

such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Executive Secretary will designate a presiding officer who will fix a place and time (not more than 10 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. Any FDIC employee engaged in investigative or prosecuting functions for the FDIC 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 FDIC, 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 also may be presented. Enforcement counsel may represent the agency at the hearing. In hearings held pursuant to this paragraph there shall be no discovery, and the provisions of §§308.6 through 308.12, §308.16, and §308.21 of the Uniform Rules will apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer will 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 of intention. The presiding officer will serve a copy of the decision on, and simultaneously certify the record to, the Executive Secretary.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the Executive Secretary 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 Executive Secretary will promptly certify the entire record to the Board of Directors. Within 60 calendar days of the Executive Secretary's certification, the Board of Directors will issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order will state the basis of the Board's decision.

§308.603 Automatic removal, suspension, and debarment.

(a) An independent public accountant or accounting firm may not perform audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if the accountant or firm:

(1) 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 Office of the Comptroller of the Currency, or the Office of Thrift Supervision under section 36 of the FDIA;

(2) 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

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

(b) Upon written request, the FDIC, for good cause shown, may grant written permission to such accountant or firm to perform audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency. The written request must comply with the requirements of §303.3 of this chapter.

§308.604 Notice of removal, suspension, or debarment.

(a) *Notice to the public.* Upon the issuance of a final order for removal,

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suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the FDIC will make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the FDIC by accountants and firms.* An accountant or accounting firm that provides audit services to any insured depository institution for which the FDIC is the appropriate Federal banking agency must provide the FDIC with written notice of:

(1) any currently effective order or other action described in §§ 308.602(a)(1)(vi) through (a)(1)(vii) or §§ 308.603(a)(2) through (a)(3); and

(2) 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)).

(c) *Timing of notice.* 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 accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

§ 308.605 Application for reinstatement.

(a) *Form of petition.* Unless otherwise ordered by the Board of Directors, an application for reinstatement by an independent public accountant, an accounting firm, or an office of a firm that was removed, suspended, or debarred under § 308.602 may be made in writing at any time. The application must comply with the requirements of § 303.3 of this chapter.

(b) *Procedure.* An applicant for reinstatement under this section may, in the sole discretion of the Board of Directors, be afforded a hearing. In reinstatement proceedings, the person seeking reinstatement shall bear the burden of going forward with an application and proving the grounds asserted in support of the application, and the Board of Directors may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Board of Directors, for good

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cause shown, has reinstated the applicant or until the suspension period has expired. The filing of an application for reinstatement will not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

PART 309—DISCLOSURE OF INFORMATION

Sec.

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AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 1819 “Seventh” and “Tenth.”

SOURCE: 60 FR 61465, Nov. 30, 1995, unless otherwise noted.

§ 309.1 Purpose and scope.

This part sets forth the basic policies of the Federal Deposit Insurance Corporation regarding information it maintains and the procedures for obtaining access to such information. Section 309.2 sets forth definitions applicable to this part 309. Section 309.3 describes the types of information and documents typically published in the FEDERAL REGISTER. Section 309.4 explains how to access public records maintained on the Federal Deposit Insurance Corporation’s World Wide Web page and in the Federal Deposit Insurance Corporation’s Public Information Center or “PIC”, and describes the categories of records generally found there. Section 309.5 implements the Freedom of Information Act (5 U.S.C. 552). Section 309.6 authorizes the discretionary disclosure of exempt records under certain limited circumstances. Section 309.7 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the FDIC.

[63 FR 16404, Apr. 3, 1998]

§ 309.2 Definitions.

For purposes of this part:

(a) The term *depository institution*, as used in § 309.6, includes depository institutions that have applied to the Corporation for federal deposit insurance,