remaining subparagraphs of this section in conformance with this change.

Six commenters expressed that directors and employees should be able to certify participation in standards of conduct training using methods other than in writing. We did not intend to limit the manner in which conflicts of interest reports are filed or how training participation is certified as long as records are created. Therefore, we have added language to the definition section at § 612.2130 to explain that for purposes of this subpart, words like report, certify, file, and sign are to be treated as permitting their electronic equivalent.[12] Institutions are expected

[12] This language should not be interpreted as referring to our regulations in part 609 on electronic

to specify what methods will be used within their standards of conduct policies and procedures.[13] Institutions are cautioned that the option to use electronic methods does not mean the contents of any standards of conduct filings may differ depending on the format used: The contents are the same whether paper or electronic means are used. Institutions must also ensure that any electronic conversion of these disclosures does not adversely affect the filing of annual reports.

3. Elements of a Standards of Conduct Program. [§ 612.2137]

Proposed § 612.2137 would set forth a System institution's responsibility to establish a Standards of Conduct Program that includes policies and procedures and a Code of Ethics, among other things, to implement the objectives of this rule. We received 118 comment letters on this section of the proposed rule, including letters from the Council and three FC banks. A significant number of the commenters asked that we retain current rule provisions in certain areas, including the treatment of agents, family and reportable business entities under the Standards of Conduct Program. Commenters also asked for clarifications and exceptions to what was proposed, with a few asking us to relocate reporting information to the section on disclosures and training information to the section on SOCO duties.

We finalize the rule with changes based on comments received and we discuss those changes in the subsections below. We also make small changes to improve readability and align the format of the rule, such as adding headings to main paragraphs and clarifying language on designing a standards of conduct program.

3–a. Core Principles and SOCO. [§ 612.2137(a) and (b)]

Proposed § 612.2137(a) would establish that the Standards of Conduct Program set forth the core principles in § 612.2135 and provide resources for its implementation. FCB of Texas suggested that language be inserted after the reference to § 612.2135 to make explicit that the Standards of Conduct Program comply with more than just the core principles of the regulation. We agree and have revised the regulatory text in final rule § 612.2137(a) accordingly. This commenter also suggested that the preamble language ''including but not limited to, additional staffing or access to outside counsel where necessary,'' be added to the end of § 612.2137(a). We are making this change but not using specific language provided. Instead, we have added language to require resources for both implementation and operation of the SOC program. We leave specificity on the type of resources to each institution. For example, reference to adequate resources could include staffing and access to outside counsel if the institution deems it necessary. It is up to each institution's board of directors to provide the necessary resources to implement an effective SOC program.

(i) Recordkeeping and SOC Program. [§ 612.2137(a)]

Proposed § 612.2137 would require a System institution to maintain records of conflicts of interest reports, investigations, and other documents for at least 6 years. As proposed, institutions would be required to protect these records and other confidential information obtained as part of the standards of conduct program from unauthorized release. Each institution would also have to periodically review and update the SOC program. One commenter expressed general agreement with the recordkeeping requirements but asked for wording changes. Another commenter suggested that these records be maintained by outside counsel for confidentiality reasons. FCB of Texas suggested naming the person responsible for the reviews and updates.

In response to the comment asking us to clarify record retention and consolidate like provisions, we move language from proposed paragraph (d) to this paragraph, which requires maintaining conflict of interest reports a minimum of six years. Language from proposed paragraph (e)(1) on maintaining SOC program records of investigations for six years is also moved into paragraph (a). No significant wording was revised but the suggested language of the commenter was considered. Although not in rule text, we clarify that a System institution may choose to place records with outside counsel, but we decline to make it a requirement. We also apply to this section the comment from FCB of Texas on naming responsible parties in the section addressing SOC program administration.

(ii) Appointing a SOCO. [§ 612.2137(b)]

In § 612.2137(b), we finalize the requirement to appoint a SOCO and add language in response to comments on who may serve as a SOCO. When offering comments on proposed duties of the SOCO, thirty-two commenters also remarked on the proposed limit of who may be SOCO in two regards: The limitation of the SOCO being an employee and the supervisory implications of the SOCO reporting directly to the board. These commenters generally expressed that the board should retain full discretion in selecting the SOCO and espoused the belief that using a person outside the institution as SOCO provides greater independence and security in monitoring and reporting conflicts. Six commenters from one association explained that at smaller associations only the Chief Executive Officer (CEO) reports directly to the board and the CEO may not be the best person to serve as the SOCO. These same commenters expressed a preference for continuing the existing practice of contracting with an outside law firm, where the SOCO is free from undue pressures by management and offers an independence desirable to employees for discussing conflict issues. Twenty commenters from two associations stated that the board should retain the discretion to select the SOCO whether inside or outside the institution. One other commenter stated that FCA's reasons for proposing the SOCO be an employee can be satisfied to a greater extent by outsourcing the position, as the independence from internal operations gives greater objectivity in standards of conduct issues and makes reporting directly to the board more manageable. Another commenter expressed significant concern with having a SOCO report to its board for standards of conduct issues but report to management on other job tasks. This commenter asks if FCA is insisting institutions create a stand-alone, full time SOCO position. If so, the commenter said that would be a real burden for smaller associations. Another commenter stated the proposed SOCO limitation threatens critical independence and objectivity. This commenter also remarked that the proposed change removes clarity, makes the SOCO role more difficult for employees to hold as the proposed SOCO duties appear to require legal expertise. This commenter also remarked upon the day-to-day work environment for employees serving as SOCO, especially once the employee takes actions against co-workers or

commerce. Standards of conduct disclosures are not considered ''business transactions'' so neither the e-commerce or e-sign provisions of part 609 apply.

[13] Institution employees have a different legal status than do directors. Employees can be required to use electronic filing procedures as a condition of employment, but directors are not ''employees'' so cannot be treated as such. Instead, to require electronic filing for directors, the SOC policies and procedures would need to specifically address the issue.

supervisors for standards of conduct noncompliance.

The final rule removes the proposed restriction on using only employees as the SOCO. To offer flexibility in response to comments, the rule specifically authorizes institutions to appoint a SOCO from several sources including using: One if its officers, the resources of a 4.25 service corporation, another institution's SOCO, or contracting with a third-party to serve as SOCO (including under a contract shared with another System institution). In situations where institutions share a SOCO, the rule requires the existence of a separate confidential relationship. Whether the SOCO serves in a full-time capacity, as a collateral duty, or in an as needed capacity is a decision of the institution.

3–b. Code of Ethics. [§ 612.2137(c)]

Proposed § 612.2137(c) would require each System institution to adopt a Code of Ethics that establishes principles and values for the ethical conduct of its directors and employees, including standards for appropriate professional conduct at the workplace and in matters related to employment. It was proposed that System institutions also be required to post the Code of Ethics on the external website for public access. The Council, CoBank, and most other commenters remarked that the Code should not include matters normally associated with employment conduct. Seventeen commenters specifically said much of the provision was redundant of work done by the human resources staff, making it inefficient to have the SOCO duplicate those efforts, and asking that language be removed. CoBank supported requiring a Code of Ethics but objected to publishing it for fear of litigation. Two commenters also objected to public posting of the Code, with one stating the whistleblower information is already on the website providing the public a venue for reporting issues. Eighteen commenters supported the suggestion of posting a general statement of the institution's professional integrity and conduct but saw no benefit in posting the entire Code of Ethics. Instead, most of these commenters said they viewed posting the Code as an invitation for borrowers to contest credit decisions on other than the merits. FCB of Texas supported requiring a Code of Ethics and publishing it, if the Code is limited to general ethical statements and does not include matters related to employment. This commenter also offered specific wording to soften the regulation in this area. Comments asking to rename this Code as a ''code of conduct'' were made when remarking on the definition for ''Code of Ethics'' and are addressed in that section.

The proposed requirement to adopt and maintain a written Code of Ethics is finalized with the following changes made in response to comments received:

- Adding clarifying language explaining the Code must be kept up-to-date;
- Replacing language regarding employment matters with language explaining the Code is directed at business transactions; and
- Revising the proposed requirement of posting the Code on an institution's website with a requirement for posting a statement that the Code has been adopted. The statement must summarize the Code and advise the public that a copy of the Code of Ethics is available on request and at no cost.

