

spouse or minor child of a covered employee, from owning securities issued by a System institution or related entity.

The FCA has determined, in accordance with 5 CFR 2635.403(a), that this restriction is necessary, in light of the Agency's sensitive regulatory, supervisory, examination, and enforcement functions, to maintain public confidence in the impartiality and objectivity with which the FCA executes its functions. The restriction will eliminate any reason for regulated entities to be concerned that sensitive information provided to the FCA might be misused for private gain and will avoid widespread disqualification of employees from official matters, which might result in the FCA's inability to fulfill its mission.

(b) *Definition of Securities.* Section 4101.103(b) contains a definition of the term "securities" to be applied to § 4101.103. It includes any "interest in debt or equity instruments" such as, for example, stocks, bonds, and commercial paper.

(c) *Exceptions.* Section 4101.103(c) includes several exceptions to the prohibition in § 4101.103(a) against owning securities issued by System institutions or related entities. The exceptions are intended to permit ownership interests of a character unlikely to raise questions regarding the objective and impartial performance of FCA employees' official duties or the possible misuse of their positions.

Section 4101.103(c) (1) and (2) permits employees to retain System securities that are in certain funds or plans, the assets of which are managed by an independent third party and are not concentrated in System securities. Such funds may include a publicly traded or publicly available investment fund or an employee's interest in a qualified profit sharing, retirement, or similar plan.

Section 4101.103(c)(3) permits employees to retain securities of System institutions held, in accordance with § 4101.104(b), as a result of pre-existing credit. This exception is necessary because the System institutions are borrower-owned institutions that require eligible borrowers to purchase a minimum amount of an institution's stock as a condition of obtaining a loan. Thus, if an employee has pre-existing credit from a System institution, he or she also will own stock in the institution, which is generally not retired until after the loan is paid off.

Section 4101.103(c)(4) is included as a specific cross-reference to the waiver authority at § 4101.109 which is to be used on a case-by-case basis.

Section 4101.104—Prohibited Borrowing

(a) *Prohibition on Employee Borrowing.* Section 4101.104(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from seeking or obtaining a loan or extension of credit from a System institution or an officer, director, employee, or related entity of a System institution.

Imposed pursuant to 5 CFR 2635.403(a), this prohibition on borrowing is necessary for several reasons. First, it is necessary to prevent covered employees from obtaining or appearing to obtain loans or extensions of credit on preferential terms, or from benefiting or appearing to benefit from their official positions through possible forbearance by the lender in collecting on the indebtedness. Public confidence in the impartiality and objectivity with which FCA programs are administered will be strengthened by prohibiting FCA employees from engaging in financial transactions with institutions regulated by the Agency. The borrowing prohibition also will help to ensure that FCA examiners and regulated institutions do not violate the prohibitions in 18 U.S.C. 212 and 213 against the offer and acceptance of certain loans. Finally, limitations on FCA employees borrowing from regulated institutions will result in fewer employee disqualifications from official matters, thereby avoiding a situation that would have a detrimental effect on the FCA's ability to carry out its mission.

(b) *Exception.* Section 4101.104(b) serves to clarify that § 4101.104(a) only prohibits covered employees and their spouses and minor children from seeking or obtaining loans or extensions of credit. Thus, a covered employee, or a spouse or minor child of a covered employee, is not prohibited from retaining a loan from a System institution on its original terms if the loan was obtained prior to appointment to a covered employee position at FCA. The renewal or renegotiation of a pre-existing loan or extension of credit, however, will be treated as a new loan subject to the prohibition in § 4101.104(a), but an employee may request, pursuant to the waiver provision in § 4101.109, that an exception be made. Employees who retain pre-existing credit, by virtue of their own credit or credit of a spouse or minor child, will be required to disqualify themselves from participation in the regulation, supervision, examination, audit, visitation, review, investigation, or other particular matter

involving the System institution providing the retained credit.

Section 4101.105—Purchase of System Institution Assets

(a) *Prohibition on Purchasing Assets Owned by a System Institution.* Section 4101.105(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from purchasing assets from a System institution or related entity. Assets sold by public auction or by a method that ensures that the asset is sold at its fair market value are exempt from this prohibition. Covered employees are required to obtain concurrence from the DAEO, however, about the applicability of this exemption.

(b) *Assets Held or Managed by the Farm Credit System Insurance Corporation or a Receiver or Conservator.* Section 4101.105(b)(1) prohibits a covered employee, or a spouse or minor child of a covered employee, from purchasing assets held or managed by a receiver or conservator for a System institution or by the Corporation as a result of its provision of open bank assistance to troubled System banks regardless of how the asset is sold. This section prohibits the purchase of such assets held by a receiver or conservator appointed by the FCA prior to January 1, 1993, as well as assets held by the Corporation, which is the only entity FCA may appoint as receiver or conservator of troubled System institutions starting January 1, 1993.

Section 4101.105(b)(2) requires a covered employee who is involved in the disposition of receivership or conservatorship assets to disqualify himself from a sales transaction when the employee becomes aware that anyone with whom he holds a covered relationship, as defined in § 2635.502(b)(1) of the Executive Branch-wide Standards, is or will be attempting to acquire receivership or conservatorship assets.

The prohibitions in § 4101.105 are intended to supplement the provisions of 5 CFR 2635.702 regarding use of public office for private gain and to preserve public confidence in the impartiality and objectivity with which FCA programs and operations are administered. They are necessary to prevent employees from purchasing or appearing to purchase assets on preferential terms, or from benefiting or appearing to benefit from their official positions by purchasing assets based on information obtained in the course of the employees' performance of their official duties.