

(b) *Right to counsel.* Any person who, in a formal investigation, is compelled to appear and testify or who appears and testifies by request or permission of the Board may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel shall mean the right of a person testifying to have an attorney present at all times while testifying and to have this attorney:

- (1) Advise such person before, during and after the conclusion of testimony;
- (2) Question such person briefly at the conclusion of testimony to clarify any of the answers given; and
- (3) Make summary notes during the testimony solely for the use of such person.

(c) *Appearance.* The provisions of § 622.3 are applicable to this subpart.

(d) *Exclusion.* (1) Any person who has given or will give testimony, and counsel representing such person, may be excluded from the taking of testimony of any other witness in the discretion of the designated FCA representative conducting the investigation.

(2) The designated FCA representative conducting the investigation shall report to the Board any instances where any person has been guilty of dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper conduct during the course of the proceeding or any other instance involving a violation of these rules. The Board may thereupon take such action as the circumstances may warrant, including exclusion of the offending individual or individual from participation in the proceeding.

**§ 622.106 Service of subpoena and payment of witness fees.**

(a) *Service.* A subpoena may be served upon the person named therein by personal service or certified mail with a return receipt to the last known address of the person. Witnesses who are subpoenaed shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. The fees and mileage need not be tendered at the time a subpoena is served.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for

compliance, but in no event more than 5 days after the date of service of such subpoena, apply to the FCA representative authorized in the order, or if unavailable to the Board, to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefor. The FCA representative, or the Board, may:

- (1) Deny the application;
- (2) Quash or revoke the subpoena;
- (3) Modify the subpoena; or
- (4) Condition the granting of the application on such terms as the FCA representative or the Board, determines in his, her, or its discretion, to be just, reasonable, and proper.

**§ 622.107 Transcripts.**

Transcripts, if any, of an investigative proceeding shall be recorded by any means authorized by the designated FCA representative conducting the investigation. A person who has given testimony in an investigative proceeding (or counsel for such person) upon proper identification shall have the right to inspect the transcript of the person's testimony but may not obtain a copy if the FCA's representative conducting the investigation has cause to believe that the contents should not be disclosed.

**PART 623—PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION**

Sec.

- 623.1 Scope of part.
- 623.2 Definitions.
- 623.3 Who may practice.
- 623.4 Suspension and debarment.
- 623.5 Reinstatement.
- 623.6 Duty to file information concerning adverse judicial or administrative action.
- 623.7 Proceeding under this part.

AUTHORITY: Secs. 5.9, 5.10, 5.17, 5.25–5.37; 12 U.S.C. 2243, 2244, 2252, 2261–2273.

SOURCE: 51 FR 21147, June 11, 1986, unless otherwise noted.

**§ 623.1 Scope of part.**

This part prescribes rules with regard to persons who may practice before the Farm Credit Administration and the circumstances under which attorneys,

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accountants, appraisers, or other persons may be suspended or debarred, either temporarily or permanently, from practicing before the Farm Credit Administration. In connection with any particular matter, reference also should be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Farm Credit Administration thereunder, which special requirements are controlling. In addition to any suspension hereunder, a person may be excluded from further participation in a particular adjudicative proceeding in accordance with § 622.3 or in a formal investigation in accordance with § 622.105.

### § 623.2 Definitions.

As used in this part:

(a) *FCA* means the Farm Credit Administration.

(b) *Board* means the Farm Credit Administration Board.

(c) *Act* means the Farm Credit Act of 1971, as amended. 12 U.S.C. 2001, et seq.

(d) The terms *institution in the System*, *System institution* and *institution* mean all institutions enumerated in section 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation and any service organization chartered under part E of title IV of the Act.

(e) The term *presiding officer* includes the Board, one or more members thereof, FCA employees, or an administrative law judge. As used in this part, the term shall be construed to refer to whichever of the above-identified individuals presides at a hearing or other proceeding, except as otherwise specified in the text;

(f) The term *attorney* means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia;

(g) The term *practice* means transacting any business with the FCA, including but not limited to:

(1) The representation of another person at any adjudicatory, investigatory, removal or rulemaking proceeding con-

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ducted before the FCA or a presiding officer;

(2) The preparation or certification of any statement, opinion, report of financial condition and performance, financial statement, appraisal report, audit report, or other document or report by any attorney, accountant, appraiser or other person which is filed with or submitted to the FCA, with such person's consent or knowledge in connection with any filing with the FCA;

(3) A presentation to the FCA or a presiding officer at a conference or meeting relating to an institution's or person's rights, privileges or liabilities under the laws administered by the FCA and rules and regulations promulgated thereunder;

(4) Any business correspondence or communication with the FCA or a presiding officer; and

(5) The transaction of any other business with the FCA on behalf of another, in the capacity of an attorney, accountant, appraiser, licensed expert or any other capacity.

