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the institution's audit if the accountant uses a partner, concurring partner, or lead member in the audit engagement team who was a director, officer or employee of the Farm Credit institution within the past year.

(2) A Farm Credit institution may not make an employment offer to a partner, concurring partner, or lead member serving on the institution's audit engagement team during the audit or within 1 year of the conclusion of the audit engagement.

(b) *Rotation.* Each institution may engage the same lead and reviewing audit partners of a qualified public accountant to conduct the institution's audit for no more than 5 consecutive years. The institution must then require the lead and reviewing audit partners assigned to the institution's audit team to rotate out of the audit team for 5 years. At the end of 5 years, the institution may again engage the audit services of those lead and reviewing audit partners.

PART 622—RULES OF PRACTICE AND PROCEDURE

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AUTHORITY: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

SOURCE: 51 FR 21139, June 11, 1986, unless otherwise noted.

Subpart A—Rules Applicable to Formal Hearings

§ 622.1 Scope of regulations.

This subpart prescribes rules of practice and procedure in connection with any formal hearing before the Farm

Credit Administration (FCA) that is required by the Farm Credit Act of 1971, as amended (Act) or is ordered for other reasons by the FCA. In connection with any particular matter, reference should also be made to any special requirements of practice and procedure that may be contained in applicable provisions of the Act or the rules adopted by the FCA in subpart B of this part, which special requirements are controlling. The rules in subpart A do not apply to the informal hearings described in subpart C of this part, to any other informal hearing that may be ordered by the FCA, or to formal investigations described in subpart D of this part.

§ 622.2 Definitions.

As used in this part:

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

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

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

(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 corporation chartered under the Act.

(e) *Party* means the FCA or a person or institution named as a party in any notice that commences a proceeding, or any person or institution who is admitted as a party or who has filed a written request and is entitled as of right to be a party.

(f) *Presiding officer* means an administrative law judge or any FCA employee or other person designated by the Board to conduct a hearing.

(g) *Ex parte communication* means an oral or written communication not on the record with respect to which reasonable prior notice to all parties is not given. It does not include requests for status reports.

[51 FR 21139, June 11, 1986, as amended at 53 FR 27284, July 19, 1988; 78 FR 31835, May 28, 2013]

§ 622.3 Appearance and practice.

(a) *Appearance before the Board or a presiding officer*—(1) *By nonattorneys.* An individual may appear in his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer or other agent of a corporation, trust association or other entity not specifically listed herein may represent the corporation, trust association, or other entity; and a duly authorized officer or employee of any government unit, agency or authority may represent that unit, agency or authority. Any person appearing in a representative capacity shall file a written notice of appearance with the Board which shall contain evidence of his or her authority to act in such capacity.

(2) *By attorneys.* A party may be represented by an attorney 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, and who has not been suspended or debarred from practice before the FCA in accordance with the provisions of part 623 of this chapter. Prior to appearing, an attorney representing a person in a proceeding shall file a written notice of appearance with the Board, which shall contain a declaration that he or she is currently qualified as provided by paragraph (a)(2) of this section and is authorized to represent the party on whose behalf he or she acts.

(3) *Representation of multiple interests.* A person shall not represent more than one party without informing each party of any actual or potential conflict of interest that may be involved in such representation. Such person shall file a statement with the Board indicating that such disclosure has been made. The presiding officer has authority to take protective measures at any stage of a proceeding, including the authority to prohibit multiple representation when deemed appropriate.

(b) *Summary suspension.* Dilatory, obstructionist, egregious, contemptuous, contumacious, or other unethical or improper conduct at any proceeding before the Board or a presiding officer shall be grounds for exclusion therefrom and suspension for the duration of the proceeding, or other appropriate

action by the Board or presiding officer.

§ 622.4 Commencement of proceedings.

Proceedings under this subpart are commenced by the issuance of a notice by the Board. Such notice shall state the time, place, and nature of the hearing, the name and address of the presiding officer if one has been designated, and a statement of the matters of fact and law constituting the grounds for the hearing. The matters of fact and law alleged in a notice may be amended by the Board at any stage of the proceeding and such amended notice may require an answer from the party or parties served and may set a new hearing date. A copy of any notice served by the FCA on any System association, director, officer or other person participating in the conduct of the affairs of the association will also be sent to the supervisory bank.

§ 622.5 Answer.

(a) *Answer is required.* Unless a different period is specified by the Board, a party who does not wish to consent to a final order must file an answer within 20 days after being served with a notice that commences the proceeding. Any subsequent notice which contains amended allegations and by its terms requires an answer must similarly be answered within 20 days after service.