3–c. Policies and Procedures. [§ 612.2137(d)]

As proposed, a System institution would have responsibility to establish policies and procedures that further the objectives of this rule. We noted that some commenters confused the proposed responsibilities of the System institution to develop policies and procedures on reporting of conflicts of interest in real time with the proposal for the periodic reporting of other matters. The institution, its directors, its employees and the SOCO all have a role in implementing the Standards of Conduct Program. The periodic reporting of other matters is a responsibility of each director and employee. Developing policies and procedures for those reporting responsibilities is a duty of the institution. We offer further clarifications in the respective discussions that follow.

In the process of addressing comments to specific provisions within this section, the organization and numbering of paragraphs has changed, including:

- Proposed paragraph (d)(1) on contents of a conflicts of interest report is renumbered paragraph (d)(2).
- Proposed paragraph (d)(2) on resolving conflicts is renumbered paragraph (d)(3).
- Provisions on third party relationships in proposed paragraph (d)(3) is renumbered paragraph (d)(4).
- Proposed paragraphs (d)(4) and (5) on enforcing the SOC program are consolidated into renumbered paragraph (d)(6) and now follow renumbered paragraph (d)(5) discussing receipt of gifts.
- Proposed paragraph (e)(3) on anonymous reporting is moved and renumbered as paragraph (d)(7). As finalized, § 612.2137(d)(1) contains the requirement to file a conflict of interest report, including the timing of the report, and providing disclosure information required under § 620.6(a), (e), and (f). The part 620 items were moved to this section in partial response to comments asking us to reconcile the conflicts of interest disclosure requirements of parts 612 and 620.

Commenters were concerned that the proposed rule preamble discussion on requirements for reporting of material interests was not adequately reflected in the rule. To address commenters' concerns, we include a requirement in final rule § 612.2137(d)(2) that the System institution must establish criteria to help directors, employees, agents and the SOCO identify conflicts and those that are material.

(i) Identifying ''Ordinary course of business'' Transactions and Materiality. [§ 612.2137(d)(2)(i) and (ii)]

As proposed, each System institution would have the flexibility to develop a Standards of Conduct Program most suited to its unique needs, and to use its existing Standards of Conduct Program if it is adequate to satisfy the purposes of this regulation. The Council and several other commenters objected to the rule requiring reports outside the ordinary course of business, stating it was too broad. The Council, FCB of Texas and some other commenters asked that this provision give the SOCO authority to exclude non-material activities and that transactions be limited to fiscal year interactions with institution directors, employees, and agents. Fourteen commenters stated the provision conflicted with other provisions as it is not limited to transactions with the institution but could be read to include all business transactions. FCB of Texas observed the rule does not require reporting ordinary business transactions as is done in 12 CFR 620.6(e) and (f). Similarly, one commenter stated the requirement to annually report all business transactions was too broad and inconsistent with 12 CFR 620.6 disclosures. This commenter asked that current reporting language be kept instead of the proposed provision. The commenter also asked that the reporting expectations be reconciled with 12 CFR 620.6(e) and (f) as well as the term ''affiliated organization'' used in part 620. One commenter asked for general clarifications and to relax the requirements to allow institutions to tailor their policies to their needs.

We discussed in the preamble to the proposed rule our expectation that each System institution should set its own

specific parameters for what would constitute a material financial interest and what activities and transactions would present real or potential conflicts, including those in the ordinary course of business.[14] Some commenters were concerned that we did not clearly set forth this expectation in the rule. In response to comments, we are revising the final rule at § 612.2137(d) to clearly require that every System institution have policies and procedures to help directors and employees identify interests and circumstances that could lead to a conflict of interest, including identifying transactions posing real or apparent conflicts of interest, explaining what would constitute a material financial interest, and establishing how transactions occurring in the ordinary course of business are identified. The board must give due consideration to the potential adverse impact of any activities identified as not presenting conflicts. We decline the request to give the SOCO specific authority to exclude non-material transactions. The authority and requirement to define what constitutes a material transaction lies with the board of directors. The SOCO implements these policies as required under § 612.2170.

FCB of Texas asked that we move all reporting details to the proposed disclosure section. We believe the final rule achieves this by consolidating all reporting requirements in § 612.2145, which correspond with the policy requirements in § 612.2137(d). However, discussion of reporting content and how reports are made is still a part of § 612.2137 as each institution's board of director must address these issues in their SOC program policies and procedures.

(ii) Identifying Reportable Business Entities and Family

Proposed § 612.2137(d)(1)(iii) and (iv) would require System institutions to establish policies and procedures for disclosing conflicts arising from family and business entities. We received several comments on this proposal and address them in III.B.4 of this preamble discussion of provisions on the reporting of conflicts.

(iii) Standards of Conduct Policies and Procedures for Resolving Conflicts of Interest. [§ 612.2137(d)(3)]

We proposed that an institution's policies and procedures address how reported conflicts of interest will be resolved. We received no substantive comments on this area, but there were related comments asking us to clarify the role of the SOCO in the resolution process. We finalize the rule in this area substantially as proposed but make some changes to improve readability and clarity. We also add language clarifying that the policies and procedures must explain the process for how conflicts will be resolved and the role of the SOCO in resolving conflicts. This clarification is made in response to comments on the issue and is in keeping with our principals-based approach to the rule.

(iv) Standards of Conduct Policies and Procedures for Agents and Other Third-Parties. [§ 612.2137(d)(4)]

As proposed, System institutions would establish policies and procedures to address third-party relationships, including disclosing known conflicts. Several commenters questioned the ability to get agents to cooperate in reporting the required information and whether all System personnel know all the institution's agents. Some specifically suggested keeping the current requirements of § 612.2260 saying it is clear and understandable. The Council asked how the phrase ''third-party relationships'' differed from the proposed definition of ''agent''. The Council, CoBank and several others suggested that those parties not covered as ''agents'' be handled by the institution's vendor management policies. The Council and nineteen other commenters also asked that service providers covered by professional conduct and ethics standards be exempted from compliance with an institution's standards of conduct or be treated as satisfying those requirements if in compliance with their own professional and ethical standards. CoBank and some others asked that existing agent contracts be grandfathered in to avoid costly renegotiations. A few commenters asked that we allow institutions to follow reasonable policies on agents. Four commenters remarked on preamble language discussing conditioning an agent's appointment on the misconduct rules, stating that is an overreach and inconsistent with rule text. Another comment stated vendors cannot be expected to know the institution's SOC program and asked us to remove the requirement. Still others asked that we add a knowledge element to the reporting requirement for agents. One commenter pointed out that most agents do not have direct knowledge of the institution's borrowers so would be unable to accurately report any potential conflicts of interest. Seventeen commenters said the requirement was unnecessary as contract language to engage an agent already has behavior clauses.

In response to comments asking to keep the current rules on agents in 12 CFR 612.2260, the final rule does not implement the proposed removal of that section. However, the existing provision is renumbered as § 612.2180. A full discussion of this retained section is contained later in this preamble at III.B.7. In connection with making this requested change, the final rule replaces proposed language with language requiring an institution's board of directors to adopt conflict of interest polices for third party relationships (including agents). And, following the comments regarding use of contracts, the final rule requires each board to apply ethical safeguards in contracts with third parties, including agents. The final rule also implements commenter suggestions by adding a knowledge requirement of conflicts disclosed by agents and other third-parties. At a minimum, board policies address its expectations for agents and other third-party service providers to disclose known conflicts to the institution. By definition, an agent is someone who has the power to act for the institution either by contract or apparent authority; therefore, it is important that agents and other third-parties maintain the same high ethical standards as directors and employees. We consider not finalizing the proposed third-party reporting provision, along with keeping existing rule text on conflict of interest reporting by agents, as satisfying all other comments asking for changes to that requirement.

Some commenters objected to the suggestion in the proposed rule preamble that a System institution should require agents to acknowledge a System institution's Code of Ethics by signing it. This is not a requirement in the rule, although a System institution could consider imposing this requirement on their own in future agency relationships.

