

section of this part or any other part of the Office's regulations.

**§513.8 Removal, suspension, or debarment of independent public accountants and accounting firms performing audit services.**

(a) *Scope.* This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured savings associations and savings and loan holding companies.

(b) *Definitions.* As used in this section, the following terms have the meaning given below unless the context requires otherwise:

(1) *Accounting firm.* The term *accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(2) *Audit services.* The term *audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA Act and 12 CFR part 363, including attestation services. Audit services include any service performed with respect to a savings and loan holding company of a savings association that is used to satisfy requirements imposed by section 36 or part 363 on that savings association.

(3) *Independent public accountant.* The term *independent public accountant* means any individual who performs or participates in providing audit services.

(c) *Removal, suspension, or debarment of independent public accountants.* The Office may remove, suspend, or debar an independent public accountant from performing audit services for savings associations that are subject to section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Office finds that the independent public accountant:

- (1) Lacks the requisite qualifications to perform audit services;
- (2) Has knowingly or recklessly engaged in conduct that results in a vio-

lation of applicable professional standards, including those standards and conflicts of interest provisions applicable to independent public accountants through the Sarbanes-Oxley Act of 2002, Pub. L. 107-204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(3) Has engaged in negligent conduct in the form of: (i) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an independent public accountant knows, or should know, that heightened scrutiny is warranted; or

(ii) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(4) Has knowingly or recklessly given false or misleading information or knowingly or recklessly participated in any way in the giving of false or misleading information to the Office or any officer or employee of the Office;

(5) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law;

(6) Has been removed, suspended, or debarred from practice before any federal or state agency regulating the banking, insurance, or securities industries, other than by action listed in paragraph (j) of this section, on grounds relevant to the provision of audit services; or

(7) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(d) *Removal, suspension or debarment of an accounting firm.* If the Office determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (c) of this section, the Office also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar an accounting firm or

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office thereof, and the term of any sanction against an accounting firm under this section, the Office may consider, for example:

(1) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(2) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(3) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(4) The extent to which managing partners or senior officers of the accounting firm have participated, directly or indirectly through oversight or review, in the act or failure to act; and

(5) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(e) *Remedies.* The remedies provided in this section are in addition to any other remedies the Office may have under any other applicable provisions of law, rule, or regulation.

(f) *Proceedings to remove, suspend, or debar.* (1) The Office may initiate a proceeding to remove, suspend, or debar an independent public accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) An independent public accountant or accounting firm named as a respondent in the notice issued under paragraph (f)(1) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 509).

(g) *Immediate suspension from performing audit services.* (1) If the Office serves written notice of intention to remove, suspend, or debar an independent public accountant or account-

ing firm from performing audit services, the Office may, with due regard for the public interest and without preliminary hearing, immediately suspend an independent public accountant or accounting firm from performing audit services for savings associations, if the Office:

(i) Has a reasonable basis to believe that the independent public accountant or accounting firm engaged in conduct (specified in the notice served upon the independent public accountant or accounting firm under paragraph (f) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (c) or (d) of this section;

(ii) Determines that immediate suspension is necessary to avoid immediate harm to an insured depository institution or its depositors or to the depository system as a whole; and

(iii) Serves such independent public accountant or accounting firm with written notice of the immediate suspension.

(2) An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Office dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Office to the independent public accountant or accounting firm.

(h) *Petition to stay.* (1) Any independent public accountant or accounting firm immediately suspended from performing audit services in accordance with paragraph (g) of this section may, within 10 calendar days after service of the notice of immediate suspension, file a petition with the Office for a stay of such suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(2) Upon receipt of a stay petition, the Office will designate a presiding officer who shall fix a place and time (not more than 10 calendar days after receipt of such petition, unless extended at the request of the petitioner), at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. Any OTS

employee engaged in investigative or prosecuting functions for the OTS in a case may not, in that or a factually related case, serve as a presiding officer or participate or advise in the decision of the presiding officer or of the OTS, except as witness or counsel in the proceeding. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph, there will be no discovery and the provisions of §§ 509.6 through 509.12, 509.16, and 509.21 of the Uniform Rules will apply.

(3) Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(4) The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the presiding officer must promptly certify the entire record to the Director. Within 60 calendar days of the presiding officer's certification, the Director shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Director's decision.

(i) *Scope of any order of removal, suspension, or debarment.* (1) Except as provided in paragraph (i)(2), any independent public accountant or accounting firm that has been removed, suspended (including an immediate suspension), or debarred from performing audit services by the Office may not, while such order is in effect, perform

audit services for any savings association.

(2) An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Office, be made applicable to a limited number of savings associations or savings and loan holding companies (limited scope order).

(j) *Automatic removal, suspension, and debarment.* (1) An independent public accountant or accounting firm may not perform audit services for a savings association if the independent public accountant or accounting firm:

(i) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency under section 36 of the FDIA;

(ii) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board or the Securities and Exchange Commission under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B)); or

(iii) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission.

(2) Upon written request, the Office, for good cause shown, may grant written permission to an independent public accountant or accounting firm to perform audit services for savings associations. The request must contain a concise statement of action requested. The Office may require the applicant to submit additional information.

(k) *Notice of removal, suspension, or debarment.* (1) Upon issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the Office shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(2) An independent public accountant or accounting firm that provides audit services to a savings association must

provide the Office with written notice of:

(i) Any currently effective order or other action described in paragraphs (c)(6) through (c)(7) or paragraphs (j)(1)(ii) through (j)(1)(iii) of this section; and

(ii) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(C) or (G)).

(3) Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action or 15 calendar days before an independent public accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

(l) *Application for reinstatement.* (1) Unless otherwise ordered by the Office, an independent public accountant, accounting firm, or office of a firm that was removed, suspended or debarred under this section may apply for reinstatement in writing at any time. The request shall contain a concise statement of action requested. The Office may require the applicant to submit additional information.

(2) An applicant for reinstatement under paragraph (l)(1) of this section may, in the Office's sole discretion, be afforded a hearing. The independent public accountant or accounting firm shall bear the burden of going forward with an application and the burden of proving the grounds supporting the application. The Office may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Office, for good cause shown, has reinstated the applicant or until, in the case of a suspension, the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an independent public accountant or accounting firm.

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