(b) *Requirements of answer; effect of failure to deny.* An answer filed under this section shall concisely state any defenses and specifically admit or deny each allegation in the notice. A party who lacks information or knowledge sufficient to form a belief as to the truth of any particular allegation shall so state and this shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. A party who intends in good faith to deny only a part of or to qualify an allegation shall specify so much of it as is true and shall deny only the remainder.

(c) *Admitted allegations.* If a party filing an answer under this section elects not to contest any of the allegations of fact set forth in the notice, the answer shall consist of a statement admitting all of the allegations to be true. Such answer constitutes a waiver of hearing as to the facts alleged in the notice, and together with the notice will provide a record basis on which the presiding officer shall file with the Board a recommended decision in accordance with 5 U.S.C. 557. The recommended decision shall be served on the party, who may file exceptions thereto within the time provided in § 622.13.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the time provided constitutes a waiver of the party's right to appear and contest the allegations in the notice and authorizes the presiding officer, without further notice to the party, to find the facts to be as alleged in the notice and to file with the Board a recommended decision containing such findings and appropriate conclusions. The Board or the presiding officer may, for good cause shown, permit the filing of a delayed answer after the time for filing and the answer has expired.

§ 622.6 Opportunity for informal settlement.

Any interested party may at any time submit to the Board for consideration written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be admissible into evidence over the objection of any party in any hearing in connection with such proceeding. The foregoing provisions of this section shall not preclude settlement of any proceeding through the regular adjudicatory process by the filing of an answer as provided in § 622.5(c), or by submission of the case to the presiding officer on a stipulation of facts and an agreed order.

§ 622.7 Conduct of hearings.

(a) *Authority of presiding officer.* All hearings governed by this subpart shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The presiding officer designated by the Board to preside at any such hearing shall have complete charge of the hearing, shall have

the duty to conduct it in a fair and impartial manner and shall take all necessary action to avoid delay in the disposition of the proceeding. Such officer shall have all powers necessary to that end, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas and subpoenas duces tecum, as authorized by law, and to revoke, quash, or modify any such subpoena;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold conferences for the settlement or simplification of issues or for any proper purpose; and

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in a proceeding under this subpart, except that a presiding officer shall not have power to decide any motion to dismiss the proceeding or other motion which results in a final determination of the merits of the proceeding. This power rests only with the Board. Without limitation on the foregoing, the presiding officer shall, subject to the provisions of this subpart, have all the authority set forth in 5 U.S.C. 556(c).

(b) *Prehearing conference.* The presiding officer may, on his or her own initiative or at the request of any party, direct counsel for all parties to meet with him or her at a specified time and place prior to the hearing, or to submit suggestions to him or her in writing, for the purpose of considering any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and of the contents and authenticity of documents;

(3) Matters of which official notice will be taken; and

(4) Such other matters as may aid in the orderly disposition of the proceeding.

At the conclusion of such conference(s) the presiding officer shall enter an order which recites the results of the conference. Such order shall include the presiding officer's rulings upon matters considered at the conference, together with appropriate directions, if any, to the parties. Such order shall control the subsequent course of the proceeding, unless modified at the hearing for good cause shown.

(c) *Exchange of information.* Thirty (30) days prior to the hearing, parties shall exchange a list of the names of witnesses with a general description of their expected testimony, and a list and one copy of all documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

(d) *Attendance at hearings.* All hearings shall be private and shall be attended only by the parties, their counsel or authorized representatives, witnesses while testifying, and other persons having an official interest in the proceeding. However, if the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest, the Board may in its sole discretion order that the hearing be public.

(e) *Transcript of testimony.* Hearings shall be recorded. A copy of the transcript of the testimony taken at any hearing, duly certified by the reporter, together with all exhibits accepted into evidence shall be filed with the presiding officer. The presiding officer shall promptly serve notice upon all parties of such filing. The parties shall make their own arrangements with the person recording the testimony for copies of the testimony and exhibits. The presiding officer shall have authority to correct the record sua sponte with notice to all parties and to rule upon motions to correct the record. In the event the hearing is public, transcripts will be furnished to interested persons upon payment of the cost thereof.

(f) *Continuances and changes or extensions of time and changes of place of hearing.* Except as otherwise provided by law, the presiding officer may extend time limits prescribed by these rules or by any notice or order issued in the proceedings, may change the time for beginning any hearing, continue or adjourn a hearing from time

to time, and/or change the location of the hearing. Prior to the appointment of a presiding officer and after the filing of a recommended decision pursuant to § 622.12, the Board may grant such extensions or changes. Subject to the approval of the presiding officer, the parties may by stipulation change the time limits specified by these rules or any notice or order issued hereunder.