(v) Policies and Procedures on Gifts. [§ 612.2137(d)(5)]

As proposed, System institutions would be required to establish policies and procedures prohibiting gifts but could have rules in place to allow directors and employees to accept *de minimis* gifts. The Council and three others asked that a gift exception be made for transactions that would not otherwise be reported, such as giveaways of token items, explaining the de minimis language is unclear on this point. AgFirst FCB and seventeen other commenters asked the gift exceptions

[14] 83 FR 27922, 27924.

include traditional gift giving events or gift between family and friends. CoBank supported the de minimis gift exception. Twelve commenters asked that the rule clarify gifts reported do not include de minimis gifts. FCB of Texas commented that the limitations on gifts is more restrictive than the current rule or past proposals as this rule does not tie gift restrictions to those intended to influence official actions. This commenter then stated that FCA offered no rationale for the more restrictive gift rules. FCB of Texas also identified inconsistencies with this provision as compared to the proposed reporting provisions which allow exceptions for de minimis gifts. FCB of Texas suggested that to resolve this, at a minimum, the rule should replace the word ''prohibiting'' with the words ''governing permissible'' gifts. FCB of Texas also suggested allowing specific exceptions for reasonable business expenses like those outlined in the FDIC's Guidelines for Compliance with the Federal Bank Bribery Laws.[15]

The final rule clarifies that the required policies and procedures on gifts address those gifts not otherwise prohibited by FCA regulation. As requested by commenters, the final rule alters proposed language on the contents of these policies and procedures to provide that institutions may make appropriate exceptions for gift giving related to non-business events as long as gift exchanges would not be viewed as an attempt to influence official institution activities. While commenters suggested various changes and specific exceptions on gifts, in keeping with the principals-based approach of this rulemaking the final rule does not adopt those detailed suggestions nor do we include a de minimis level. Instead, the rule leaves it to the institution to set specific gift parameters. The final rule also clarifies that authorized gift exchanges must have de minimis thresholds at both the individual gift level and in the annual aggregate, per recipient.

We do not believe the restrictions on gifts are more restrictive. The principles-based approach to the regulations allows the institutions to set criteria for accepting gifts and includes an exception for non-business events where the gift is not viewed by the institution as attempting to influence official institution business. We encourage institutions to have internal controls or policies to ensure adequate de minimis levels are set and followed. The final rule retains the proposed requirement that the policies and procedures establish disclosure requirements for gifts received as well as any disposed of because they were impermissible. In response to other changes, this provision is renumbered as § 612.2137(d)(5).

(vi) SOC Program Enforcement. [§ 612.2137(d)(6)]

Proposed paragraphs (d)(4) and (5) would require SOC program policies and procedures to discuss how the SOC program is monitored and enforced. We received no substantive comments on this area, but there were related comments asking us to clarify the role of the SOCO in enforcement actions. We finalize the rule in this area substantially as proposed but make some changes to improve readability and clarity, including consolidating the provisions into renumbered paragraph (d)(6). As requested by commenters, we also specifically require the policies and procedures identify who is authorized to take enforcement actions and discuss the SOCO role in investigating certain conduct issues.

(vii) Anonymous Reporting. [§ 612.2137(d)(7)]

The proposed rule would require internal controls for anonymous reporting of suspected standards of conduct and Code of Ethics violations through a hotline or other reporting procedure. FCB of Texas suggested adding language to clarify that reporting is for any individual action. CoBank stated that this provision appears to codify the Whistleblower Program that is already in place for reporting financial improprieties and used for other types of anonymous reporting and thus the new provision should be eliminated. We finalize the rule substantially as proposed but add reference to individuals making a report and make small changes to improve readability. We feel that providing an avenue to anonymously report both known and suspected violations is an important part of a Standards of Conduct Program and believe it should be included within SOC program policies and procedures even when there is Whistleblower Program in place. We also add that nothing in the rule prevents institutions from adapting existing Whistleblower or Hotline programs for SOC program purposes. In response to other changes, this provision is renumbered as § 612.2137(d)(7).

3–d. Internal Controls for SOC Program. [§ 612.2137(e)]

Proposed § 612.2137(e) would require each System institution to arrange periodic internal audits of the Standards of Conduct Program to identity weaknesses, measure effectiveness, and conduct reviews to prescribe necessary corrective actions. Two commenters said the program as written would be costly to implement especially for those associations who do not have an internal audit department. The commenters asked that the word ''internal'' be removed to allow for outsourcing the service. One commenter also asked if FCA was requiring each institution to establish a new department of internal SOC audits. Another commenter asked us to explain how the provision would be applied at unincorporated business entities (UBE) of a System institution.

We finalize the rule in this area substantially as proposed but, as discussed earlier, moved some provisions to other paragraphs. We also add a heading to the paragraph in keeping with the overall format of the rule. We make some clarifying changes considered necessary based on comments received and to improve readability. The final rule clarifies that the institution's board of directors establishes the internal controls program but does so with the assistance of the SOCO and other officers of the institution. However, the board ultimately decides the scope of the internal review and identifies who will conduct the audit. Also, the final rule clarifies that all audit results of the SOC program go directly to the board. A commenter asked about the proposed rule's reference to UBEs so the final rule adds reference to FCA regulations in § 611.1150(b).

The final rule's requirement for an ''internal'' audit of the SOC program refers to an audit of the internal operations of the program. It does not limit the persons who perform the audit. System institutions are not required to establish an internal audit department. While we recognize there could be some additional costs involved, the audit could be a component of the institution's risk assessment process as established by the Audit Committee and conducted by a person or entity independent of the Standards of Conduct Program. The board is responsible for identifying who will conduct the internal audit, which is important to ensure the program is being managed effectively. We believe that to ensure a strong ethical culture, ethical conduct must be encouraged

[15] Federal Deposit Insurance Corporation, FDIC Law, Regulations, Related Acts. 5000—Statements of Policy, ''Guidelines for Compliance With the Federal Bank Bribery Law,'' Nov. 10, 1987, *https://www.fdic.gov/regulations/laws/rules/5000-2300.html#fdic5000guidelinesfc.*

across all System activities, including those conducted in UBEs. Therefore, we require periodic audits that cover the entire System institution.

3–e. Training Policies. [§ 612.2137(f)]

Proposed § 612.2137(f) would require each System institution to establish within its policies and procedures SOC program training, setting the timeframes for conducting such training. FCB of Texas remarked that this could be duplicative of the training requirements proposed elsewhere and suggested consolidating them all into this section. As discussed earlier in this preamble at III.B.2–d, the final rule relocates most provisions on standards of conduct training into this paragraph. The final rule makes some clarifying changes to § 612.2137(f) considered necessary based on consolidating like provisions and adds a heading to the paragraph in keeping with the overall format of the rule. Changes made in response to other comments are discussed below.

(i) New Director SOC Program Training

As proposed, new directors would receive standards of conduct training 60 calendar days before or after the director's election or beginning of his or her term. The Council, CoBank, and 16 others separately commented on the proposed timeframes, questioning if there was an error in asking for training before a director begins his or her term of service. The commenters explained the unworkability of trying to administer training *before* a director begins his or her term of office and how such an action would be contrary to cooperative principles. Commenters also pointed out there is an existing regulation at § 611.210(b) requiring director orientation training to be completed within one year of a director assuming his or her position on the board. Commenters asked that we correct the error by having the required training occur 60 calendar days *after* a director's term of office begins. Some also asked that we use the one-year time frame of § 611.210(b) instead of the proposed 60 days.

We agree with commenters that it is impractical as well as generally impossible to provide training to directors who have not yet begun serving their terms of office. Directors are not employees of the institution so providing individuals access to the institution's resources for training or other reasons before board service would be impermissible due to confidentiality laws and regulations, especially as there is no basis under which to obtain confidentiality agreements from these individuals until board service begins. It is an established corporate governance principle that once elected to the board a director owes his or her fiduciary duties, including a duty of confidentiality, to the institution and shareholders as a whole. As such, an institution may take measures to ensure each director abides by policies defining and specifying the treatment of the institution's confidential information, including restricting directors from disclosing confidential information to the shareholders electing them to serve on the institution's board. However, this authority does not arise until board service begins. We appreciate commenters identifying our inadvertent mistake. In this final rule we correct the error on director training by changing ''before'' to ''after'' and, for further clarity and consistency, use the language of § 611.210(b) on when to start the 60 days. New director training must occur within 60 calendar days of a director assuming his or her position on the board. We decline requests to extend the timeframe to one year as directors should be made aware of their standards of conduct responsibilities as soon as possible. We clarify that this new director standards of conduct training can be considered part of the overall § 611.210(b) orientation training as nothing in § 611.210(b) requires all components of orientation training to occur at one time; rather, it all must just be completed within 1 year.

