

may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for banking organizations, if the Board:

(i) Has a reasonable basis to believe that the accountant or firm has engaged in conduct (specified in the notice served on the accountant or firm under paragraph (b) 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 to avoid immediate harm to an insured depository institution or its depositors or to 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 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 to the respondent.

(3) *Petition to stay.* Any accountant or 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 with the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551 for a stay of 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 Secretary will designate a presiding officer who shall 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 Board employee engaged in investigative or prosecuting functions for the Board in a case may not, in that or a factually related case, serve as a pre-

siding officer or participate or advise in the decision of the presiding officer or of the Board, 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 shall be no discovery and the provisions of §§ 263.6 through 263.12, 263.16, and 263.21 of this part shall apply.

(5) *Decision on petition.* 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.

(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 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 shall promptly certify the entire record to the Board. Within 60 calendar days of the presiding officer's certification, the Board 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 Board's decision.

**§ 263.403 Automatic removal, suspension, and debarment.**

(a) An independent public accountant or accounting firm may not perform audit services for banking organizations 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 Federal Deposit Insurance Corporation, the Office of the Comptroller of

## § 263.404

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 of 2002 (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 Board, for good cause shown, may grant written permission to such accountant or firm to perform audit services for banking organizations. The request shall contain a concise statement of the action requested. The Board may require the applicant to submit additional information.

### § 263.404 Notice of removal, suspension, or debarment.

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

(b) *Notice to the Board by accountants and firms.* An accountant or accounting firm that provides audit services to a banking organization must provide the Board with written notice of:

(1) Any currently effective order or other action described in §§ 263.402(a)(1)(vi) through (a)(1)(vii) or §§ 263.403(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 of 2002 (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 firm accepts an engage-

## 12 CFR Ch. II (1–1–11 Edition)

ment to provide audit services, whichever date is earlier.

### § 263.405 Petition for reinstatement.

(a) *Form of petition.* Unless otherwise ordered by the Board, a petition for reinstatement by an independent public accountant, an accounting firm, or an office of a firm that was removed, suspended, or debarred under § 263.402 may be made in writing at any time. The request shall contain a concise statement of the action requested. The Board may require the petitioner to submit additional information.

(b) *Procedure.* A petitioner for reinstatement under this section may, in the sole discretion of the Board, be afforded a hearing. The accountant or firm shall bear the burden of going forward with a petition and proving the grounds asserted in support of the petition. The Board 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, for good cause shown, has reinstated the petitioner or until 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 accountant or firm.

## PART 264—EMPLOYEE RESPONSIBILITIES AND CONDUCT

AUTHORITY: 5 U.S.C. 7301; 12 U.S.C. 244.

### § 264.101 Cross-reference to employees' ethical conduct standards and financial disclosure regulations.

Employees of the Board of Governors of the Federal Reserve System (Board) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635 and the Board's regulation at 5 CFR part 6801, which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

[61 FR 53830, Oct. 16, 1996]