(g) *Closing of hearing.* The record of the hearing shall be closed by an announcement to that effect by the presiding officer when the taking of evidence has been concluded. In the discretion of the presiding officer, the record may be closed as of a future date in order to permit the admission into the record, under circumstances determined by the presiding officer, of exhibits to be prepared.

(h) *Call for further evidence, oral arguments, briefs, reopening of hearing.* The presiding officer may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at the hearing and, upon appropriate notice, may reopen any hearing at any time prior to the filing of his or her recommended decision. The Board may reopen the record at anytime permitted by law.

(i) *Order of procedure.* The FCA shall open and close.

(j) *Ex parte communications.* (1) No person shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to the presiding officer or anyone who is or may reasonably be expected to be involved in the decisional process.

(2) No person who is or may reasonably be expected to be involved in the decisional process shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any person.

(3) Except as authorized by law, the presiding officer shall not consult anyone on any fact in issue, unless upon notice and opportunity for all parties to participate. The presiding officer shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the FCA engaged in the performance of investigative or prosecuting functions. An officer, employee or agent engaged in the performance of such functions in any case shall not, in that case or a factually related case, participate or advise in the decision of the presiding officer, except as a witness or counsel in the proceedings, or as otherwise authorized by law.

(4) If an ex parte communication is made or knowingly caused to be made, all such communications, and any responses, shall be placed in the record.

(5) Upon receipt of a communication knowingly made or caused to be made in violation of paragraph (j) of this section, the responsible party may be required to show cause why such party's claim or interest should not be dismissed, denied, or otherwise adversely affected. To the extent consistent with the interests of justice, a knowing violation of paragraph (j) of this section may be grounds for a decision adverse to a party in violation.

(6) The prohibitions against ex parte communications apply from the time a proceeding is noticed for hearing. However, when the person responsible for the communication has knowledge that the proceeding will be noticed, the prohibitions apply from the time such knowledge is acquired.

§ 622.8 Rules of evidence.

(a) *Evidence.* Every party shall have the right to present a case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(b) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objection relied upon but no argument thereon shall be permitted, except as ordered, allowed, or requested by the presiding officer. Rulings on such objections and all other matters shall be part of the transcript. Failure to object timely to the admission or exclusion of evidence or to any ruling constitutes a waiver of such objection.

(c) *Stipulations.* Independently of the orders or rulings issued as provided by § 622.7(b), the parties may stipulate as to any relevant matters of fact or the

authenticity of any relevant documents. Such stipulations may be received in evidence at the hearing, and when so received shall be binding on the parties with respect to the matters therein stipulated.

(d) *Official notice.* All matters officially noticed by the presiding officer shall appear on the record.

§ 622.9 Subpoenas.

(a) *Issuance.* The presiding officer or, in the event he or she is unavailable, the Board may issue subpoenas and subpoena duces tecum at the request of any party requiring the attendance of witnesses or the production of documents at a designated place. The person seeking the subpoena may be required, as a condition precedent to the issuance of the subpoena, to show the general relevance and reasonable scope of the testimony or other evidence sought. Where it appears to the presiding officer that a subpoena may be unreasonable, oppressive, excessive in scope, unduly burdensome, or delay the proceeding, the presiding officer has discretion to refuse to issue a subpoena or to issue it only upon such conditions as fairness requires.

(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 10 days after the date the subpoena was served, with notice to the party requesting the subpoena, apply to the presiding officer, or in the event he or she is unavailable to the Board, to quash or modify the subpoena, accompanying such application with a brief statement of the reasons therefor. The presiding officer may deny the application or, upon notice to the party on whose behalf the subpoena was issued and after affording that party an opportunity to reply, may quash or modify the subpoena or impose reasonable conditions including, in the case of a subpoena duces tecum, a requirement that the party on whose behalf the subpoena was issued pay in advance the reasonable cost of copying and transporting the documentary evidence to the designated place.

(c) *Service of subpoena.* 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. The fees for one day's attendance and mileage as specified in paragraph (d) of this section must be tendered at the time of service unless the subpoena is issued on behalf of the FCA. If personal service is made by a U.S. marshal, a deputy U.S. marshal, or an employee of the FCA, such service shall be evidenced by the return thereon. If personal service is made by any other person, such person shall sign an affidavit describing the manner in which service is made, and return such affidavit with a copy of the subpoena. In case of failure to make service, reasons for the failure shall be stated on the original subpoena. The original or a copy of the subpoena, bearing or accompanied by the required return, affidavit, statement or return receipt, shall be returned without delay to the presiding officer.