[51 FR 21147, June 11, 1986, as amended at 53 FR 27285, July 19, 1988]

### § 623.3 Who may practice.

(a) *By nonattorneys.* (1) An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a bona fide and duly authorized officer or other designated representative of a corporation, trust, association or other entity not specifically listed herein may represent the corporation, trust, association or other entity; and an authorized officer or other designated representative of any government unit, agency or authority may represent that unit, agency or authority.

(2) Any accountant, appraiser or licensed expert may practice before the FCA in a professional capacity.

(b) *By attorneys.* Any entity noted in paragraph (a) of this section may be represented in any proceeding or other matter before the FCA by an attorney.

(c) Any person transacting business with the FCA in a representative capacity may be required to show evidence of his or her authority to act in such capacity and certification of credentials.

**§ 623.4 Suspension and debarment.**

(a) *Grounds.* The Board may censure any person practicing before the FCA or may deny, temporarily or permanently, the privilege of any person to practice before the FCA if such person is found by the Board, after notice of and opportunity for hearing in the matter:

(1) Not to possess the requisite qualifications to represent others;

(2) To be lacking in character or professional integrity;

(3) To have engaged in any dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper conduct before FCA; or

(4) To have willfully violated, or willfully aided and abetted the violation of, any provision of the laws administered by the FCA or the rules and regulations promulgated thereunder.

(b) *Automatic suspension.* (1) Any person who, after being licensed as a professional or expert by any competent authority, has been convicted by a Federal or State court of a felony, or of a misdemeanor involving moral turpitude, personal dishonesty or breach of trust, shall be suspended automatically from practicing before the FCA without a hearing.

(2) Any accountant, appraiser or licensed expert whose license to practice has been revoked in any State, possession, territory, Commonwealth or the District of Columbia, or who has been suspended or otherwise barred from practice before any Federal or State regulatory authority, shall be suspended automatically from practicing before the FCA without a hearing.

(3) Any attorney who has been suspended or disbarred by a court of the United States or in any State, possession, territory, Commonwealth or the District of Columbia, shall be suspended automatically from practicing before the FCA without a hearing.

(4) A conviction (including a judgment or order on a plea of *nolo contendere*), revocation, suspension or disbarment under paragraphs (b)(1), (2) and (3) of this section shall be deemed to have occurred when the convicting, revoking, suspending or disbarring agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken.

(5) For purposes of this section, it shall be irrelevant that any attorney, accountant, appraiser or licensed expert who has been suspended, disbarred or otherwise disqualified from practice before a court, regulatory authority, or in a jurisdiction continues in professional good standing before other courts, regulatory authorities, or in other jurisdictions.

(c) *Temporary suspension.* (1) The Board, with due regard to the public interest and without preliminary hearing, by order, may temporarily suspend any person from appearing or practicing before it who by name, has been:

(i) Permanently enjoined (whether by consent, default or summary judgment or after trial) by any court of competent jurisdiction or by the Board in a final administrative order, by reason of his or her misconduct in any action brought by the FCA based upon violations of, or aiding and abetting the violation of any provision of any law that is administered by the FCA or of any rule or regulation promulgated thereunder; or

(ii) Found by any court of competent jurisdiction (whether by consent, default, upon summary judgment or after hearing) or in any administrative proceeding in which the FCA is a complainant and he or she is a party, to have willfully committed, caused, aided or abetted a violation of any provision of any law that is administered by the FCA, or of any rule or regulation promulgated thereunder.

(2) An order of temporary suspension shall become effective when served by certified mail with a return receipt directed to the last known business or residential address of the person involved. No order of temporary suspension shall be entered by the Board pursuant to paragraph (c)(1) of this section more than 3 months after the final judgment or order entered in a judicial or administrative proceeding described in paragraph (c)(1) (i) or (ii) of this section has become effective and all review or appeal procedures have been completed or are no longer available.

(3) Any person temporarily suspended from appearing and practicing before the FCA in accordance with paragraph (c)(1) of this section may, within 30

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days after service of the order of temporary suspension, petition the Board to lift such suspension. If no petition is received by the Board within 30 days, the suspension shall become permanent.

(4) Within 30 days after the filing of a petition in accordance with paragraph (c)(3) of this section, the Board shall either lift the temporary suspension or set the matter down for hearing at a time and place to be designated by the Board, or both. After opportunity for hearing, the Board may censure the petitioner or may suspend the petitioner from appearing or practicing before the FCA temporarily or permanently. In any case in which the temporary suspension has not been lifted, the hearing and any other action taken pursuant to this paragraph shall be expedited by the Board in order to ensure the petitioner's right to address the allegations.

