

be prohibited and excluded from the proceedings.

### Subparts C–D [Reserved]

### PARTS 110–111 [RESERVED]

## PART 112—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

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AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1467, 1467a, 1813, 1817(j), 1818(n), 1820(c), 5412(b)(2)(B); 15 U.S.C. 78l.

SOURCE: 76 FR 48970, Aug. 9, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 88 FR 89908, Dec. 28, 2023, part 112 was removed, effective Apr. 1, 2024.

#### § 112.1 Scope of part.

This part prescribes rules of practice and procedure applicable to the conduct of formal examination proceedings with respect to Federal savings associations and their affiliates under section 5(d)(1)(B) of the HOLA, as amended, 12 U.S.C. 1464(d)(1)(B) or section 7(j)(15) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1817(j)(15) (“FDIA”), section 8(n) of the FDIA, 12 U.S.C. 1818(n), or section 10(c) of the FDIA, 12 U.S.C. 1820(c). This part does not apply to adjudicatory proceedings as to which hearings are required by statute, the rules for which are contained in part 109 of this chapter.

#### § 112.2 Definitions.

As used in this part:

- (a) *OCC* means the Office of the Comptroller of the Currency;
- (b) [Reserved]
- (c) *Formal examination proceeding* means the administration of oaths and affirmations, taking and preserving of testimony, requiring the production of books, papers, correspondence, memo-

randa, and all other records, the issuance of subpoenas, and all related activities in connection with examination of savings associations and their affiliates conducted pursuant to section 5(d)(1)(B) of the HOLA, section 7(j)(15) of the FDIA, section 8(n) of the FDIA or section 10(c) of the FDIA; and

(d) *Designated representative* means the person or persons empowered by the OCC to conduct an investigative proceeding or a formal examination proceeding.

#### § 112.3 Confidentiality of proceedings.

All formal examination proceedings shall be private and, unless otherwise ordered by the OCC, all investigative proceedings shall also be private. Unless otherwise ordered or permitted by the OCC, or required by law, and except as provided in §§ 112.4 and 112.5, the entire record of any investigative proceeding or formal examination proceeding, including the resolution of the OCC or its delegate(s) authorizing the proceeding, the transcript of such proceeding, and all documents and information obtained by the designated representative(s) during the course of said proceedings shall be confidential.

#### § 112.4 Transcripts.

Transcripts or other recordings, if any, of investigative proceedings or formal examination proceedings shall be prepared solely by an official reporter or by any other person or means authorized by the designated representative. A person who has submitted documentary evidence or given testimony in an investigative proceeding or formal examination proceeding may procure a copy of his own documentary evidence or transcript of his own testimony upon payment of the cost thereof; *provided*, that a person seeking a transcript of his own testimony must file a written request with the OCC’s Director for Enforcement stating the reason he desires to procure such transcript, and said persons may for good cause deny such request. In any event, any witness (or his counsel) shall have the right to inspect the transcript of the witness’ own testimony.

[76 FR 48970, Aug. 9, 2011, as amended at 85 FR 42643, July 14, 2020]

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### § 112.5 Rights of witnesses.

(a) Any person who is compelled or requested to furnish documentary evidence or give testimony at an investigative proceeding or formal examination proceeding shall have the right to examine, upon request, the OCC resolution authorizing such proceeding. Copies of such resolution shall be furnished, for their retention, to such persons only with the written approval of the OCC.

(b) Any witness at an investigative proceeding or formal examination proceeding may be accompanied and advised by an attorney personally representing that witness.

(1) Such attorney shall be a member in good standing of the bar of the highest court of any state, Commonwealth, possession, territory, or the District of Columbia, who has not been suspended or debarred from practice by the bar of any such political entity or before the OCC in accordance with the provisions of part 19 of this chapter and has not been excluded from the particular investigative proceeding or formal examination proceeding in accordance with paragraph (b)(3) of this section.