(d) *Attendance of witnesses.* The attendance of witnesses at a designated place may be required from any place in any State or territory subject to the jurisdiction of the United States. Witnesses who are subpoenaed shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Fees required by this paragraph shall be paid by the party upon whose application the subpoena is issued.

(e) *Production of documents.* The production of documents at a designated place may be required from any place in any State or territory subject to the jurisdiction of the United States. In lieu of an original document, a certified or authenticated copy may be produced. However, any party has the right to inspect the original document.

§ 622.10 Depositions.

(a) *Application to take deposition.* Any party desiring to take the deposition of any person shall make written application to the presiding officer setting forth the name and address of the witness, the subject matter concerning which the witness is expected to testify, its relevance, the time and place of the deposition, and the reasons why such deposition should be taken. The application may include a request that specified documents be produced at the deposition. A copy of the application

shall be served on the other parties at the same time the application is filed with the presiding officer.

(b) *Subpoena; notice to other parties.* Upon a showing that the testimony or other evidence sought will be material, and the taking of the deposition will not result in any undue burden to the witness or any party or undue delay of the proceedings, the presiding officer may issue a subpoena or subpoena duces tecum. Notice of the issuance of such subpoena shall be served upon all parties at least 10 days in advance of the date set for deposition.

(c) *Deposition by notice.* The requirements of paragraphs (a) and (b) of this section may be waived by agreement of the parties and the witness whose testimony or documentary evidence is sought. Such agreement shall be embodied in a stipulation which becomes part of the record and may provide for the taking of depositions upon notice without leave of the presiding officer.

(d) *Procedure on deposition.* Depositions may be taken before any person having the power to administer oaths. Each witness whose testimony is taken by deposition shall be duly sworn before any question is propounded. Examination and cross-examination of deponents may proceed as permitted at the hearing. Objections to questions or documents shall be in short form, stating the grounds relief upon for the objection. Failure to object to questions or evidence is deemed a waiver if the ground of the objection is one which might have been obviated or removed if presented at that time. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate) shall be recorded by or under the direction of the person before whom the deposition is taken. The deposition shall be signed by the witness, unless the parties by stipulation waive the signing or the witness is physically unable to sign, cannot be found, or refuses to sign. The deposition shall also be certified as a true and complete transcript by the person recording the testimony. If the deposition is not signed by the witness, the person recording the testimony shall state this fact and the reason therefor on the record. The person before whom the deposition is taken shall promptly file the transcript and all exhibits with the presiding officer. Interested parties shall make their own arrangements with the person recording the testimony for copies of the testimony and exhibits.

(e) *Introduction as evidence.* Subject to appropriate rulings by the presiding officer on such objections and answers as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying at the hearing, the deposition or any part thereof may be received in evidence by the presiding officer in his or her discretion. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record upon which a decision may be based.

(f) *Payment of fees.* Deponents whose depositions are taken and the reporter taking the same shall be entitled to the same fees as are paid for like services in the district courts of the United States, which fees shall be paid by the party upon whose application the deposition is taken.

§ 622.11 Motions.

(a) *How made.* An application or request for an order or ruling not otherwise specifically provided for in this subpart, unless made during a hearing, shall be made by written motion supported by a memorandum which concisely states the grounds therefor.

(b) *Opposition.* Within 10 days after service of any written motion, or within such other period of time as may be fixed by the presiding officer, any party may file a memorandum in opposition thereto. The moving party has no right to reply except as permitted by the presiding officer. The presiding officer has discretion to waive the requirements of this section as to motions for extension of time and may rule upon such motions ex parte.

(c) *Oral argument.* No oral argument will be heard on motions except as otherwise directed by the presiding officer or the Board.

(d) *Rulings and orders.* Except as otherwise provided in this subpart, the presiding officer shall rule on all motions and may issue appropriate orders, except that motions may be referred to

the Board if the presiding officer is unavailable or determines that such motion should be referred to the Board. Prior to the appointment of a presiding officer and after a recommended decision is filed pursuant to § 622.12, the Board shall rule on motions filed by the parties.

(e) *Appeal from rulings on motions.* All answers, motions, objections and rulings shall become part of the record. Rulings of a presiding officer on any motion may not be appealed to the Board prior to its consideration of the presiding officer's recommended decision, except by special permission of the Board. However, such rulings shall be considered by the Board in reviewing the record. Requests to the Board for special permission to appeal from a ruling of the presiding officer shall be filed in writing within 5 days of the ruling, and shall briefly state the grounds relied on. The moving party shall immediately serve a copy thereof on every other party to the proceeding who may then respond to such request within 5 days after service.

(f) *Continuation of hearing.* Unless otherwise ordered by the presiding officer or the Board, the hearing shall continue pending the determination of any request or motion by the Board.