(ii) New Employee SOC Program Training

We proposed that newly hired employees receive training within five business days of starting employment. One commenter asked that we provide a longer timeframe, suggesting 10 business days. FCB of Texas also remarked five days was too short. In response to the commenters' request for a longer period of time, we are changing the time period in the final rule from five days to the suggested ten days. We believe the requested timeframe of 10 days is reasonable and meets policy objectives.

(iii) Periodic SOC Program Training

Over 30 commenters supported the requirement for annual SOC training, with fourteen of them asking to incorporate it into existing training requirements rather than treat it as a separate training event. Six commenters asked that periodic training be every other year (*e.g.,* biennial) instead of each year as that timing is sufficient to stay current on requirements. Five commenters asked us to clarify that SOC program training on fiduciary duties would only apply to directors, not employees as well.

We believe it is important for all employees, not just directors, to receive SOC training to ensure knowledge of prohibited conduct and any changes to the SOC program. We do not agree that training every 2 years is sufficient and final the requirement for annual training. We think it is important for training to reinforce the SOC requirements. The institution can decide if that can be accomplished effectively by incorporating the SOC training into existing training. Additional comments on SOC program training are addressed in III.B.6–c of this preamble.

4. Disclosing and Reporting Conflicts of Interest. [§ 612.2145]

We proposed consolidating and revising existing standards of conduct reporting requirements to enhance the quality of information captured in a standards of conduct report as well as implement a principles-based approach. As proposed, the rule would establish requirements for directors and employees to identify and report conflicts of interest. We received 132 comments on the proposed changes to the standards of conduct reporting requirements, including comments from the Council and three FC banks, as well as individual letters representing 27 associations. The majority of comments were directed at the proposed paragraph regarding the contents of conflict of interest reports.

We finalize the provisions on reporting conflicts of interest with changes based on comments received. We discuss those changes in the subsections below. We also make small changes to improve readability and align the format of the rule, such as adding headings to main paragraphs and clarifying language.

FCB of Texas asked that the heading for this section read as only ''reporting requirements'' to avoid confusion. In response to the suggestion on the heading for this section, the final rule changes the heading for this provision to ''Disclosing and reporting conflicts of interest.'' Additionally, in response to requests that we keep existing section numbering, we do not final the proposal to move reporting requirements to a new § 612.2138. Section 612.2145, which currently addresses SOC program reporting for directors, will now encompass reporting for directors and employees. The § 612.2155 employee reporting section is removed and reserved.

4–a. Disclosing Conflicts of Interest. [§ 612.2145(a)]

As proposed, directors and employees would be required 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. We also proposed that a director or employee with a conflict in a matter subject to official action refrain from participating in the official action (*i.e.,* recusal). FCB of Texas and one other commenter remarked that provisions on cooperating was redundant with requirements to report conflicts and suggested consolidating them within paragraph (a), leaving recusal issues in paragraph (b). One commenter expressed appreciation for adding rule text on recusals, calling it an improvement over the existing regulation.

The final rule consolidates into paragraph (a) the proposed paragraphs discussing identification and reporting conflicts of interest. To further group the responsibilities into paragraph (a), the proposed contents of paragraph (b) are consolidated and renumbered as (a)(1). As suggested by a commenter, language on recusals is now in new paragraph (a)(1). In the process of consolidating these provisions, some language was revised for readability and to remove redundancy. Also, a new paragraph (a)(2) is added as a conforming change with retaining existing language regarding reporting illegal or unethical behavior, which is further discussed in this preamble at III.B.6-d. The contents of paragraph (a)(2) resemble the core principles in § 612.2135(b)(3).

(i) Scope of Transactions Disclosed

CoBank and several others asked that the requirement to report ''any matter'' be limited to transactions outside the ordinary course of business. The commenters also asked to limit entity reporting to material business transactions with the System. Commenters explained that normal business interactions should not trigger a report as operating as a cooperative, many System directors are farmers and conduct farm business in the same communities as their institution's borrowers. The final rule replaces the proposed language on reporting ''any matter, transactions or activities pending at the System institution'' with language explaining that identification, disclosure and reporting on conflicts means ''any interest or circumstance that does or could constitute'' a conflict or potential conflict. The final rule has a related requirement for directors and employees to disclose actual conflicts with ''a matter, transaction or activity subject to official action'' by the institution. We think that it is more important to both disclose the conflict of interest and refrain from participating in any action or board discussion of the matter rather than prescribe what must be in the disclosure. As was proposed, the final rule at § 612.2145(a)(1) requires directors and employees to refrain from participating in official actions at the institution that are related to the matter disclosed. In keeping with the principals-based approach, we have not finalized the proposed language detailing what the disclosure must contain. Additionally, System institutions should understand that identifying conflicts uses a reasonable person's perspective in a manner that gives full consideration to the cooperative structure of the System, and institutions may build their SOC program policies and procedures accordingly.

(ii) Identifying Conflicts of Interest

As proposed, directors and employees would identify, report, and cooperate with the SOCO to resolve conflicts of interest. Commenters asked that a director or employee not be required to identify conflicts of interest when functionally it is the SOCO who has the obligation to determine whether there is a conflict. We view the process of reporting conflicts of interest as a collaborative one between the director or employee making the report and the SOCO. We have made clarifying changes to better reflect that process. We have revised the wording in final rule § 612.2145(a) to provide that the director or employee must identify, disclose, and report any interest or circumstance that does or could be a conflict of interest. The rule at § 612.2170(b)(1) lists helping institution personnel identify conflicts as a SOCO responsibility. Next, the rule at § 612.2145(a) requires directors and employees to cooperate with the SOCO in identifying if a conflict is material or not. The rule elaborates in § 612.2145(b) that this includes providing enough information to the SOCO for a ''reasonable person'' to make a materiality determination. Elsewhere we explain that the SOCO will use the institution's SOC program policies and procedures to determine materiality. Further guidance on any interest or circumstance that might give rise to a conflict of interest must be provided in the System institutions' policies and procedures as discussed earlier in III.B.3-c of this preamble.

The Council and a few other commenters specifically asked that directors be excused from detailed reporting as they are no longer involved in loan approvals. We decline the request. Directors of System institutions have ultimate responsibility for all that occurs at the institution and are directly involved in hiring the CEO. Directors also play a role in credit decisions when setting institution lending policies and through service on the institution's credit review committee.

4–b. Reporting Conflicts of Interest. [§ 612.2145(b)]

As proposed, annual reporting of interests in business matters, names of family members, material financial interests, reportable business entities, and persons residing in the home would be required. The Council and most associations (or persons and entities affiliated with associations) objected to the language on reporting the names of family and reportable business entities, stating it is too broad and inconsistent with 12 CFR 620.6(e) and (f). The Council and 20 other commenters recommended keeping existing regulations in this area and explaining how these reports interact with the part 620 annual reporting requirements on conflicts of interest for directors and senior officers. CoBank and a few other commenters likewise objected to reporting requirements on entities, asking to limit it to those with current year transactions. Eleven of these also asked that the provision be reconciled with how affiliated organizations are reported in part 620.

The reporting requirements of § 612.2145(b) were revised in response to comments received. Some changes were made to general areas of § 612.2145, but most were specific to certain subject matters and we discuss those in the subsections below.

Additionally, existing language from current §§ 612.2145(b) and 612.2155(b) was inadvertently omitted from the proposed rule. The final rule restores:

- The language requiring directors and employees to file conflicts of interest reports with the SOCO that contain the disclosures required by this section and the institution's SOC program policies and procedures;
- The current provisions of §§ 612.2145(b)(2) and 612.2155(b)(2) regarding the scope of reporting for reportable business entities; and
- The current provisions of §§ 612.2145(b)(1) and 612.2155(b)(1) regarding the scope of reporting for family.

In response to comments, the final rule also modifies the proposed list of minimum report contents as follows:

- Clarifies that ''business matters'' includes loans and loan applications.
- Clarifies that ''business matters'' reported must include those before the institution, a supervised institution, and a supervising institution.
- Limits reported material transactions to those with any director, employee, agent or borrower of the institution, or a supervised or supervising institution; and
- Clarifies that the report must include gifts received or disposed of that are reportable under the institution's SOC program policies and procedures.

