

§ 509.200

12 CFR Ch. V (1–1–10 Edition)

law judge under § 509.32 of this part. Materials required or permitted to be filed with or referred to the Director pursuant to subparts A and B of this part shall be filed with the Director, to the attention of the Secretary.

(h) *Presence of cameras and other recording devices.* The use of cameras and other recording devices, other than those used by the court reporter, shall be prohibited and excluded from the proceedings.

[56 FR 38306, Aug. 12, 1991, as amended at 58 FR 4311, Jan. 14, 1993; 61 FR 20356, May 6, 1996]

Subpart C—Special Rules

SOURCE: 70 FR 10023, Mar. 2, 2005, unless otherwise noted.

§ 509.200 Scope.

The rules and procedures in subpart C of this part and those rules and procedures in subparts A and B of this part that are identified in subpart C of this part shall apply to any proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine for purposes of section 10 of the HOLA, other than subsections (c), (d), (f), (h)(2), (m), (n), (q) and (s), whether any company that owns at least one percent but no more than 10 percent of the outstanding shares of a savings association or savings and loan holding company directly or indirectly exercises a controlling influence over the management or policies of such savings association or savings and loan holding company.

§ 509.201 Definitions.

The definitions contained in § 509.3 of this part shall apply to this subpart.

§ 509.202 Commencement of proceedings and contents of notice.

(a) *Commencement of proceedings.* The Director commences a proceeding by issuing a notice and having it served on the respondent in the manner provided for service by the Director in § 509.11 of this part;

(b) *Contents of notice.* The notice must set forth: (1) The legal authority for the proceeding and for the Office's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing the Office is entitled to issue an Order finding, for purposes of section 10 of the HOLA, other than subsections (c), (d), (f), (h)(2), (m), (n), (q) and (s), the respondent to be directly or indirectly exercising a controlling influence over the management or policies of a savings association or savings and loan holding company;

(3) A proposed Order;

(4) A statement that the respondent must file an answer and, if it so desires, request a hearing within 20 days of service of the notice; and

(5) The time and place of the hearing if one is properly requested by the respondent.

§ 509.203 Answer, consequences of failure to answer, and consent.

(a) *Content of answer.* (1) An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes a prayer for relief or proposed Order.

(2) If a respondent does not contest the allegations in a notice, the respondent may file an answer that contains only a statement that the respondent consents to the entry of the proposed Order. At any time thereafter, the proposed Order may be issued as a final Order.

(b) *Default.* Failure of a respondent to file an answer within the time provided constitutes a waiver of its right to appear and contest the allegations in the notice. If a timely answer is not filed, a default Order may be entered. A respondent that believes that there was good cause for it to not file an answer within the time allowed may request

that the Office exercise its discretion to vacate such a default Order. A default Order based upon a respondent's failure to answer is deemed to be a final Order issued upon consent.

§ 509.204 Hearing Procedure.

(a) (1) The Director shall preside at the hearing and enter the final decision of the agency, provided that no party seeks discovery or proffers any oral testimony;

(2) Respondents shall provide two copies of any pleadings and other filings to the Office of the Chief Counsel, Business Transactions Division. The Office of the Chief Counsel, Business Transactions Division shall serve in the manner provided in § 509.11 of this part, each respondent separately represented with a copy of any pleading or other filing made by the Office.

(b) If any party seeks discovery or proffers any oral testimony, the procedures in subparts A and B of this part shall apply from that time until the conclusion of the proceeding.

Subpart D—Exemptions under Section 19(e) of the FDIA

SOURCE: 72 FR 25955, May 8, 2007, unless otherwise noted.

§ 509.300 Scope.

The procedures in this subpart D govern hearings on denials of applications for case-by-case exemptions under 12 CFR part 585. Part 585 implements section 19(e) of the FDIA, which prohibits persons who have been convicted of certain criminal offenses or who have agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such criminal offenses from occupying various positions with a savings and loan holding company.

§ 509.301 Hearing procedures.

(a) *Hearings.* The following procedures apply to hearings under 12 CFR part 585.

(1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Director.

(2) An applicant may elect in writing to have the matter determined on the basis of written submissions, rather than an oral hearing.

(3) The parties to the hearing are OTS Enforcement counsel and the applicant.

(4) 12 CFR 509.2, 509.4, 509.6 through 509.12, and 509.16 apply to the hearing.

(5) Discovery is not permitted.

(6) A party may introduce relevant and material documents and make oral argument at the hearing.

(7) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties before to the hearing. Witnesses must be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party may cross-examine any witness presented by the opposing party. OTS will furnish a transcript of the proceedings upon an applicant's request and upon the payment of the costs of the transcript.

(8) The presiding officer has the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. If the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees are paid in accordance with 12 CFR 509.14.

(9) Upon the request of a party, the record will remain open for five business days following the hearing for additional submissions to the record.

(10) OTS Enforcement Counsel has the burden of proving a *prima facie* case that a person is prohibited from a position under section 19(e) of the FDIA. The applicant has the burden of proof on all other matters.

(11) The presiding officer must make recommendations to the Director, where possible, within 20 days after the last day for the parties to submit additions to the record.