Module: Compliance
Section: Criminal Referrals
EM-640

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Introduction and Purpose

The FCA is interested in early detection and reporting of known or suspected criminal violations to ensure confidence and stability within the Farm Credit System (System). The timely filing of the FCA Referral Form with the appropriate authorities is necessary after discovery of a known or suspected crime. Primary responsibility for establishing and maintaining safeguards to deter crimes against System institutions rests with each institution's management (i.e., adequate internal controls). However, examiners have the responsibility to evaluate the adequacy of such safeguards. Examiners must be alert and able to recognize irregular or unusual activity whether it be internal crimes or fraudulent schemes by outsiders. Explanations by institution officers or employees that appear unreasonable should not be accepted without additional examination.

The purpose of this section is to provide a discussion and explanation of those violations of Federal criminal statutes most likely to be encountered by examiners. Procedures for examiners to follow in reporting alleged criminal activities to appropriate authorities are also covered. Since examiners are prohibited from disclosing certain information by 18 U.S.C. 1905 (trade secrets and confidential financial information) and 1907 (information from an examination), it is important the procedures outlined in this section be followed closely.

The information contained in the criminal referral report is confidential and subject to the applicable provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and FCA Regulations 12 CFR Parts 602, 603, and 617.

Procedures for Reporting Known or Suspected Criminal Violations

Known or suspected criminal violations disclosed during a regular or special examination and those discovered by institution personnel and others must be reported in accordance with the following procedures. Examiners should ensure that institution personnel comply with their responsibility under 12 CFR Part 617 to report known or suspected criminal violations to the proper authorities within 30 days of determining there is a known or suspected criminal violation. If an examiner detects a criminal violation, the examiner should first offer the institution an opportunity to complete the FCA Referral Form and forward it to the proper law enforcement authorities. Thus, examiners would complete and forward an FCA Referral Form in accordance with this section only in those instances where the examiner detects the known or suspected criminal violation and the institution has not completed and forwarded an FCA Referral Form under 12 CFR Part 617. It is not necessary for examiners to forward an FCA Referral Form where a law enforcement agency has initiated an investigation of the known or suspected criminal violation prior to completing the examination or where the examiner knows that an investigatory agency has been notified. In such cases, FCA must be assured the known or suspected violation was reported. If any doubt exists, the examiner should prepare and forward an FCA Referral Form as required. Further, in all cases involving possible loss to the institution, examiners should ensure the institution has immediately notified its bonding company in accordance with established procedures. Full restitution by the offender or others, or the death of the offender, does not eliminate the necessity for a complete report by the institution or FCA personnel.

<u>Preliminary Notification</u>

Examiners must immediately notify the Chief Examiner by telephone of those known or suspected

criminal violations where: (1) there is a likelihood the suspect(s) will flee; (2) the magnitude or the continuation of the activity may imperil the institution's continued operation; or (3) key institution personnel are involved, possibly necessitating removal. The Chief Examiner will in turn notify FCA's General Counsel as soon as practicable. The Chief Examiner may elect to inform the appropriate criminal investigatory authority, by telephone, thereby enabling immediate entry into the case by investigators prior to formal written notification. Such action is especially important where the suspect's position could further expose the institution to additional peril or where continuation or expansion of an activity might represent a significant threat to the institution's operations. Preliminary notification is required in addition to the following procedures.

Notification to the Institution

Generally, the institution board of directors shall be promptly notified of any criminal referral by the institution, except when the criminal referral involves a member of the board of directors. Discretion may be exercised in notifying such member of the criminal referral. If an examiner makes the criminal referral, the examiner may use discretion in determining whether to: (1) request a board meeting immediately upon discovery of the violation; (2) request a board meeting during or after the examination has been concluded; or (3) instruct senior officers to inform the board. This decision will depend primarily on the gravity of the offense and its probable effect on the welfare of the institution. In all cases, the examiner's discussion with the board should be limited to actual facts documented during the examination of the matter. Examiners may not make a statement that expresses an opinion as to the guilt or innocence of any suspected person. In any event, the senior executive officer, if not personally involved, should be informed immediately upon discovery of an apparent violation.

Notification to the Chief Examiner and General Counsel

When there is a known or suspected criminal violation, examiners must promptly file an FCA Referral Form with the Chief Examiner. The FCA Referral Form and instructions are provided in Supplement 1. A short cover letter should accompany the Form. The Chief Examiner will promptly forward the FCA Referral Form to the General Counsel. A copy of the Form will be kept in the records of the involved institution. The examiner should also keep a copy of the referral.