As a conforming change to the consolidation of proposed paragraphs (a) and (b), this provision is now numbered as § 612.2145(b).

(i) Reporting of Past, Present, and Future Transactions—Paragraph (b)

The Council, CoBank, FCB of Texas, three commenters from AgFirst, and most of those associations commenting expressed concern with being required to report all past transactions. These commenters asked that only current and new transactions be subject to reporting. We agree that the obligation to report should be limited to current and new transactions and think that limiting transactions to the current year should be sufficient to capture any known or potential conflicts of interest. The final rule clarifies that transactional timeframes are those occurring in the current year, as that term is defined in the institution's SOC program policies and procedures.

(ii) Reporting ''any'' Business Interests—Paragraph (b)(1)

The Council and FCB of Texas remarked that the requirement to report ''any'' interest in ''any'' business matter is too broad. The Council recommended moving into the rule text the preamble explanation that this provision captures direct and indirect business matters pertaining to the System institution, including those occurring through an entity. FCB of Texas recommended limiting the requirement to interests with System personnel. This commenter added that if we keep the provision as proposed, the phrase ''any business matter'' should create a link with the initial conflict of interest report. One association questioned the need for disclosure of personal relationships. In response to the request of some commenters, the final rule specifies that only those transactions with the institution or the supervising or supervised institution must be reported under paragraph (b)(1).

(iii) Reporting Material Financial Interests With System Personnel—Paragraph (b)(2)

The Council, three commenters from AgFirst FCB, and several others objected to the requirement to report ''all'' material financial interests regardless of any System connection, asking the reporting expectation to be limited to transactions with System institutions and System borrowers. The Council and CoBank asked that this element be further limited to reporting only those transactions that are outside the ordinary course of business. The Council remarked that without these constraints, the reporting requirement would be overly broad and burdensome. FCB of Texas said this reporting requirement overlaps with those in proposed § 612.2138, asking us to clarify if the intent is for both ordinary transactions and those outside the ordinary course of business be reported, or just those outside the ordinary course of business.

In § 612.2145(b)(2), a material interest with any director, employee, agent, or borrower must be reported, regardless of the nature of the interest. We understand this may result in an ordinary course of business transaction being reported because the transaction presents a conflict or is material in nature. The policies and procedures of the System institution should provide further clarification and explain how materiality of a conflict is identified.

FCB of Texas asked that ''business affiliates'' be removed from the provision to avoid confusion, while twenty other commenters asked that it be defined. The final rule in this area does not contain the phrase ''business affiliates'' as requested by commenters.

(iv) Reporting Transactions by Reportable Business Entities—Paragraph (b)(3)

The Council asked that reporting on ''reportable business entities'' be limited to only where the person holds a material interest in an entity that poses a conflict. The Council, FCB of Texas and several other commenters suggested following the existing rule under § 612.2145(b)(1), which only requires reporting those entities doing business with the System. The final rule does not make the requested change to only limit entity reporting on a materiality standard. We do not think it is necessary to limit reporting on ''reportable business entities'' to where the person holds a material interest in the entity because the term ''reportable business entity'' is based on ownership and control. However, the final rule does make the requested change to follow existing rules on with whom transactions occur that will make them reportable. The final rule limits the listing of reportable business entities to those transacting business in the current year with the institution, a supervised or supervising institution, or a borrower who has business with your System institution, or a supervised or supervising institution.

(v) Reporting Family Transactions With the System—Paragraph (b)(4)

AgFirst FCB remarked that the proposed definition of ''family'' would make the reporting requirement unduly burdensome, especially as the ''family'' definition does not require a legal relationship. This commenter and a few others said the requirement substantially increases the workload of the SOCO, who reviews all submissions. AgFirst FCB and many others suggested the requirement be limited to reporting family members when there is actual knowledge of business transactions with the institution. CoBank and several other commenters stated the rule was unclear on if extended family needed to be reported and expressed support for keeping the current requirement to report only immediate family having business with the institution during the reporting year. One commenter suggested restricting the scope of family to immediate family to reduce the reporting burden and place focus on those family members who are most likely to present a risk of undue influence risk to the institution director or employee.

The Council, FCB of Texas and several other commenters objected to expanding existing requirements on naming family and placing no time constraints on activities to be reported. The Council and several others suggested limiting the requirement to transactions occurring in the reporting year, including those that ended in the reporting year. In the alternative, the Council suggested following the proposed rule preamble explanation by leaving the reporting of past business transactions to each institution's discretion. FCB of Texas also said the transactions being reported should be tied to System transactions as is done in existing § 612.2155(b). Three others said reporting on family transactions should be limited to when it occurs rather than a set time annual timeframe. These commenters suggested keeping the existing rule provision requiring positive reporting on family when there is actual knowledge.

We have changed the definition of family, which was discussed above in III.B.1–f of the preamble. In response to comments, we have also changed the reporting requirements for family and reportable business entities to those ''you know or have reason to know'' and included a timeframe of the current year. In response to other comments, the final rule modifies the reporting requirements for family to resemble that of the current rules in §§ 612.2145(b) and 612.2155(b). Reportable transactions by family are those occurring in the current year with the director's or employee's System institution or any supervised or supervising institution. We have chosen not to limit the requirement to immediate family, preferring to use the definition of family found in § 612.2130. We believe the changes to that definition provide sufficient limits while still addressing potentials for conflict to arise.

(vi) Persons ''known'' To Do Business With the System—Paragraphs (b)(3) and (4)

The proposed standard for what to disclose as a real or potential conflict of interest was ''to the best of your knowledge and belief.'' When reporting for family, the proposed standard was supplemented to require reporting the name of those family members ''you know or have reason to know'' have business with the System. The Council, CoBank and some others asked for clarification of whether the proposed reporting requirement for family was intended to be more or less restrictive and if this same requirement poses a duty to inquire. The Council, FCB of Texas and some commenters remarked that combining a knowledge standard with a ''reason to know'' standard is contradictory and suggested using an actual knowledge standard for this provision or at least clarifying the same standard used for all reporting areas. The Council and a few others also asked if the ''reason to know'' standard was restricted to family reporting. FCB of Texas, CoBank and some other commenters recommended we use the existing rule's actual knowledge standard. A couple of commenters suggested using ''to the best of knowledge'' as not all directors and employees know the financial activities of family. The majority of commenters expressed a preference for the same standard to be used in all of the proposed reporting items.

As a director or employee, you should know what interests you have in business matters or loan applications that are being considered by your institution or supervising institution. However, you may not be directly involved in transactions with family members or reportable business entities. Therefore, the final rule applies a ''know or have reason to know'' standard for reporting on family and reportable business entities transactions with the System. The other reportable items do not have a similar qualifier.

(vii) Reporting Gifts—Paragraph (b)(5)

FCB of Texas asked that gift reporting requirements from the SOC program elements be moved to this section. We are not moving the gift requirements as suggested but have modified the rule to explain the report must include reportable gifts received or disposed of that are reportable under the institution's SOC program policies and procedures.

4–c. Making Part 620 Disclosures. [§ 612.2145(c)]

The proposed rule would have required all directors and employees to make the disclosures required under 12 CFR 620.6(f). The part 620 provision currently only applies to directors and senior officers. The proposal also inadvertently omitted paragraphs (a) and (e) of 12 CFR 620.6 from this requirement. A few commenters asked that we keep the term ''senior officer'' to clarify that reporting on part 620 disclosures is not being extended to all employees. A few asked if institutions have the authority to limit reporting under this provision to senior officers and directors and if so, asked that the rule text reflect that.

We agree with comments that the part 620 disclosures only apply to directors and officers and make appropriate changes in the final rule. The final rule also moves references to reports made under 12 CFR 620.6 to a new paragraph (c) since those disclosures are only required of directors and officers. In conformance with final provisions on the SOCO duties discussed in this preamble at III.B.6–b, § 612.2145(c) requires directors and officers give the SOCO disclosures required under § 620.6(a), (e), and (f). We note that the § 612.2130 definition of ''officer'' is substantially similar to that of ''senior officer'' as used in part 620 and defined in § 619.9310. The final rule leaves it to the institution to determine the timing of these disclosures, but specifies they must at least occur annually (in connection with filing the institution's annual report) and when the institution issues an Annual Meeting Information Statement under FCA regulations § 620.21(a)(3).

