

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; or

(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.

(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 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 accounting 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 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 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 will 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 30 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. 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).