Notification of Law Enforcement Authorities

The General Counsel will refer the matter to the appropriate field office of the United States Attorney and to the field office of the appropriate investigatory authority agency. The FCA Referral Form provides adequate information in a concise and efficient manner for the appropriate law enforcement authority to receive a criminal referral. In general, the FBI is charged with the responsibility of investigating violations of Federal criminal statutes and should always be notified of any referral by the Chief Examiner. However, other agencies have overlapping authorities and may need to be notified. The U.S. Secret Service Division of the Treasury Department has responsibility for cases involving certain enumerated crimes, as well as joint responsibility for matters involving an FCB or FLBA. The Internal Revenue Service investigates cases of tax fraud or money laundering/structuring violations. The U.S. Postal Service investigates cases of mail fraud. And, in certain cases, State law enforcement authorities may be included in a referral due to violations of State law. The U.S. Attorney's office in each Judicial District is responsible for the prosecution of all Federal criminal cases and needs to be notified. Once an investigation has begun, the responsible investigating agency should contact the Office of General Counsel for approval prior to interviewing any FCA employees or examining any Agency records.

The FCA, along with other financial regulators, has agreed with the Department of Justice (DOJ) to coordinate actions to seek civil penalties pursuant to Section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 1833a, from parties that violate Sections 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 of Title 18 of the U.S. Code. The Office of General Counsel will coordinate the FCA's efforts in the area of criminal referrals.

Evidentiary Material

If the examiner believes evidence may be destroyed or otherwise become unavailable to an investigating agency, the examiner should notify the Office of General Counsel and, upon request, duplicate evidence during the examination. Duplication of records is not required when: notification to the U.S. Attorney is not required; the investigating agency has initiated or completed action; the alleged offender is no longer with the institution and no evidence of collusion with other institution personnel is evident; the suspect is a borrower and there is no evidence of collusion with institution personnel; or the suspect is still in the institution's employ, but there is no reason to believe relevant documents may be destroyed.

When duplication is warranted, the examiner will make two sets and retain them in an appropriately labeled and sealed envelope. The envelope will be kept apart from regular workpapers in the FCA field office files. Upon request, a copy of the evidentiary material may be sent to the Office of General Counsel. Evidence will be made available to the prosecuting or investigating authority upon oral or written request to the Office of General Counsel.

In order to assure subsequent identification of evidence, examiners should mark the sealed envelope and all relevant documents. (The fact that the material is an original or duplicate has no bearing on the marking of exhibits.) Marking should be done by placing the examiner's initials in ink on the document followed by the date. Either the original document, prior to duplication, or the duplicated exhibit may be marked.

Provisions of the Federal Criminal Code Most Likely To Be Encountered

Most of the Federal criminal statutes to be encountered in connection with an examination are contained in Title 18 of the United States Code (U.S.C.). Examiners should also be aware that noninstitution personnel may be in violation of any of the following sections if there is collusion between such person and a director, officer, employee, attorney, or agent (institution personnel) of a System institution. Such other person would then be either an aider or abettor under 18 U.S.C. 2 or a conspirator under 18 U.S.C. 371. Only major provisions of Title 18 are discussed below.

Section 4

Makes it a crime for any person having knowledge of the actual commission of a felony to conceal that knowledge and not make that fact known to the proper authorities.

Section 201

Prohibits the bribery of public officials and the acceptance or demand of a bribe by public officials, including employees of any agency of the Federal Government and witnesses in official proceedings, with the intent to influence that official's functions.

Section 212

Institution personnel are prohibited from making or granting loans or gratuities to the examiners authorized to examine that particular institution. (Conversely, Section 213 prohibits examiners from accepting a loan or gratuity from an institution.)

Section 215

Generally prohibits anyone from giving anything of value with the intent to influence institution personnel and the acceptance by institution personnel of such a bribe in connection with any business or transaction (making or renewing a loan) of such institution.

Section 493

Prohibits the counterfeiting or alteration of any System institution's bonds, instruments, or other obligations.

Section 641

It is illegal for any person to embezzle, steal, purloin, or knowingly convert to his use or the use of another, or without authority, to sell, convey, or dispose of any record or thing of value to the United States. This section also prohibits the receipt or concealment of such acts.

Section 657

It is a crime for any officer, employee, or agent of FCA, a System institution, System receiver, Farm Credit Services Insurance Corporation (FCSIC), or any person connected in any capacity with FCA, a System institution, or the FCSIC, to embezzle or willfully misapply the funds or assets belonging to such institution. Essential elements of this offense are: at least one of the accused is an officer, employee, or agent of an entity covered by this section; such person embezzled or willfully misapplied funds of the entity; and the intent was to injure or defraud the entity. Loss to the entity is not an element of the crime and subsequent restoration has no bearing on the offense. The requisite intent needed to prove a crime under Section 657 may be inferred from all circumstances surrounding the transactions in question. For example, proof that normal loan procedures were circumvented or facts concealed from other officers or the board of directors would be indicative of fraudulent intent. In a case involving an apparent misapplication of funds, the fact that the accused did meet or could have met a demand for payment is probative of intent but not determinative. Where operative facts indicate a crime was committed, the matter should be reported.

Section 658

Prohibits any person from knowingly and with intent to defraud from concealing, removing, disposing of, or converting to personal use or to the use of another, any property mortgaged, pledged to, or held by a Farm Credit System institution.

Section 1001

Makes it a crime to knowingly and willfully make an oral or written false representation or conceal a material fact with regard to any matter within the jurisdiction of any department or agency of the United States. The test applied under this statute is whether the falsification or concealment has the natural tendency to influence or is capable of influencing an agency's required determination. It is not necessary for the agency to be actually influenced by the representation. Such statements need not be made under oath, and loss to the United States is not an essential element in the crime.

