

# Farm Credit Administration

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## INFORMATIONAL MEMORANDUM



July 9, 2015

To: Chairman, Board of Directors  
Chief Executive Officer  
All Farm Credit System Institutions

From: Samuel R. Coleman, Director and Chief Examiner  
Office of Examination

A handwritten signature in black ink that reads 'Samuel R. Coleman'.

Subject: Whistleblower Programs

This Informational Memorandum provides guidance to Farm Credit System (FCS) institutions on Whistleblower (WB) programs. Every institution must have an effective internal control process as required by 12 CFR 618.8430, and a WB program can be a key part of the process.

A WB program provides ways to confidentially report complaints or tips about a violation of law, regulation, or policy, as well as fraud, corruption, or operational weaknesses. A WB program is most effective when both internal parties (directors, officers, and employees) and external parties (borrowers, shareholders, applicants and others) can report a complaint, misconduct, or tip for corrective action.

WB program effectiveness hinges on board and executive leaders establishing a healthy organizational culture. A policy covering the WB program helps the board and management properly define the program's scope and their expectations. Through policy statements, training, and other communications, leaders can inform employees and others about the importance of, and support for, the WB program. Furthermore, training should ensure employees are aware of reporting mechanisms and understand their duty to report wrongdoing without fear of retaliation.

WB programs can play an important role in detecting and preventing fraud and loss. According to the *2014 Report to the Nation* by the Association of Certified Fraud Examiners, tips are by far the most common way that fraud schemes are detected. Management review and internal audit ranked a distant second and third, respectively.

For guidance in establishing a WB program, System institutions can look to the Sarbanes-Oxley Act (SOX) of 2002, which requires U.S.-listed public companies to use WB programs. The SOX assigned audit committees the responsibility of establishing procedures for handling:

- Complaints regarding accounting, internal accounting controls or auditing matters; and,
- Confidential, anonymous submissions of concerns regarding questionable accounting or auditing matters.

While FCS institutions are not subject to this law, those requirements are important guidelines to consider in designing and implementing a WB program.

In addition, we are providing the attached guidance to you on WB programs. Examiners will focus additional attention on FCS institutions' internal control programs and processes during upcoming examinations. Please direct questions about this Informational Memorandum to your Examiner-in-Charge or Dan Fennewald, Director, Examination Policy Division, at (952) 259-0432 or [fennewaldd@fca.gov](mailto:fennewaldd@fca.gov).

Attachment

## WB Program Guidance

For a WB program to be effective, an FCS institution should consider addressing the following in a written policy or other program guidance:

**WB programs must provide for confidential and anonymous reporting. An external, independent party is a key way to ensure confidentiality and anonymity.** Using a third-party WB hotline provider is strongly recommended to increase trustworthiness. Assurances of confidential, anonymous reporting should diminish fear of retribution for making a report and increase an individual's likelihood of reporting observed wrongdoing. If an institution assigns a senior officer as the sole recipient of a WB report, this could have a detrimental effect and employees and others may not be willing to use the program. There are several reputable external parties that provide WB services, and the annual expenses for external WB reporting providers typically are very affordable. The benefits from using an external party far outweigh any modest savings from using institution resources, especially when the potential consequences of unreported fraudulent activity and other wrongdoing are considered.

**WB programs should be structured to allow tips or complaints from both inside and outside the organization.** WB programs should not restrict WB reporting to only employees. Industry best practices involve providing avenues for truly anonymous and confidential reporting from outside the organization. External sources include customers, loan applicants, appraisers, vendors and others. Reports can be made through WB links on the institution's website with a best practice of having the WB link available on all website pages. Effective links list the telephone number and other contact information of the independent external party along with a description of the types of items to report, and even a form to complete. Institutions also can include WB contact information on quarterly financial reports, newsletters, and other documents mailed to customers or vendors. An institution also can have a telephone hotline, a dedicated email address, or other contact methods dedicated to receiving a WB report.