5. Prohibited Conduct. [§ 612.2150]

We proposed consolidating the current prohibited activities for directors, employees and joint employees into one section. We also proposed incorporating the existing prohibitions on purchasing System obligations into this same section. In the process, we proposed clarifications and elaborations to existing rule text. We received 45 comments on the proposed changes to prohibited conduct and the related consolidation, including comments from the Council and two FC banks. Outside of general comments to keep the existing rule, all the comments for this section were directed at a few specific provisions. We make some changes to the proposed provisions on prohibited conduct in response to comments and to reconcile provisions with changes elsewhere, which we discuss in the subsections that follow. We also make small changes to improve readability and align the format of the rule, such as adding headings to main paragraphs and clarifying language. Those changes include:

- Consolidating proposed paragraph (a)(1) into the main portion of paragraph (a), renumbering the remaining subordinate paragraphs, and adding a new lead to paragraph (a) for the list of prohibited activities.
- Adding clarifying language that ''you'' refers to both directors and employees.
- Clarifying that the subordinate paragraph on gifts refers to prohibited gifts.
- Using consistent language to identify supervising and supervised institutions.
- Numbering provisions containing exceptions for ease of reference; and
- Only using the term ''family'' since the additional language on persons residing in the home is now captured in the definition of ''family.''

In response to general requests that we keep existing section numbering where possible, we do not final the proposal to number these provisions as § 612.2139. Instead, we have consolidated and moved prohibited conduct provisions to the existing section on employee prohibited conduct in § 612.2150. The current § 612.2140 director prohibited conduct numbering is removed and reserved.

5–a. Using Position for Personal Gain. [§ 612.2150(a)(1)]

As proposed, the current director and employee prohibitions on participation in matters affecting certain financial interests would be retained. The final rule clarifies this prohibition includes

both direct and indirect effect on financial interests. The final rule also retains a sentence from the existing rule that was inadvertently omitted in the proposed rule. That sentence prohibits directors and employees from using their positions to obtain special advantages for themselves, their families and their reportable business entities.

5–b. Accepting Prohibited Gifts. [§ 612.2150(a)(3)]

The proposed language on gifts 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 final rule makes minor changes to reconcile the provision with the final language on the elements of a SOC program, located in § 612.2137, discussing an institution's role in setting SOC program policies and procedures for gifts, including limiting the blanket gift prohibition to gifts offered because a person serves as a director or employee of a System institution.

5–c. Acquired Property. [§ 612.2150(a)(4)]

We proposed keeping the current prohibitions against directors and employees knowingly purchasing or otherwise acquiring any interest in real or personal property owned by his or her System institution within the past 12 months. FCB of Texas asked for an exception to the 12-month provision when a third party purchases the property from the institution and then sells it by competitive bid within 1 year. The Council and CoBank asked if the provision applied to inventory property held by a UBE, as was mentioned in the proposed rule preamble but not regulatory text. Many commenters offered the general observation that items were put in the proposed preamble that should be contained in rule text. In some instances, we have agreed with commenter requests and in others we have not.

We stated in the preamble to the proposed rule that the prohibition on acquired property would apply to collateral acquired by a System institution, including collateral acquired directly or through an acquired property UBE. As requested by commenters, the final rule text specifically references property held or sold by a UBE or a 4.25 service corporation. In one of our preamble explanations for this section, we said that the acquired property prohibition does not affect a director's right of first refusal to inventory property under 12 U.S.C. 2219a. Commenters asked that this be included in the rule text and the final rule adds that exception. As finalized, this paragraph sets forth all the exceptions on acquiring institution property in subparagraph form: (i) By inheritance, (ii) through the right of first refusal, and (iii) when property is sold by public auction. We caution that although we do not directly include agents in the acquired property prohibition, System institutions should be aware of agent conflicts and not allow an agent to purchase acquired property if he or she has non-public information (*e.g.,* property type, location, condition) of such property that would give him or her an unfair advantage over other interested parties.

One commenter questioned why employees were included in the prohibition. The current rule does not exempt employees from this prohibition and we did not propose to change that. Unlike directors, institution employees are heavily involved in the acquisition and sale of acquired properties and thus present real possibility for actual conflicts of interest. To minimize the potential for misconduct and the burden of institutions augmenting their internal controls and monitoring systems, we believe that it is in the best interest of the System to keep employees covered by the prohibition.

5–d. Transactions With Prohibited Sources. [§ 612.2150(a)(5)]

We proposed keeping the current limitations on directors and employees entering into lending relationships with individuals who may have a financial relationship with a System institution, with certain exceptions. The FCB of Texas and one other commenter expressed concern that the proposed rule does not keep the existing exception for transactions with any person residing in the director's or employee's household. The final rule retains the existing exemption for family and given the final rule also changes the definition of ''family'' to now include persons residing in the household, we believe the final rule addresses this comment. These same two commenters questioned the absence of the existing exception for non-material transactions. These comments are directed at the current provision allowing the SOCO to determine an otherwise prohibited transaction as permissible because it does not involve a material amount of money and the director or employee does not participate in the other party's business with the institution. We did not propose to keep this exemption based on other changes to the subpart and are not otherwise persuaded by the comments to now do so. We point out that the final rule retains the prohibited transaction exception for ordinary course of business transactions. However, the extent to which these transactions will be allowed is for each institution to address as part of the SOC program policies and procedures.

The final rule makes minor changes to improve the readability of the provision, including breaking the main sentence into two. This action separates the language prohibiting financial transactions with the institution from those with a borrower of the institution. No change in the meaning is intended by this. Also, as mentioned earlier, the exceptions to this prohibition are set forth in subparagraph form. In making this modification, we identified that an existing exception to the prohibition on financial transactions was inadvertently omitted. The final rule restores the exception for official transactions connected with the institution's relationships with Other Financing Institutions.

5–e. System Obligations. [§ 612.2150(a)(6)]

We proposed keeping the current limitations on directors and employees purchasing System obligations. The Council, CoBank, and one other commenter asked that the prohibition exclude those obligations held in a mutual fund or other account where an individual investor is not involved in selecting the securities comprising the mutual fund. The commenters do not elaborate on if the mutual funds would be publicly available or private funds.

We understand the concern surrounding mutual funds. At this time, we are not making the requested change. Because of the complicated nature of this request, we will review this issue and possibly include it in another rule making action. We remind the commenters that the rule does not prevent most System directors and employees [16] from purchasing those System obligations that are part of a public offering when bought from members of the Funding Corporation selling group [17] or in the secondary market.

[16] This exception in the rule does not extend to directors and employees of the Funding Corporation.

[17] The Funding Corporation works with a selling group of approximately 30 investment and dealer banks that provide distribution, trading and underwriting capabilities for Farm Credit debt securities.

5–f. Employee Only Prohibitions: Joint Employee—Board Service. [§ 612.2139(b)(1) and (4)]

We proposed retaining most existing joint employment prohibitions for employees, but also proposed establishing additional ones. We received comments on some of the proposals for this issue and discuss them below.

(i) Non-System Entities. [§ 612.2150(b)(1)]

We received sixteen comments on limiting service on the board of directors of a non-System entity. Four commenters expressed concern with limiting service on other rural boards. Eleven comments discussed service on a family-owned company, explaining the current rule allows employees to work on family-owned entities but the proposed rule would change that to ''reportable business entities'', eliminating many family-owned businesses because of the proposed definition of ''reportable business entity.'' These commenters state the proposed change will reduce the employment pool in rural areas and asked FCA to keep the exception for family-owned businesses that may not satisfy the new meaning of ''reportable business entity.''

The final rule prohibits serving as a director or employee of any commercial bank, savings and loan, or other non-System financial institution in all situations. The final rule retains the exception for service at an employee credit union. However, the proposed limits on serving at an entity transacting business with the institution or serving at another System institution in the district are not being finalized as proposed. Instead, the prohibition on serving at an entity transacting business with the institution or with any institution in the district now applies the exceptions for 'transacts business with' as provided in the rule. Additionally, the final rule further limits application of the provision to non-System entities. We believe this change provides some of the requested relief but remind commenters that the provision is in our current Standards of Conduct rules, so it is not a new prohibition.