§ 622.12 Proposed findings and conclusions; recommended decision.

(a) *Proposed findings and conclusions by parties.* Within 30 days after the hearing transcript has been filed, any party may file proposed findings of fact and conclusions of law. Such proposals shall be supported by citation of such statutes, decisions, and other authorities, and by specific page references to such portions of the record as may be relevant. All such proposals shall become a part of the record.

(b) *Recommended decision by presiding officer.* Within 30 days after the expiration of time allowed under paragraph (a) of this section, or within such further time as the Board for good cause allows, the presiding officer shall file the entire hearing record, including a recommended decision and findings and conclusions, the transcript, exhibits (including on request of any of the parties any exhibits excluded from evidence or tender of proof), exceptions, rulings and all briefs and memoranda filed in connection with the hearing. Promptly upon such filing, the presiding officer shall serve a copy of the recommended decision, findings and conclusions upon each party to the proceeding.

(c) *Board as presiding officer.* In proceedings in which the Board or one or more of its members has presided at the reception of evidence, the presiding officer's recommended decision, findings of fact, and conclusions of law will be omitted. In such proceedings the proposed findings and conclusions, briefs, and other submissions permitted under paragraph (a) of this section shall be filed with the Board for consideration.

§ 622.13 Exceptions.

(a) *Filing.* Within 15 days after service of the recommended decision of the presiding officer, any party may file exceptions thereto or to any portion thereof, or to the failure of the presiding officer to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the presiding officer.

(b) *Contents.* Each exception shall be supported by a concise argument and by citation of such statutes, decisions and other authorities, and by page references to such portions of the record as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(c) *Waiver.* Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed shall be a waiver of objection thereto.

§ 622.14 Briefs.

(a) *Contents.* Any brief filed in a proceeding shall be confined to the particular matters in issue, citing statutes, decisions, and other authorities, and page references to such portions of the record or the recommended decision of the presiding officer as may be relevant.

(b) *Reply briefs.* Reply briefs may be filed within 10 days after service of

original briefs of opposing parties, and shall be confined to matters in such briefs. Further briefs may be filed only with permission of the presiding officer or the Board with respect to a matter before the Board.

(c) *Delayed filing*. Briefs not filed on or before the time fixed in this subpart or by the presiding officer will be received only upon special permission of the Board.

§ 622.15 Oral argument before the Board.

Upon its own initiative or upon written request by any party, the Board, in its discretion, may order the matter to be set down for oral argument before the Board or one or more members thereof. Any request for oral argument by a party filing exceptions shall be made within the time prescribed for filing such exceptions, or by any other party, within the time prescribed for the filing of a reply brief. Oral argument before the Board shall be recorded unless otherwise ordered by the Board.

§ 622.16 Notice of submission to the Board.

Upon the filing of the record with the Board, and upon the expiration of the time for the filing of exceptions and all briefs, including reply briefs or any further briefs permitted by the presiding officer or the Board, and upon the hearing of oral argument by the Board, if ordered by the Board, the Board shall notify the parties in writing that the case has been submitted for final decision.

§ 622.17 Decision of the Board.

Any person who has not engaged in the performance of investigative or prosecuting functions in the case, or in a factually related case, may advise and assist the Board in the consideration of the case. Copies of the decision and order of the Board shall be served upon the parties. A copy of the order will also be sent to the supervisory bank if the order relates to a System association, director, officer, or other person participating in the conduct of the affairs of the association.

§ 622.18 Filing.

(a) *Filing*. Papers required or permitted to be filed with the Board shall be filed with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102–5090 or with the person designated to receive papers for the agency in a proceeding. Papers sent by mail must be postmarked or received within the prescribed time limit for filing. Papers sent by any other means must be received within the prescribed time limit for filing.

(b) *Formal requirements*. All filed papers shall be printed, typewritten, or otherwise reproduced, and copies shall be clear and legible. The original of all papers filed by a party shall be signed and dated as of the date of execution by the party filing the same, or a duly authorized agent or attorney. The signer's address and telephone number must appear on the original. Counsel for the FCA shall sign the original of all papers filed on behalf of the FCA. All papers filed must name in the heading or on a title page, the parties, the docket number and the subject of the papers.

(c) *Copies*. Parties shall file an original and three copies of all documents and papers required or permitted to be filed under this subpart (except the transcript of testimony and exhibits), unless otherwise specifically provided by the Board.

§ 622.19 Service.