(2) Such attorney may advise the witness before, during, and after the taking of his testimony and may briefly question the witness, on the record, at the conclusion of his testimony, for the sole purpose of clarifying any of the answers the witness has given. During the taking of the testimony of a witness, such attorney may make summary notes solely for his use in representing his client. All witnesses shall be sequestered, and, unless permitted in the discretion of the designated representative, no witness or accompanying attorney may be permitted to be present during the taking of testimony of any other witness called in such proceeding. Neither attorney(s) for the association(s) that are the subjects of the investigative proceedings or formal examination proceedings, nor attorneys for any other interested persons, shall have any right to be present during the testimony of any witness not personally being represented by such attorney.

(3) The OCC, for good cause, may exclude a particular attorney from further participation in any investigation

in which the OCC has found the attorney to have engaged in dilatory, obstructionist, egregious, contemptuous or contumacious conduct. The person conducting an investigation may report to the OCC instances of apparently dilatory, obstructionist, egregious, contemptuous or contumacious conduct on the part of an attorney. After due notice to the attorney, the OCC may take such action as the circumstances warrant based upon a written record evidencing the conduct of the attorney in that investigation or such other or additional written or oral presentation as the OCC may permit or direct.

### § 112.6 Obstruction of the proceedings.

The designated representative shall report to the Comptroller any instances where any witness or counsel has engaged in dilatory, obstructionist, or contumacious conduct or has otherwise violated any provision of this part during the course of an investigative proceeding or formal examination proceeding; and the OCC may take such action as the circumstances warrant, including the exclusion of counsel from further participation in such proceeding.

### § 112.7 Subpoenas.

(a) *Service.* Service of a subpoena in connection with any investigative proceeding or formal examination proceeding shall be effected in the following manner:

(1) *Service upon a natural person.* Service of a subpoena upon a natural person may be effected by handing it to such person; by leaving it at his office with the person in charge thereof, or, if there is no one in charge, by leaving it in a conspicuous place therein; by leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; by mailing it to him by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to him.

(2) *Service upon other persons.* When the person to be served is not a natural person, service of the subpoena may be effected by handing the subpoena to a registered agent for service, or to any

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officer, director, or agent in charge of any office of such person; by mailing it to any such representative by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to such person.

(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 of service of such subpoena, apply to the Deputy Chief Counsel or his designee to quash or modify such subpoena, accompanying such application with a statement of the reasons therefor. The Deputy Chief Counsel or his designee, as appropriate, 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 Deputy Chief Counsel or his designee determines to be just, reasonable, and proper.

(c) *Attendance of witnesses.* Subpoenas issued in connection with an investigative proceeding or formal examination proceeding may require the attendance and/or testimony of witnesses from any state or territory of the United States and the production by such witnesses of documentary or other tangible evidence at any designated place where the proceeding is being (or is to be) conducted. Foreign nationals are subject to such subpoenas if such service is made upon a duly authorized agent located in the United States.

(d) *Witness fees and mileage.* Witnesses summoned in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Such fees and mileage need not be tendered when the subpoena is issued on behalf of the OCC by any of its designated representatives.

### PARTS 113–127 [RESERVED]

### PART 128—NONDISCRIMINATION REQUIREMENTS

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AUTHORITY: 12 U.S.C. 1464, 5412(b)(2)(B).

SOURCE: 76 FR 48978, August 9, 2011, unless otherwise noted.

#### § 128.1 Definitions.

As used in this part 128—

(a) *Application.* For purposes of this part, an application for a loan or other service is as defined in Regulation C, 12 CFR 203.2(b).

(b) *Savings association.* The term “savings association” means any Federal savings association as defined in 12 U.S.C. 1813(b)(2).

(c) *Dwelling.* The term “dwelling” means a residential structure (whether or not it is attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.

#### § 128.2 Nondiscrimination in lending and other services.

(a) No savings association may deny a loan or other service, or discriminate in the purchase of loans or securities or discriminate in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of such loan or other service on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract) or national origin of:

- (1) An applicant or joint applicant;
- (2) Any person associated with an applicant or joint applicant regarding such loan or other service, or with the purposes of such loan or other service;