In response to comments regarding family businesses that may not satisfy the definition of ''reportable business entities'', the final rule includes those family businesses as one of the named exceptions to the 'transacts business with' provision. We recognize that employees may work on family-owned entities that do not necessarily meet the definition of a ''reportable business entity.'' Without this broader exception, employees who assist in family farming operations without having a material influence might be prohibited from serving as a director or employee of a family operation, which was not our intent. Therefore, we have added family-owned entities into the exception. The final rule provides that the phrase ''transacts business'', as used in this provision, 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. As a conforming change, the final rule removes the sentence cross-referencing the joint employment provision of paragraph (b)(4) since it is redundant with the final rule language regarding non-System entities.

As proposed, the current exception allowing an employee of a Farm Credit Bank or association to serve as a director of a cooperative that borrows from a bank for cooperatives (BCs) would be removed. One commenter remarked that the offered reason of mergers for removing this exception was not clear, stating there was a need for board members to serve cooperatives in small rural areas. The commenter suggested limiting prohibitions on board service to System institutions. We agree with the commenter that service on a cooperative board would not be a conflict in all situations. As such, we do not final the proposed removal of the current provision giving an exception for serving as a director of a cooperative borrowing from the System under Title III authorities. However, the rule updates the current language of this provision to recognize that the former BCs merged and now exist within CoBank. As a result of a subsequent merger with a Farm Credit Bank, CoBank is currently the only institution possessing Title III lending authority under the Act. The final rule recognizes there is an obvious conflict with employees of CoBank also serving as directors of cooperatives borrowing from CoBank. As existed in the current rule, this final rule allows System employees—except those employed at CoBank—to serve as a director of a cooperative borrowing from the System under Title III authorities. This authorization is dependent upon the current employing institution approving service on that cooperative's board of directors. We expect each institution to consider the potential for conflict when approving or disapproving an employee request to serve on a cooperative's board, particularly if the employee involved works at a System association for which CoBank is the funding bank.

(ii) Joint Employees. [§ 612.2150(b)(4)]

We proposed keeping the current joint employee prohibition but with an exception to allow certain joint employee relationships. The proposed exception would require both boards to authorize the service and that the duties and compensation at each institution be delineated in the board's approval. The institutions would also provide reasonable notice to the FCA beforehand. CoBank expressed support for the changes, adding that joint employment between banks and associations does not often occur. The Council and CoBank commented that proposed language regarding service on the board of other System institutions differs from the existing rule. The Council contended that under the existing rule an employee may serve on the board of another System institution, particularly service corporations, regardless of ownership. Both commenters expressed concern that the proposal limits service to only those institutions where the employing institution has an ownership interest. We also received eight comments from persons affiliated with the Foundations service corporation, two from persons associated with Farm Start, and 34 letters from association personnel or directors. All commented that paragraph (b)(4), as proposed, could be interpreted to preclude System institution employees from serving as officers or managers of a service corporation or other entity in which a System institution has an ownership interest. One commenter specifically stated the provision would preclude alliances among System institutions.

The final rule does not contain language requiring or prohibiting ownership interest in both institutions when sharing an employee. The relevant measure is the relationship between a supervised and supervising institution. To prevent potential conflicts, the rule prohibits officers from serving simultaneously at both the supervising and supervised institutions: Other employees are not similarly prevented from this activity. This reflects the current prohibitions for banks and association officers, excepting use of the terms ''supervising'' and ''supervised'' institutions. The definitions of these terms as proposed and as contained in this final rule do not include service corporations. We believe commenters

mistakenly relied upon the definition of ''institution'' alone, which does include service corporations, when reading this provision. To clarify this, we have revised the way this rule text is presented.

FCB of Texas commented on proposed language regarding notice to FCA of the joint employees, asking that it be clarified regarding the terms ''extraordinary situations'' and ''reasonable prior notice''. FCB of Texas suggested removing the latter term, replacing it with a requirement for FCA approval. CoBank also commented that ''reasonable prior notice'' was vague, asking for clarification or, in the alternative, removal of all restrictions on joint employment. FCB of Texas also observed this section of the proposed rule used the word ''officer'' when the word had been proposed for replacement with ''employee.'' The commenter suggested keeping the term and related definition of ''officer.''

The final rule implements the suggestions of commenters regarding FCA involvement in joint employee arrangements. The rule explains that in extraordinary circumstances, FCA may approve a non-officer Farm Credit bank employee serving as an officer at a supervised institution when both institutions have board approval of the joint service and the division of the shared employee's duties and compensation are identified in the board approval documents. To address the concern over the term ''reasonable prior notice'', the final rule changes the requirement to send the approval documents to FCA at least 10 business days in advance of the joint employment beginning. Comments regarding use of the term ''officer'' have been addressed by the final rule retaining the definition of ''officer.''

To incorporate changes made at the suggestion of commenters, the layout of paragraph (b)(4) was revised. Now the opening sentence of the provision contains the blanket prohibition on serving at a supervised or supervising institution. Thereafter, subordinate paragraphs are used to identify the two exceptions:

- Serving as a non-officer employee at a Farm Credit bank and association when expenses are appropriately divided; or
- Serving as an officer at a supervised association in extraordinary circumstances.

Paragraph (b)(4)(ii) also contains the language on obtaining FCA approval for the joint employment.

6. Standards of Conduct Official. [§ 612.2170]

We proposed enhancing the role of the Standards of Conduct Official (or SOCO) by identifying the SOCO as the point of contact for advice, guidance, and reporting on matters related to conflicts of interests. We also proposed charging the SOCO with responsibility for training in this area and requiring the SOCO to have direct access to an institution's board of directors. We received 59 comment letters on the role of the SOCO, including comments from the Council and two FC banks. Most expressed support, some asked for modifications and ten commenters from one association remarked that the listed SOCO responsibilities were unreasonable and will make finding a SOCO difficult. Two other commenters asked us to keep the existing language of § 612.2170, stating the current rule works well and the proposed rule does not improve on existing provisions. Some commenters, including FCB of Texas, noted that this section is duplicative of other sections, asking us to consolidate like provisions.

6–a. SOCO Authority. [§ 612.2170(a)]

In conformance with changes made elsewhere in the rule on defining and appointing a SOCO, the final rule adds a new paragraph (a) on the authority of the SOCO to administer the program. In response to commenters' requests, the final rule also consolidates provisions on the SOCO authority to carry out assigned responsibilities, clarifying that the SOCO must have access to directors, employees and agents to fulfill these duties as well as possess the resources and legal authority to do his or her job. This preamble adds the clarification that legal authority is directed at the ability to receive confidential SOC program communications. This was added because of FCA regulations in 12 CFR part 618, subpart G, regarding an institution's responsibilities to safeguard its files and records from unauthorized disclosure. Under the final rule, the institution board authorizes the SOCO to handle these confidential documents as a means of recognizing it is necessary for performing official duties of the institution as SOCO and therefore permitted under FCA regulation § 618.8300.

We had proposed as part of the SOCO definition a requirement for access to the institution's board of directors. Further, the proposed duties of the SOCO included reporting 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. Based on comments made elsewhere, we consolidated that language to this section.

Three commenters, including one FC bank, asked that only significant or material instances of non-compliance be reported by the SOCO to the board. Another commenter asked for clarification that the board access did not replace supervisory reporting lines or other institution organizational structures. The final rule clarifies that the SOCO must have direct access to the board for purposes of discussing and reporting on matters related to standards of conduct or the Code of Ethics. Information reported by the SOCO is determined by each institution's SOC program policies and procedures.

6–b. SOCO Implementation of Standards of Conduct Program. [§ 612.2170(b)]

As proposed, the SOCO would provide guidance and information to directors and employees on conflicts, resolve reported conflicts, maintain appropriate documentation and report to the institution's board noncompliance with the SOC program. A few commenters stated that the SOCO should not be responsible for giving advice, especially not to agents, and eighteen commenters objected to language in the proposed rule preamble naming the SOCO the authority for giving advice. These commenters remarked that the SOCO can provide guidance and information, but not advice. Two commenters suggested consolidating the proposed language on the SOCO providing guidance with the paragraph on helping identify conflicts. One remarked that nothing in this section requires the SOCO to identify conflicts of interest, only help others to do so. This commenter suggested the SOCO have responsibility for identifying and reporting conflicts.