(a) *Service*. Except as otherwise provided in these rules, each party who files papers is responsible for serving a copy thereof upon the presiding officer and upon every other party or the attorney or representative of record of that party. A copy of all papers filed by the presiding officer or the Board, except for the transcript of testimony and exhibits, shall be served upon each of the parties. Service may be by personal service, private delivery service, or by express, certified or regular first-class mail. If a party is not represented, service shall be made at the last known address of the party or an officer thereof as shown on the records of the FCA.

(b) *Proof of service*. Proof of service of papers filed by a party shall be filed before action is to be taken thereon. The

proof shall show the date and manner of service, and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of an attorney or other representative of record. Failure to make proof of service shall not affect the validity of service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 622.20 Documents in proceedings confidential.

Unless otherwise ordered by the Board or required by law, the entire record in any proceeding under this subpart, including the notice of hearing, transcript, exhibits, proposed findings and conclusions, recommended decision of the presiding officer, exceptions thereto, decision and order of the Board, and any other papers which are filed in connection with the proceeding shall not be made public, and shall be for the confidential use only of the FCA and its staff, the presiding officer, the parties, and other appropriate supervisory authorities.

§ 622.21 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act or event from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday or Federal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and Federal holidays shall not be included in the computation.

(b) *Service by mail.* Whenever any party has the right or is required to do some act within the period of time prescribed in this subpart after the service upon the party of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the United States mail.

§ 622.22 Retained authority.

Nothing is this part is in derogation of powers of examination and investigation conferred on the FCA by any provision of law.

§§ 622.23–622.50 [Reserved]

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

SOURCE: 53 FR 27284, July 19, 1988, unless otherwise noted.

§ 622.51 Definitions.

Unless noted otherwise, the definitions set forth in § 622.2 of subpart A shall apply to this subpart.

§ 622.52 Purpose and scope.

The rules and procedures specified in this subpart and in subpart A are applicable to proceedings by the FCA to assess and collect civil money penalties:

(a) For violations of the terms of a final cease and desist order issued under section 5.25 or 5.26 of the Act;

(b) For violations of any provision of the Act or any regulation issued under the Act; or

(c) For violations of the National Flood Insurance Reform Act (Reform Act) as set forth in 42 U.S.C. 4012a(f) or any regulation issued under the Reform Act.

[51 FR 21139, June 11, 1986, as amended at 70 FR 12584, Mar. 15, 2005]

§§ 622.53–622.54 [Reserved]

§ 622.55 Notice of assessment of civil money penalty.

(a) *Notice of assessment.* The notice of assessment for a civil money penalty will state:

(1) The legal authority for the assessment;

(2) The amount of the civil money penalty being assessed;

(3) The date by which the civil money penalty must be paid;

(4) The matter of fact or law constituting the grounds for assessment of the civil money penalty;

(5) The right of the institution or person being assessed to a formal hearing to challenge the assessment;

(6) That failure to request a hearing constitutes a waiver of the opportunity for a hearing and the notice of assessment will constitute a final and unappealable order; and

(7) The time limit to request such a formal hearing.

(b) *Service*. The notice of assessment may be served upon the institution or person being assessed by personal service or by certified mail with a return receipt to the institution's or the person's last known address. Such service constitutes issuance of the notice.

[51 FR 21139, June 11, 1986, as amended at 70 FR 12585, Mar. 15, 2005]

§ 622.56 Request for formal hearing on assessment.

An institution or person being assessed may request a formal hearing to challenge the assessment of a civil money penalty. The request must be filed in writing, within 10 days of the issuance of the notice of assessment, with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102–5090.

§ 622.57 Waiver of hearing; consent.

(a) *Waiver*. Failure to request a hearing pursuant to § 622.56 constitutes a waiver of the opportunity for a hearing and the notice of assessment issued pursuant to § 622.55 will constitute a final and unappealable order.

(b) *Consent*. Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative is deemed to have consented to the issuance of an assessment order.

[51 FR 21139, June 11, 1986, as amended at 70 FR 12585, Mar. 15, 2005]

§ 622.58 Hearing on assessment.

(a) *Time and place*. An institution or person requesting a hearing will be informed by order of the Board of the time and place set for hearing.

(b) *Answer; procedures*. The hearing order may require the institution or person requesting the hearing to file an answer as prescribed in § 622.5 of subpart A. The procedures of the Administrative Procedure Act (5 U.S.C. 554–557) and subpart A of these rules will apply to the hearing.

[51 FR 21139, June 11, 1986, as amended at 70 FR 12585, Mar. 15, 2005]

§ 622.59 Assessment order.

(a) *Consent*. In the event of consent of the parties concerned to an assessment, or if, upon the record made at a hearing ordered under this subpart, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue an order of assessment of civil money penalty. In its assessment order, the Board may reduce the amount of the penalty specified in the notice of assessment.

