

For: FFAS Employees

Changes in Standards of Conduct

Approved by: Acting Deputy Administrator, Management



1 Overview

A Background

On February 3, 1993, the Office of Government Ethics (OGE) issued uniform regulations to executive branch agencies on addressing conflict of interest and standards of ethical conduct. This regulation superseded and nullified existing agency ethics and standards of conduct regulations, including RD Instruction 2045-BB and 7 CFR Part 0.

Based on an OGE audit in 1997, USDA has been advised to cease the enforcement of former Agency conflict of interest and standards of conduct regulations.

HRD has revised 3-PM. Part 5:

- updates:
 - political activities
 - the confidential financial disclosure reporting process
 - ethics training
- incorporates:
 - recommendations from a GAO audit on FLP
 - FLP issues.

Although 3-PM applies to Federal employees only, Part 5 contains requirements that will be placed on CO employees. 22-PM will be amended to ensure uniform application for Federal and CO employees.

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Disposal Date	Distribution
May 1, 2000	All FAS, FSA, and RMA employees; State Offices relay to County Offices

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1 Overview (Continued)

B

Purpose

This notice provides:

- a summary of conflict of interest changes in 3-PM for Federal employees
 - guidance for Federal and CO employees regarding FLP issues.
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2 Summary of Changes in 3-PM, Part 5

A

Summary of Changes

The following changes were made in 3-PM, Part 5:

- basic obligation of public service
- general ethics principles
- Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635)

Note: This regulation can be downloaded from the Internet at www.usoge.gov/usoge006.html#regs.

- 5 CFR Part 735 addresses restrictions on certain gambling activities, conduct prejudicial to the Government, and special preparation of persons for civil service and foreign service examinations
 - revised USDA Employee Responsibilities and Conduct, dated November 12, 1996
 - designation of ethics officials and advisors
 - permitted and prohibited political activities for employees covered under the Hatch Act Reform Amendment of 1993 and those covered under the old Hatch Act provisions
 - OGE-450 program
 - resolving conflict of interest situations
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2 Summary of Changes in 3-PM, Part 5 (Continued)

A

Summary of Changes (Continued)

- outside employment or activities
- processing and servicing FSA assistance under FLP
- initial and annual ethics training for covered employees
- post-employment restrictions
- employee's initial and annual disclosures of applicant and borrower relationships
- FLP issues.

Note: All Federal employees are strongly encouraged to review 3-PM, Part 5.

3 FLP Issues

A

Availability of FLP Assistance

FSA employees, including relatives residing in their households, may be considered for FLP assistance in the form of:

- direct loans of all types
- guaranteed loans of all types
- emergency loans
- youth loans.

Note: Changes may occur in rules, regulations, and USDA and FSA policy concerning FLP loans; however, these changes do not diminish the Government-wide conflict of interest statutes or the standards of conduct regulations.

B

Employees as Cosigners

Cosigners are considered borrowers under FLP regulations. Therefore, loans for which an employee cosigned will be handled as if the employee is the primary recipient of the FLP assistance.

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3 FLP Issues (Continued)

C

**Employee
Restrictions
Involving FLP
Applicants,
Borrowers, or
Participants**

All FSA employees, including STC and COC members, must recuse themselves from acting in any official capacity involving any program applicant, borrower, or participant with whom they have any business, contractual, or other financial relationship, other than a routine consumer transaction, **if that decision involves a particular matter involving specific parties**. This recusal shall include any meeting or any part of a decision making process related to the program applicant, borrower, or participant.

In considering whether a relationship would cause a reasonable person to question the employee's impartiality, employees shall seek the assistance of an FSA official, such as their supervisor, Agency ethics advisor, or Agency designee. The FSA official shall review the information in paragraph 4 to provide guidance. For additional information, see 5 CFR Part 2635, Subpart E.

D

**Examples of
Restrictions
Involving FLP
Applicants,
Borrowers, or
Participants**

Following are examples of recusal situations.

- An employee in a County Office is the sister of an applicant applying for a loan in that County Office. That employee may not be involved in the decision making, reviewing, or servicing process for that applicant, her sibling. See subparagraph E for guidance in loan handling.
- A COC member shall not make a determination of personal eligibility for a relative, such as approving FCI-74 for a cousin to obtain assistance under NAP.

Following are examples of situations where recusal is **not** needed.