In conformance with changes made elsewhere in the rule on SOC program elements and comments on how a SOCO duties are characterized, the final rule consolidates into paragraph (b) various provisions in proposed § 612.2170 regarding SOC program administration, making some language modifications in response to comments. The consolidation results in a list of key duties for the SOCO:

- Providing guidance and aiding in the identification of conflicts required to be reported (from proposed paragraph (b));
- Receiving conflicts of interest reports (from proposed paragraph (d));

• Receiving the disclosures required under 12 CFR 620.6(a), (e), and (f) as a supplement to any conflicts-of-interest report filed under part 612 (from proposed § 612.2138(c)(4) and existing standards of conduct reporting requirements at §§ 612.2145(a), 612.2155(a), and 612.2165(b)(12));
• Reviewing and acting upon filed reports, including documenting resolution efforts for material conflicts (from proposed paragraphs (d), (e), and (f));
• Maintaining SOC program records (from proposed paragraph (f));
• Conducting investigations authorized under FCA regulations or the institution's SOC program policies and procedures (from existing rule text inadvertently omitted); and
• Promptly reporting to the institution's board of directors those matters as required under FCA regulations or the institution's SOC program policies and procedures (from proposed paragraph (g)). We believe the consolidation and clarifications address the general comments made on this provision. Below we address more specific comments on certain SOCO duties.

(i) Resolving Conflicts

As proposed, the Standards of Conduct Official would make written determinations on how conflicts of interest will be resolved, consistent with the System institution's policies and procedures. The SOCO would also document resolved and unresolved material or significant conflicts of interest. One commenter observed the word ''significant'' is redundant and confusing. Another commenter questioned how the Standards of Conduct Official can resolve a conflict when the resolution is to fire the employee or director. One commenter remarked that conflict situations are fluid so one set process for reporting and addressing the conflicts as proposed is unrealistic. This commenter asked to keep resolution processes in the hands of the association through the SOC program policies and procedure. The commenter also remarked that documenting conflicts is given too much importance when focus should be on reporting transactions and financial obligations as well as avoiding conflicts.

The final rule requires the SOCO to review and act upon reports and disclosures. In response to comments, we are not finalizing the requirement to document ''significant'' conflicts of interest but have retained a requirement on making determinations on how conflicts of interest will be resolved and documenting material conflicts, whether resolved or unresolved. The process of deciding the appropriate resolution to a conflict does not always empower the SOCO to enforce the resolution, that is dependent upon the institution's SOC program policies and procedures as is the resolution process.

(ii) Recordkeeping

Two commenters observed we had not proposed a record retention schedule on reported conflicts within § 617.2170. We talk about maintaining SOC program documentation in § 612.2137(a) so do not believe it is necessary to repeat it in this section.

6–c. SOCO Training Responsibilities. [§ 612.2170(c)]

In proposed paragraphs (c)(1) through (6), the SOCO would give training for the following:
• Procedures for the review of the institution's standards of conduct rules and the Code of Ethics, and recommendations of any updates;
• Procedures for anonymously reporting known or suspected violations of standards of conduct and Code of Ethics and unethical conduct;
• Rules for prohibited conduct;
• Fiduciary duties;
• Conflicts of interest and apparent conflicts of interest;
• Reporting requirements; and
• New director and new employee training.

The Council, CoBank and several others commented that the list of items was prescriptive and did not consider whether all items would be appropriate for both directors and employees. Commenters asked for more flexibility to develop appropriate training rather than detailed rules on the content of such training. Some commenters specifically asked that we remove the requirement for the training to cover revisions to an institution's SOC program or Code of Ethics.

Commenters' concerns with the specificity of the training requirements proposed in this section are reasonable. Therefore, the final rule does not include the proposed list. We believe this allows each System institution the requested flexibility to develop the training that meets its needs and improve its ethical culture. We clarify that SOC program training could include separate training for directors, officers and other employees. We consider our removal of the training list as satisfying all other comments asking for changes to that list, including comments asking us to change terminology used and asking us to restrict training requirements for fiduciary duties to directors. We continue to see a need for targeted training for those employees with fiduciary duties and strongly encourage each institution to devote time to providing that training. The final rule continues to require that the SOC program training include updates to the institution's Code of Ethics and standards of conduct policies and procedures.

The rule finalizes the proposal to require the SOCO to obtain certification of participation from every director and employee taking the SOC program training. Comments regarding the format of training certifications are addressed in III.B.2–d of this preamble. Also, as discussed earlier at III.B.3–e, the final rule relocates most provisions on standards of conduct training, including timelines, into § 612.2137(f).

6–d. SOCO Investigative Duties. [§ 612.2170(d)]

We did not propose keeping the SOCO's existing responsibilities regarding criminal referrals. We received no comments on this change but are not finalizing it. At the time of the proposed rulemaking, discussions were underway to modify the criminal referral process of subpart B of part 612. However, FCA issued Bookletter–073 instead of making a rule change,[18] meaning the SOCO's existing duties for criminal referrals need to remain intact. As a result, we are keeping the existing requirements of § 612.2170(a)(5) and (6) and (b)(4). In coordination with the reorganization of subpart A, we move these provisions within § 612.2170 to new paragraph (d). We also make a technical correction to a reference currently contained in the existing regulations. The reference is changed to direct readers to criminal referrals made under subpart B of part 612, instead of part 617. Several years ago criminal referral provisions were moved from part 617 to subpart B of part 612 and the current cross reference should have been updated at that time.

7. Standards of Conduct for Agents. [New § 612.2180]

We proposed removing the current separate provision on standards of conduct for agents at § 612.2260. At the request of commenters, we are not finalizing that change. The final rule retains this section but renumbers it as § 612.2180. Additionally, the final rule makes small changes to improve readability and align the format of the section with the rest of the rule, such as

[18] FCA Bookletter ''Criminal Referral Guidance (BL–073)'', issued January 19, 2021.

adding headings to main paragraphs and breaking out longer sentences into subparagraphs. No change to the current meaning of the rule text is intended by these formatting actions.

The final rule also adds a new paragraph (d) to capture a legal change in FCA's authority over ''institution-affiliated parties.'' As is discussed earlier in this preamble at III.B.1–a, FCA's enforcement authorities were enhanced to give FCA enforcement jurisdiction over ''institution-affiliated parties'', which definition includes both agents and independent contractors of System institutions as well as ''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.'' The final rule adds this statutory language to the regulations without elaboration or interpretation.

IV. Regulatory Flexibility Act and Major Rule Conclusion

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will 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.

Under the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this final rule is not a ''major rule,'' as the term is defined at 5 U.S.C. 804(2).

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 amended as follows:

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

■ 1. The authority citation for part 612 is revised to read as follows:

Authority: Secs. 5.9, 5.17, 5.19, 5.31A of the Farm Credit Act of 1971, as amended, (Act) (12 U.S.C. 2243, 2252, 2254, 2267a); Sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

■ 2. Subpart A, consisting of §§ 661.2130 through 612.2270, is revised to read as follows:

Subpart A—Standards of Conduct

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:

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.

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 a minimum, the core principles established under this subpart.

Conflicts 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 affect (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.

Employee means any individual working on a part-time, full-time, or temporary basis by the System institution, including those identified as officers of the institution. Persons not maintained on the institution's payroll (*i.e.,* independent contractors) are not employees for purposes of this subpart.

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.

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.

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.

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.

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 (including sole proprietorships).

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 from his or her status as a partner, director, officer, or majority shareholder in the 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 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 investigate allegations of misconduct by institution directors, employees or agents.

Standards of Conduct Program or SOC program means the policies and procedures, internal controls and other actions a System institution must implement to put into practice the requirements of this subpart.

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

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.

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.

§ 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 judgment 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.

§ 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 the 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 any 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 conflict 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 § 620.6(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 interests or 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. The 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 thresholds 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 conduct 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 exercises 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.

§ 612.2140 [Reserved]

§ 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 potential 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 this section and those 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 § 620.6(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.

§ 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 of 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 borrows 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 act 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 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.* 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.

§§ 612.2155–612.2165 [Reserved]

§ 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 of 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 interests 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 § 620.6(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) Maintaining 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 statutes;

(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 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.

§ 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 institutions;

(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 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.

§§ 612.2260–612.2270 [Reserved]

Dated: August 23, 2021.

Dale Aultman,

Secretary, Farm Credit Administration Board.

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