**WB programs should provide automatic notices of any WB complaint or tip to the audit committee and board chairman.** This process provides direct communications with board leadership and reinforces the board's support and involvement in the program. Of course, the notice process needs to maintain confidentiality and anonymity and specify alternate routing should the complaint or tip name any audit committee members or the board chairman.

**WB programs should have an effective process for screening and following up on tips and complaints.** An institution should be prepared for complaints or tips on a broad array of topics not necessarily directly related to financial integrity and reporting (such as human resources, or standards of conduct issues). Institutions should assign specific board, committee, and managerial positions with responsibility for following up on tips or complaints that surface through the WB program or through any other means. For example, the Audit Committee could have sole responsibility for the receipt, handling and investigation of accounting, internal control, and auditing matters. Regardless of who is specifically assigned, an institution should have a well-defined process for screening and tracking complaints and tips, which could include working with an external party who receives the initial complaint and tip. Timeliness of the

## WB Program Guidance

investigation of a complaint is important to determine whether wrongdoing has occurred and to demonstrate that complaints will be investigated promptly. Effective programs include a secure tracking system for complaints, the follow-up, the investigation, the disposition, and the final closure of the complaints. The Audit Committee should receive regular status updates on each complaint, and these also should be reviewed with internal audit. Programs also should address document retention requirements for WB complaints and investigations. An institution should consult legal counsel when establishing retention guidelines.

**Institutions may need outside expertise to promptly and fully investigate WB complaints and tips.** To improve accountability and results, institutions should consult qualified advisors, both internal and external, as it addresses WB complaints and tips. Any suspected internal fraud or other significant event involving insiders should be reported to FCA immediately. The Agency has investigative and other authorities not available to FCS institutions. We also can offer input on the investigation and help an institution avoid missteps. If there is any known or suspected criminal violation, an institution must follow FCA Regulation 12 CFR Part 612, subpart B, and make a criminal referral.

**WB programs should include an anti-retaliation policy.** To help create an appropriate WB environment, the board and management should provide clear, anti-retaliation assurances in a policy statement or other guidance. The anti-retaliation policy (whether a stand-alone statement or included in another policy) should be openly communicated to offer appropriate assurances that any person who makes a WB complaint or tip will not be subject to retaliation or retribution from the institution and its employees.

**Education and awareness is critical to the success of any WB program to ensure that employees and others know the program is available, that they will be supported, and reports are confidential.** This includes a formal training program for new and existing employees. Institutions also can use a variety of other methods to refresh awareness such as posters, notices in newsletters, and coverage in staff meetings. Institutions should include periodic board training that can vary and range from annual, formal training to relying on the board's periodic review of the WB policy and program information. Board training should help ensure that directors fully understand the program and the board's crucial role in establishing a healthy, ethical culture. Training can also be provided on making an appropriate report. A director, officer, employee, or agent of an FCS institution has immunity from liability (12 U.S.C. 2219e) under State and Federal law for disclosures in good faith to a Government authority that may be relevant to a possible violation of any law or regulation. This immunity does not apply to reporting false or frivolous claims or to reports by external parties.

**WB programs should be tested periodically to ensure the reporting and routing mechanisms are functioning as intended.** Communication methods (e.g., telephone systems, website posts, email, etc.) need to be open, available, and accompanied by clear instructions. A busy phone tip line, a complicated set of menus, a breach of confidentiality, or an unanswered email complaint may cause the WB process to fail. Further, testing should evaluate whether WB

## WB Program Guidance

reports are directed to the appropriate individuals, including exclusion of an individual named in a complaint.

**WB programs should be included in the internal audit program's risk assessment process and audit plans.** Audit testing should consider all significant aspects of the program, including the reliability and responsiveness of a third-party hotline provider. The Audit Committee should arrange for independent evaluations of the WB program if internal audit personnel are involved in administering the WB program.