- An employee is asked to participate in drafting proposed regulations for EM loan making. The employee's father is a borrower. Because the proposed regulation is not a particular matter involving specific parties, the employee may continue to work on the regulation and need not be concerned that a relationship with a borrower would raise a question concerning his impartiality.
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3 FLP Issues (Continued)

D

Examples of Restrictions Involving FLP Applicants, Borrowers, or Participants (Continued)

- A COC member may participate in making crop loss determinations for the entire county, such as whether or not a crop suffered greater than a 25 percent loss for potential inclusion in a request for approval of a NAP area, even if his or her brother owns a farm that will be affected. It is not a particular matter involving specific parties.

Note: Changes may occur in rules, regulations, and USDA and FSA policy concerning FLP loans; however, these changes do not diminish the Government-wide conflict of interest statutes or the standards of conduct regulations.

E

Obtaining Loans and Handling Loan Files

Approval officials for loan making and servicing actions on loans to employees and their relatives are identified in the following table.

IF the applicant is a...	THEN the approving official is...
Federal or CO employee in the County Office	SED.
COC member or advisor	Farm Loan Manager that does not work with COC or CED that does not work for COC.
Federal employee in the State Office	SED.
STC member or SED	Administrator.
relative residing in the employee's household	SED.
relative residing outside the employee's household	another employee within the servicing area designated by SED.

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3 FLP Issues (Continued)

E
Obtaining Loans and Handling Loan Files (Continued)

Maintain loan files according to the following table.

IF the borrower is a...	THEN maintain the file in...
Federal or CO employee in the County Office	a neighboring County Office or the State Office.
COC member or advisor	the member's County Office. Exception: If unusual circumstances exist, SED may require the file to be transferred to another office.
Federal employee in the State Office	the County Office serving the county in which the operation is headquartered.
STC member	a neighboring State Office.
SED	the National Office.
relative residing in the employee's household	a neighboring County Office.
relative residing outside the employee's household	the County Office serving the county in which the operation is headquartered.

F
Business Transactions With FSA Applicants, Borrowers, or Program Participants

If an employee contemplates entering into or conducting business transactions with any FSA applicant, borrower, or program participant, the employee shall confer with the supervisor or administrative officer, who in turn will seek guidance from an Agency ethics advisor. This is to ensure that statutory and regulatory conflict of interest rules are not violated.

Note: On occasion, employees will not know if they are doing business with or contemplating doing business with an FSA applicant, borrower, or program participant. In these situations, when an employee becomes aware of their FSA affiliation, the employee shall immediately contact their supervisor or Agency designee so that a conflict of interest determination can be made.

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3 FLP Issues (Continued)

F
Business Transactions With FSA Applicants, Borrowers, or Program Participants (Continued)

Business transactions can include, but are not limited to, the following:

- leases between employees or family members residing in the same household and any FSA applicant, borrower, or program participant
- hiring any applicant, borrower, program participant, or business closely associated with this person for the benefit of the employee's family member; or being hired by an applicant, borrower, program participant, or business closely associated with this person
- selling, directly or indirectly, real estate or personal property to an applicant, borrower, or program participant
- accepting credit from an FSA-financed cooperative
- entering into any long-term contractual business relationship with an applicant, borrower, program participant, or business closely associated with this person.

Note: Changes may occur in rules, regulations, and USDA and FSA policy concerning FLP loans; however, these changes do not diminish the Government-wide conflict of interest statutes or the standards of conduct regulations

G
7 U.S.C. 1986 Violations

FSA employees and their family members residing in the same household are prohibited from purchasing any real property on which the employee reviewed an FLP application within 3 years of the date of the review. Violations can result in a fine of up to \$2,000, 2 years imprisonment, or both, under 7 U.S.C. 1986.

H
General Standards of Conduct Restrictions

Employees shall follow all Government ethics rules and regulations, including, but not limited to, prohibitions on taking any official action on a matter in which they have conflicting financial interests, losing official impartiality, and misusing their official position, particularly through the misuse of nonpublic information for their own benefit or the benefit of others. The restrictions are in 5 CFR Part 2635.

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3 FLP Issues (Continued)

H

**General
Standards of
Conduct
Restrictions
(Continued)**

These restrictions are particularly relevant to situations where an employee considers purchasing or knows of a family member, close relative, or household member who is considering purchasing or leasing any of the following:

- property in FSA inventory
- property securing outstanding FLP debt on which foreclosure action has been initiated by FSA or any other party
- real or personal property mortgaged or pledged as FLP security.

