

Chapter 11 – Formal Investigations

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Formal Investigations

Section 10(c) of the FDI Act authorizes the FDIC to conduct a formal investigation to obtain needed information or evidence.

Note: All information obtained as part of the investigation is to be kept confidential pursuant to Section 308.147 of the FDIC Rules of Practice and Procedure.

Grounds

A Section 10(c) investigation may be appropriate when any of the following conditions are present:

- The FDIC believes matters are being misrepresented or inadequate documentation exists to determine the amount of risk to the DIF.
- Affiliates or IAPs have information required to establish whether potential unsafe or unsound practices, breaches of fiduciary duties, or violations of laws or regulations exist.
- Unaffiliated third parties have documentation or other information that relates to the affairs of an IDI.

Note: An existing or potential enforcement action is not a requirement for use of the FDIC's Section 10(c) investigation authority. If any of the above grounds are met, the FDIC may conduct an investigation to develop information from sources other than IDI records.

Statutory Authority

Section 10(c) explicitly authorizes the exercise of powers set forth in Section 8(n). Section 8(n), in turn, authorizes the FDIC to administer oaths; to take or cause to be taken testimony under oath; and significantly, to issue, revoke, quash or modify subpoenas and subpoenas duces tecum. Subpart K of Part 308 of the *FDIC Rules of Practice and Procedure* (Sections 308.144 through 308.150) establishes procedures for investigations under Section 10(c).

Part 308 of the FDIC Rules of Practice and Procedure

The individuals named to conduct an investigation (generally FDIC examiners, investigators, and attorneys) may perform the following actions:

- Subpoena witnesses and compel their attendance.
- Administer oaths and affirmations.
- Examine witnesses and take and preserve testimony under oath.
- Take evidence.
- Require the production of any books, papers, correspondence, memoranda, or other records deemed relevant to the inquiry with respect to the affairs and ownership of any institution or IAP.

- Perform all other duties in connection with the investigation as deemed necessary or as prescribed by law.

When conducting investigations, RMS and DCP staff must work closely with attorneys from the Legal Division.

Rights of Witnesses

Any person who testifies during the course of an investigation is entitled to have legal counsel present. Witnesses also have the right to receive a transcript of their testimony at the conclusion of an investigation or at an earlier time at the discretion of the FDIC.

Order of Investigation

To initiate a formal investigation under Section 10(c), the FDIC issues an order of investigation. The document indicates the purpose of the investigation and designates the FDIC representative(s) who will conduct the investigation. A copy of this order of investigation may be provided to any person or entity that is served with a subpoena pursuant to a Section 10(c) Order of Investigation.

Modification/Termination Orders

A modification order must be issued to change the provisions of an order of investigation. For example, a modification order is needed to expand the scope of the investigation or to include individuals whose involvement was discovered after the issuance of the initial order of investigation. A modification order would also be needed to include additional FDIC staff to be empowered under Section 10(c). When an investigation is completed, the FDIC issues an order terminating the order of investigation.

Enforcement of Order of Investigation

If necessary, the FDIC may apply to the U.S. District Court to enforce the order of investigation (e.g., to compel a witness to testify or produce documents).