(b) *Effective date and period*. An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and will remain effective and enforceable unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(c) *Service*. An assessment order may be served by personal service or by certified mail with a return receipt to the last known address of the institution or person being assessed. Such service constitutes issuance of the order.

[51 FR 21139, June 11, 1986, as amended at 70 FR 12585, Mar. 15, 2005]

§ 622.60 Payment of civil money penalty.

(a) *Payment date*. Generally, the date designated in the notice of assessment for payment of the civil money penalty will be 60 days from the issuance of the notice. If, however, the Board finds, in a specific case, that the purposes of the relevant statutes would be better served if the 60-day period were changed, the Board may shorten or lengthen the period or make the civil money penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of a civil money penalty is filed, payment of the penalty will not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil money penalty is to be paid or collected.

(b) *Method of payment.* Checks in payment of civil money penalties must be made payable to the ''Farm Credit Administration.'' Upon collection, the FCA will forward payment for penalties described in § 622.52(a) and (b) to the United States Department of Treasury. The FCA will forward payment for penalties described in § 622.52(c) to the National Flood Mitigation Fund as required by 42 U.S.C. 4012a(f)(8).

[70 FR 12585, Mar. 15, 2005]

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(a) The maximum amount of each civil money penalty within FCA's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 *note*), as follows:

(1) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued under section 5.25 or 5.26 of the Act: The maximum daily amount is $2,395 for violations that occur on or after January 15, 2021.

(2) Amount of civil money penalty for violation of the Act or regulations: The maximum daily amount is $1,084 for each violation that occurs on or after January 15, 2021.

(b) The maximum civil money penalty amount assessed under 42 U.S.C. 4012a(f) is $2,252 for each violation that occurs on or after January 15, 2021, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year.

[86 FR 7236, Jan. 27, 2021]

§§ 622.62–622.75 [Reserved]

Subpart C—Rules and Procedures Applicable to Suspension or Removal of an Individual Where Certain Crimes Are Charged or Proven

§ 622.76 Definitions.

Unless noted otherwise, the definitions set forth in § 622.2 of subpart A shall apply to this subpart.

§ 622.77 Purpose and scope.

The rules and procedures set forth in this subpart apply to informal hearings afforded to any officer, director, or other person participating in the conduct of the affairs of a System institution who has been suspended or removed from office or prohibited from further participation in any manner in the conduct of the institution's affairs by a notice or order issued by the Board upon the grounds set forth in section 5.29 of the Act.

§ 622.78 Suspension, prohibition or removal.

(a) *Content.* The Board may serve a notice of suspension or prohibition or order of removal upon a director, officer or other person participating in the conduct of the affairs of an institution. A copy of such notice or order shall also be served upon the institution, whereupon the individual concerned shall immediately cease service to the institution or participation in the affairs of the institution. Any notice or order shall indicate the basis for the suspension, prohibition, or removal and shall inform the individual of the right to request in writing, within 30 days of being served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the institution does not, or is not likely to, pose a threat to the interests of the institution's shareholders or the investors in Farm Credit System obligations or threaten to impair public confidence in the institution or the Farm Credit System.

(b) *Service.* A notice or order of suspension, removal or prohibition may be

served by personal service or by certified mail with a return receipt to the last known address of the person being served.

§ 622.79 Petition for informal hearing.

(a) *Filing*. To obtain a hearing, the subject individual must file an original and three copies of a petition with the Board within 30 days of being served with the notice or order.

(b) *Content*. The petition shall:

(1) State whether the petitioner is requesting termination or modification of the notice or order;

(2) State with particularity how the petitioner intends to show that his or her continued service to or participation in the conduct of the affairs of the institution would not, or is not likely to, pose a threat to the interests of the institution's shareholders or the investors in Farm Credit System obligations or threaten to impair public confidence in the institution or the Farm Credit System;

(3) Include a request to present oral testimony or witnesses at the hearing, if the petitioner desires to do so. The request should specify the names of the witnesses and a summary of their expected testimony; and

(4) Indicate whether the petitioner desires oral argument or elects to have the matter determined solely on the basis of written submissions.

§ 622.80 Informal hearing.

(a) *Time and place*. Upon receipt of a timely petition for a hearing, the Board shall notify the petitioner of the time and place fixed for the hearing and shall designate one or more Board members or FCA employees to preside (''designated FCA representative''). The hearing shall be scheduled to be held no later than 30 days from the date a petition for hearing is received unless the time is extended at the request of the petitioner. Notice of the hearing shall also be sent to the FCA's Office of General Counsel.

