

(a)(1) of this section, the Board of Directors 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 an office thereof, and the term of any sanction against an accounting firm under this section, the Board of Directors may consider, for example:

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

(ii) 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;

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

(iv) 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

(v) 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.

(3) *Limited scope orders.* An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Board of Directors, be made applicable to a limited number of insured depository institutions for which the FDIC is the appropriate Federal banking agency.

(4) *Remedies not exclusive.* The remedies provided in this subpart are in addition to any other remedies the FDIC may have under any other applicable provision of law, rule, or regulation.

(b) *Proceedings to remove, suspend or debar—* (1) *Initiation of formal removal, suspension, or debarment proceedings.* The Board of Directors may initiate a proceeding to remove, suspend, or debar an 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) *Hearings under paragraph (b) of this section.* An accountant or firm named as a respondent in the notice issued under paragraph (b)(1) of this section may request a hearing on the allegations contained 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 308, subpart A) (Uniform Rules).

(c) *Immediate suspension from performing audit service—* (1) *In general.* If the Board of Directors serves a written notice of intention to remove, suspend, or debar an accountant or accounting firm from performing audit services, the Board of Directors may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if the Board of Directors:

(i) Has a reasonable basis to believe that the accountant or accounting firm has engaged in conduct (specified in the notice served upon the accountant or accounting firm under paragraph (b)(1) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (a) of this section;

(ii) Determines that immediate suspension is necessary for the protection of an insured depository institution or its depositors or for the protection of the depository system as a whole; and

(iii) Serves such respondent with written notice of the immediate suspension.

(2) *Procedures.* An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Board of Directors 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 Board of Directors to the respondent.

(3) *Petition to stay.* Any accountant or accounting firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file a petition with the Executive Secretary for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension will 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 30 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. 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