Section 1006

Prohibits any officer, agent, or employee of FCA or a System institution or any person connected in any capacity with FCA or a System institution from making any false entry in any book, report, or statement with intent to injure or defraud FCA or the institution, or to deceive FCA or any officer of the institution. In addition, it prohibits any such person, without authority, from issuing or drawing on any obligations of such institution. The crime of making false entries includes any entry on an institution's books intentionally made to represent what is not true and does not exist. The crime may be committed personally or by direction; therefore, an officer directing the making of false entries violates this statute.

Section 1011

Prohibits mortgagees from knowingly making false statements relating to the sale of such mortgage to any district bank. Also prohibits appraisers from willfully overvaluing any land securing any such mortgage.

Section 1013

It is a crime for any person to deceive, defraud, or impose upon, or attempt to deceive, defraud, or impose upon another by making false representations concerning the character of any bond or other obligation of a Farm Credit bank. The test is whether the deception was knowingly or willingly made. Loss from the transaction is not a necessary element.

Section 1014

Prohibits any person from knowingly making a false statement or report, or willfully overvaluing any land or property for the purpose of influencing in any way the action of the FCA, FCSIC, a System institution, or any institution personnel on any application or other submission to such institution. The false statement or report, or the overvaluation of land, property, or security, must be knowingly or willfully made. A loss resulting from the transaction is not an element of the crime. An application, even though denied, will trigger the statute, assuming requisite elements of the crime are present. In certain cases, the omission of a statement may be construed as a violation, i.e., omitting some liabilities on a loan application.

Section 1030

Computer Fraud--Prohibits knowingly accessing a computer without authorization, or using it for unauthorized purposes, including obtaining information contained in records of financial institutions.

Section 1341

Mail Fraud--Prohibits the use of the Postal Service in the furtherance of any scheme or plan to defraud, or for obtaining money or property by means of false pretenses or fraudulent representations. The crime encompasses both the depositing and receiving of mail for the purpose of promoting a scheme to defraud.

Section 1343

Wire Fraud--Prohibits any person from advancing any scheme or artifice to defraud using transmission by wire, radio, or television.

Section 1344

Bank Fraud--Makes it a crime for any person to knowingly execute or attempt to execute a scheme or artifice to defraud a Federally chartered or insured financial institution, including any System institution, or obtain funds or property by misrepresentation. It is important to point out that the method used to defraud the institution can trigger other criminal violations. The use of the Postal Service triggers the mail fraud statute, § 1341; use of a wire service, telephone, radio, or television triggers the wire fraud statute, § 1343; and use of a computer triggers the computer fraud statute, § 1030. The essential elements of the crime are a scheme or plan to defraud a System institution by means of false pretenses, representations, or promises. Loss is not necessary for a violation to occur.

Section 1956

Money Laundering--It is a crime for any person to conduct or attempt to conduct a financial transaction knowing that the property in the transaction represents the proceeds of an unlawful activity, while acting with either (a) the intent to promote the unlawful activity, or (b) the knowledge that the transaction would conceal or disguise the nature, source, ownership, or control of the proceeds or to avoid reporting the transaction to the proper authorities. The term "transaction" includes loans, extensions of credit, purchase or sale of any stock, bond, certificate of deposit, or other instrument, or any other payment or transfer by, through, or to a financial institution. The statute requires actual knowledge that the money was the proceeds of unlawful activity, although the specific unlawful activity need not be known. Unlawful activity includes, among others, the Racketeer Influenced and Corrupt Organizations (RICO)

and fraud statutes, as well as dealing in controlled substances.

Section 1957

Prohibits any person from engaging or attempting to engage in a monetary transaction in property, knowing that it is criminally derived property and has a value over $10,000. "Monetary transaction" means the deposit, withdrawal, transfer, or exchange of funds by, through, or to a financial institution. "Criminally derived property" means property constituting, obtained from, or proceeds derived from a criminal offense. The statute requires actual knowledge that the property is proceeds from a criminal offense, although the specific criminal offense need not be known. Actual knowledge that the value of the property is over $10,000 is also necessary.

Section 1961

RICO Statute--Prohibits any person from investing in any enterprise affecting interstate commerce if the funds for the investment are derived from a pattern of racketeering activity. The activities are defined to include murder, drug dealing, bribery, robbery, extortion, counterfeiting, mail fraud, wire fraud, embezzlement from pension funds, obstruction of criminal investigations, fraud in the sale of securities, etc.

Section 2314

Prohibits the transportation of stolen goods, securities, or money in interstate or foreign commerce. The following are crimes under this provision: (1) the intent to defraud a person or entity of money or property while traveling, (2) concealing a scheme to defraud by transporting in interstate travel, and (3) the interstate transport of counterfeit securities or the tools and implements used in counterfeiting.

Section 2315

Prohibits any person from selling or receiving any stolen goods, securities, or money as described in Section 2314 above.