At minimum, if such a purchase is contemplated, the employees shall discuss this issue with their supervisor and Agency ethics advisor. Violations of the regulations may be grounds for adverse administrative actions, and, if rising to a level of financial self-interest, they can be prosecuted as a criminal conflict of interest under 18 U.S.C. 208.

Note: Changes may occur in rules, regulations, and USDA and FSA policy concerning FLP loans; however, these changes do not diminish the Government-wide conflict of interest statutes or the standards of conduct regulations

4 Determining Whether There Is a Conflict of Interest

A

Introduction

Use the information in this paragraph to determine whether there is a conflict of interest regarding the impartiality of official duties (5 CFR 2635, Subpart E).

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4 Determining Whether There Is a Conflict of Interest (Continued)

B
**Considerations
of Appearances
by Employee**

When an employee determines that either of the following circumstances would cause a reasonable person with knowledge of the relevant facts to question the employee's impartiality in the matter, the employee should not participate in the matter unless he or she has informed the Agency designee of the appearance of a problem and received authorization from the Agency designee according to subparagraph I:

- an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his or her household
- an employee knows that a person with whom he or she has a covered relationship is, or represents, a party in a particular matter that may have a direct and predictable effect on the financial interest of a member of his or her household.

Note: An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required in this analysis and authorization.

C
**Covered
Relationships**

An employee has a covered relationship with any of the following:

- a person, other than a prospective employer, with whom the employee has or seeks a business, contractual, or other financial relationship that involves other than a routine consumer transaction

Note: An employee who is seeking employment shall comply with 5 CFR Part 2635, Subpart F.

- a person who is a member of the employee's household or who is a relative with whom the employee has a close personal relationship
 - a person for whom the employee's spouse, parent, or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee
 - any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee
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4 Determining Whether There Is a Conflict of Interest (Continued)

**C
Covered
Relationships
(Continued)**

- an organization, other than a political party as described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization.

Note: Nothing in this subparagraph shall be construed to suggest that an employee should not participate in a matter because of his or her political, religious, or moral views.

**D
Disclosures of
Applicant and
Borrower
Relationships**

State and County Office employees shall disclose, upon entry to their position and annually, any covered relationship that they or a member of their household have with FLP borrowers and applicants.

This table contains information about:

- initial and annual disclosures
- review of disclosures.

Type of Action	Employee or Office Responsible for Action	Responsibility
making initial disclosure	State and County Office employees	<p>Within 30 calendar days after entering on duty, disclose any covered relationship the employee may have with FLP borrowers, applicants, or other parties, such as producers participating in FSA programs, that may raise the appearance of a loss of impartiality in the performance of their duties.</p> <p>The disclosure shall include, at a minimum, the following:</p> <ul style="list-style-type: none"> • employee's name, title, office location, and telephone number • borrower's, applicant's, or other parties' name, relationship to employee, and type of covered relationship <p>Note: For FLP loans, include security property location, type of assistance, and status of assistance.</p> <ul style="list-style-type: none"> • relevant information needed to determine potential for a conflict of interest.

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4 Determining Whether There Is a Conflict of Interest (Continued)

**D
Disclosures of
Applicant and
Borrower
Relationships
(Continued)**

Type of Action	Employee or Office Responsible for Action	Responsibility
preparing annual reminder	HRD	Prepare an annual notice to remind State and County Office employees about the annual disclosure requirement.
making annual disclosure	State and County Office employees	<p>Prepare the same kind of disclosure information that is required for the initial disclosure.</p> <p>Note: See "making initial disclosure" in this subparagraph.</p>
reviewing disclosures	administrative officer or designee	<p>Review all disclosure reports, except for the following employees:</p> <ul style="list-style-type: none"> • administrative officer • SED • STC member. <p>Note: Forward:</p> <ul style="list-style-type: none"> • SED and STC member disclosures to HRD for review and adjudication • administrative officer disclosures to KCMO, Personnel Division for review and adjudication. <p>When a covered relationship exists:</p> <ul style="list-style-type: none"> • use the criteria in 5 CFR Part 2635, Subparts D and E to determine whether transfer of loan and/or work assignment, disqualification, waiver, or other action is appropriate • provide the employee with a written response in a timely manner.