(5) In any hearing held on a petition filed in accordance with paragraph (c)(3) of this section, a showing that the petitioner has been enjoined or has been found to have committed, caused, aided or abetted violations as described in paragraph (c)(1) of this section, without more, may be a basis for suspension or debarment; that showing having been made, the burden shall then be on the petitioner to show why the petitioner should not be censured or be temporarily or permanently suspended or debarred. A petitioner will not be permitted to contest any findings against the petitioner or any admissions made by the petitioner in the judicial or administrative proceedings upon which the proposed censure, suspension or debarment is based. A petitioner who has consented to the entry of a permanent injunction or order as described in paragraph (c)(1)(i) of this section, without admitting the facts set forth in the complaint, shall nevertheless be presumed for all purposes under this section to have been enjoined or ordered by reason of the misconduct alleged in the complaint.

### § 623.5 Reinstatement.

(a) Any person who is suspended from practicing before the FCA under § 623.4 (a) or (c) of this part may file an application for reinstatement at any time.

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Denial of the privilege of practicing before the FCA shall continue unless and until the applicant has been reinstated by order of the Board for good cause shown.

(b) Any person suspended under § 623.4(b) shall be reinstated by the Board, upon appropriate application, if all of the grounds for application of the provisions of that paragraph are removed subsequently by a reversal of the conviction or termination of the suspension, disbarment or revocation. An application for reinstatement on any other grounds by any person suspended under § 623.4(b) may be filed at any time. Such application shall state with particularity the relief requested and the grounds therefor and shall include supporting evidence, when available. The applicant shall be accorded an opportunity for an informal hearing in the matter, unless the applicant has waived a hearing in the application and, instead, has elected to have the matter determined on the basis of written submissions. Such hearing shall utilize the procedures established in part 622, subpart C. However, such suspension shall continue unless and until the applicant has been reinstated by order of the Board for good cause shown.

### § 623.6 Duty to file information concerning adverse judicial or administrative action.

Any person appearing or practicing before the FCA who has been or is the subject of a conviction, suspension, debarment, license revocation, injunction or other finding of the kind described in § 623.4 (b) or (c) of this part is an action not instituted by the FCA shall promptly file a copy of the relevant order, judgment or decree with the Board together with any related opinion or statement of the agency or tribunal involved. Any person who fails to file a copy of such an order, judgment or decree within 30 days after the later of the entry of the order, judgment or decree, or the date such person initiates practice before the FCA, for that reason alone may be disqualified from practicing before the FCA until such time as the appropriate filing shall be made, but neither the filing of these documents nor the failure of a person

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to file them shall in any way impair the operation of any other provision of this part.

### § 623.7 Proceeding under this part.

(a) *Rules.* All hearings required or permitted to be held under paragraphs (a) and (c) of § 623.4 of this part shall be held before a presiding officer utilizing the procedures established in the rules of practice and procedure under part 622, subpart A.

(b) *Closed hearings.* All hearings held under this part shall be closed to the public unless the Board directs otherwise on its own motion or upon the request of a party.

(c) *Collateral proceedings.* Any proceeding brought under any section of this part shall not preclude a proceeding under any other section of this part or any other part of the FCA's regulations.

## PART 624 [RESERVED]

## PART 625—APPLICATION FOR AWARD OF FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

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### Subpart B—Applicant Information Required

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625.29 Payment of award.

AUTHORITY: 5 U.S.C. 504, 12 U.S.C. 2252.

SOURCE: 57 FR 60109, Dec. 18, 1992, unless otherwise noted.

## Subpart A—General Provisions

### § 625.1 Purpose.

These rules implement the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA). The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (designated by the EAJA as “adversary adjudications”) before Federal agencies. An eligible party may receive an award when it prevails over an agency, unless the agency’s position was substantially justified or special circumstances make an award unjust. The rules in this part explain how the EAJA applies to Farm Credit Administration (FCA) proceedings. The rules describe the parties eligible for awards, how such parties may apply for awards, and the procedures and standards that govern FCA consideration of applications.

### § 625.2 Proceedings covered.

(a) The EAJA applies to adversary adjudications conducted by the FCA either on its own behalf or in connection with any other agency of the United States that participates in or in any way is a part of the adversary adjudication. Adversary adjudications are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the FCA or other agency is presented by an attorney or other representative who enters an appearance and participates in the proceeding; and

(2) Enforcement proceedings under 12 U.S.C. 2261–2273.

(b) The failure of the FCA to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes that the proceeding is covered by the EAJA; whether the proceeding is covered shall then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered and excluded from coverage by the EAJA, any award made