# Section 4101.106—Restrictions Arising From the Employment of Relatives

Section 4101.106 requires a covered employee to file a report of family member employment with his or her immediate supervisor, the ethics liaison in the office, and the DAEO if the covered employee's spouse or a relative who is dependent on or resides with the covered employee is employed with an entity specified in §4101.108(a). The employee would be disgualified from participating in any matter involving the employee's spouse or relative, or the employing entity, unless the employee received the appropriate authorization pursuant to the standard in § 2635.502(d) of the Executive Branchwide Standards.

In effect, § 4101.106 supplements § 2635.502 of the Executive Branchwide Standards, relating to impartial performance of official duties, and is necessary to ensure that the employment of a close family member by System institutions or related entities does not interfere with the objective and impartial execution of a covered employee's official duties. The requirements of § 4101.106 will help to ensure public confidence in the FCA's execution of its mission.

#### Section 4101.107—Involvement in System Institution Board Member Elections

Section 4101.107 prohibits those covered employees who own stock in a System institution, by virtue of retaining a pre-existing loan or extension of credit from a System institution in accordance with § 4101.104(b), from participating in a stockholder nomination or election of a System institution's board members, other than by exercising their right to vote. In addition, this section prohibits covered employees from making any oral or written statements that could be reasonably construed as an attempt to influence a nomination or election.

Section 4101.107 supplements § 2635.702 of the Executive Branchwide Standards by prohibiting conduct that, given the broad power of the Agency over System institutions, is likely to give rise to an appearance of misuse of official authority.

# Section 4101.108—Outside Employment and Business Activity

(a) *Prohibition*. Section 4101.108(a) supplements § 2635.802 of the Executive Branch-wide Standards by prohibiting covered employees from engaging in specified outside employment and activities. Covered employees are prohibited from performing paid or unpaid services for

any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. This regulation is based, in part, on 18 U.S.C. 1909, which prohibits an FCA examiner from performing any service for compensation for any System institution or for any person connected therewith, such as persons working on a contract basis for a System institution. It is expanded to cover persons other than examiners in order to ensure that covered employees do not engage in outside activities that are likely to appear to interfere with the objective and impartial performance of their official duties.

(b) General Requirement for Prior Approval. Pursuant to § 2635.803 of the Executive Branch-wide Standards, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. Under 12 CFR 601.101, FCA has required employees who engage in outside employment to seek prior approval. Based on its finding that this requirement has helped ensure that employees' outside activities conform to applicable statutes and regulations, FCA has determined that continuing this requirement is necessary for the purposes of its ethics program. Thus, § 4101.108(b) requires all employees to obtain written approval from the DAEO before engaging in any outside employment, with or without compensation. This section also provides that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and these supplemental regulations.

(c) *Definition.* The term "employment" is broadly defined at § 4101.108(c) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, and similar organizations for which no compensation is received other than reimbursement for necessary expenses.

#### Section 4101.109—Waivers

Section 4101.109 gives the DAEO authority to grant a written waiver of any provision in part 4101 based upon a determination that the waiver is not inconsistent with law and the Executive Branch-wide Standards, and meets the waiver standard established in § 4101.109. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

The waiver provision is intended, in appropriate cases, to ease the burden that the supplemental regulations may impose on the private lives of FCA employees, while ensuring that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions.

#### III. Repeal of FCA Employee Responsibilities and Conduct Regulations

On the effective date of the interim rule, the FCA's regulations on Employee Responsibilities and Conduct, 12 CFR part 601, will be amended to remove §§ 601.100-601.102. A new § 601.100 will be added to provide a crossreference to FCA's supplemental ethical conduct regulation, to be codified at 5 CFR part 4101, and to the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635. Most sections of 12 CFR part 601 were removed and certain sections reserved by action of the FCA Board, dated January 25, 1993, 58 FR 5919.

## **IV. Matters of Regulatory Procedure**

#### Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), the FCA finds good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to this interim final rule. The notice and delayed effective date are being waived because these supplemental regulations for FCA employees and their families concern matters of Agency organization, practice and procedure and because it is in the public interest that these supplemental regulations be effective as soon as possible. The FCA is, however, issuing these regulations as an interim rule, with a request for comments, and will consider any comments received when adopting the regulations in final form.

### Executive Order 12866

In promulgating these interim supplemental regulations, the FCA has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule deals with Agency organization, management, and personnel matters and