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4 Determining Whether There Is a Conflict of Interest (Continued)

E

Direct and Predictable Effect

A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately.

- A particular matter will not have a direct effect on a financial interest; however, if the chain of causation is attenuated or is contingent on the occurrence of events that are speculative or that are independent of, and unrelated to, the matter.
- A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of 5 CFR Part 2635, Subpart D.

A particular matter will have a predictable effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known and the dollar amount of the gain or loss is immaterial.

F

Definition of Particular Matter Involving Specific Parties

Particular matter involving specific parties means any judicial or other proceeding, application, request for a ruling, or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.

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4 Determining Whether There Is a Conflict of Interest (Continued)

G

**Determination
by Agency
Designee**

The Agency designee shall use the information in the following table to determine whether there is a conflict of interest.

IF an Agency designee...	THEN the...
<p>has information concerning a potential appearance of a problem arising from either of the following:</p> <ul style="list-style-type: none"> • the financial interest of a member of the employee's household in a particular matter involving specific parties • the financial interest of a person with whom the employee has a covered relationship in a particular matter involving specific parties 	<p>Agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter.</p> <ul style="list-style-type: none"> • Ordinarily, the Agency designee's determination will be initiated from information provided by the employee. • However, at any time, including after the employee has disqualified himself or herself from participation in a matter, the Agency designee may make this determination on his or her own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.
<p>determines that the employee's impartiality is likely to be questioned</p>	<p>Agency designee shall use the information in subparagraph I to determine whether the employee should be authorized to participate in the matter.</p>
<p>determines that the employee's participation should not be authorized</p>	<p>employee will be disqualified from participation in the matter according to subparagraph J.</p>
<p>determines that the employee's impartiality is not likely to be questioned</p>	<p>Agency designee may advise the employee, including an employee who has reached a contrary conclusion, that the employee's participation in the matter would be proper.</p>

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4 Determining Whether There Is a Conflict of Interest (Continued)

H

Agency Designee Agency designees for the FFAS mission area are the mission area Deputy Ethics Official and the mission area ethics advisors. The mission area HRD Director serves as mission area Deputy Ethics Official. The mission area ethics advisors are designated as follows.

Location	Office	Position
Washington, D.C.	HRD	The following positions: <ul style="list-style-type: none">• Chief, Employee and Labor Relations Branch• designated Employee Relations Specialists.
Kansas City	KCMO, Personnel Division	The following positions: <ul style="list-style-type: none">• Personnel Officer• Chief, Employee and Labor Relations Branch• designated Employee Relations Specialists.

A notice shall be issued annually to notify employees of Agency designee names, titles, addresses, and telephone and FAX numbers.

I

Authorization by Agency Designee

When an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his or her impartiality, the Agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the Agency's programs and operations.

Factors that may be taken into consideration include the following:

- nature of the relationship
- effect that resolution of the matter would have upon the financial interests of the person involved in the relationship

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4 **Determining Whether There Is a Conflict of Interest (Continued)**

I
**Authorization by
Agency Designee
(Continued)**

- nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter
- sensitivity of the matter
- difficulty of reassigning the matter to another employee
- adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

The Agency designee shall document the authorization in writing. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself or herself from participation in the matter on the basis of an appearance of a problem involving the same circumstances that have been considered by the Agency designee.

Note: Agency designees shall consult 5 CFR Part 2635 before making a determination.

J
Disqualification

Unless the employee is authorized to participate in the matter according to subparagraph I, an employee shall not participate in a particular matter involving specific parties when the employee or the Agency designee has concluded, according to subparagraphs B and G, that the financial interest of a member of the employee's household, or the role of a person with whom the employee has a covered relationship, is likely to raise a question in the mind of a reasonable person about the employee's impartiality. Disqualification is accomplished by not participating in the matter.

Continued on the next page

4 Determining Whether There Is a Conflict of Interest (Continued)

J

**Disqualification
(Continued)**

An employee who becomes aware of the need to disqualify himself or herself from participation in a particular matter involving specific parties to which he or she has been assigned should notify the person responsible for his or her assignment. An employee who is responsible for his or her own assignments should take all steps necessary to ensure that he or she does not participate in the matter from which he or she is disqualified.

Appropriate written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he or she is disqualified.