(b) *Appearance*. A petitioner may appear personally or through counsel to submit relevant written materials and oral argument. An attorney is subject to all the requirements and limitations imposed on attorneys in § 622.3 of subpart A. A representative(s) of the FCA's Office of General Counsel may participate in the hearing to the extent such representative deems appropriate.

(c) *Written material*. Any written material the petitioner wishes to have considered must be submitted to the designated FCA representative and the FCA's Office of General Counsel at least 10 days prior to the date of the hearing.

(d) *Oral testimony*. Oral testimony may be presented only if expressly permitted by the Board in the notice of hearing. The designated FCA representative may ask questions of any witness.

(e) *Transcripts*. Oral testimony, if any, and oral argument shall be recorded. A copy of the transcript shall be filed with the designated FCA representative, who shall have authority to correct the record sua sponte upon notice, or upon the motion of the petitioner or the representative of the FCA's Office of General Counsel. The designated FCA representative shall promptly serve notice upon the petitioner and the FCA's Office of General Counsel of such filing. Such parties shall make arrangements with the person recording the testimony or argument for copies of the transcript.

(f) *Closing of record*. Upon the request of the petitioner or representative of the FCA's Office of General Counsel, the record shall remain open for a period of 5 business days following the hearing, during which time additional submissions for the record may be made. Thereafter, the record shall be closed.

(g) *Rules of evidence and procedure*. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554–557) or subpart A of these rules shall apply to the informal hearing ordered under this subpart unless the Board orders that they apply in whole or in part.

§ 622.81 Default.

If the subject individual fails to file a petition for a hearing, or fails to appear at a hearing, either in person or by an attorney, or fails to submit a written argument where oral argument has been waived, the notice shall remain in effect until the information,

indictment, or complaint is finally disposed of and the order shall remain in effect until terminated by the Board.

§ 622.82 Decision of the Board.

(a) *Recommended decision.* Within 30 days of the hearing, the designated FCA representative shall make a recommendation with findings and conclusions to the Board concerning the notice or order of suspension, removal, or prohibition.

(b) *Final decision.* Within 60 days of the hearing, the Board shall notify the subject individual and the FCA's Office of General Counsel whether the suspension or removal from office, or prohibition from participation in any manner in the affairs of the institution, will be continued, terminated, or otherwise modified. The Board's final decision, if adverse to the individual, shall contain a statement of the basis thereof. The Board may satisfy this requirement where it adopts the recommended decision of the designated FCA representative.

(c) *Guilt not an issue.* In deciding upon any suspension of prohibition by notice, the ultimate question of the guilt or innocence of the individual with respect to the criminal charge that is outstanding will not be considered. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting removal proceedings pursuant to section 5.28 of the Act.

(d) *Effective period.* A removal or prohibition by order remains in effect until terminated by the Board. A suspension or prohibition by notice remains in effect until the criminal charge is finally disposed of or until terminated by the Board.

(e) *Reconsideration.* A suspended or removed individual may petition the Board to reconsider the decision any time after the expiration of a 12-month period from the date of the decision, but no petition for reconsideration may be made within 12 months of a previous petition. A petition shall state with particularity the relief sought and the grounds therefor and may be accompanied by a supporting memorandum and any other documentation the petitioner wishes to have considered. No hearing need be granted on the petition for reconsideration.

§§ 622.83–622.100 [Reserved]

Subpart D—Rules and Procedures Applicable to Formal Investigations

§ 622.101 Definitions.

Unless noted otherwise, the definitions set forth in § 622.2 of subpart A shall apply to this subpart.

§ 622.102 Scope.

The rules in this subpart apply to formal investigations initiated by order of the Board and pertain to the exercise of powers specified in section 5.37 of the Act. These rules do not restrict or in any way affect the authority of the FCA, including but not limited to the powers enumerated in section 5.37 of the Act, to conduct examinations of System institutions.

§ 622.103 Formal investigations are confidential.

Information or documents obtained or testimony recorded in the course of a formal investigation shall be confidential and shall be disclosed only in accordance with the provisions of 12 CFR part 602.

§ 622.104 Order to conduct formal investigation.

A formal investigation begins with the issuance of an order by the Board. The order shall designate the person or persons who will conduct the investigation, issue, revoke, quash or modify subpoenas and subpoenas duces tecum, take or cause to be taken depositions, administer oaths, and receive affirmations as to any matter under investigation by the FCA. Upon application and for good cause shown, the Board may limit, modify, or withdraw the order at any stage of the proceeding.

§ 622.105 Conduct of investigation.

(a) *Review of order.* Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation shall upon request be shown the order initiating such investigation.

(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.

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AUTHORITY: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (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,