

§ 308.305

(2) *Contents of response.* The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed order.

(d) *Agency consideration of response.* After considering the response, the FDIC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank, or any other relevant source.

(e) *Failure to file response.* Failure by a bank to file with the FDIC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any bank that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the FDIC reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the FDIC, the order shall continue in place while such request is pending before the FDIC.

§ 308.305 Enforcement of orders.

(a) *Judicial remedies.* Whenever a bank fails to comply with an order issued under section 39, the FDIC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Failure to comply with order.* Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

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(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

Subpart S—Applications for a Stay or Review of Actions of Bank Clearing Agencies

SOURCE: 61 FR 48403, Sept. 11, 1996, unless otherwise noted.

§ 308.400 Scope.

This subpart is issued by the Corporation pursuant to sections 17A(b)(3)(g), 17A(b)(5)(C), 19 and 23 of the Securities Exchange Act of 1934 (Exchange Act), as amended (15 U.S.C. 78q-1 (b)(3)(g), (b)(5)(C), 78s, 78w). It applies to applications by banks insured by the Corporation (other than members of the Federal Reserve System) for a stay or review of certain actions by clearing agencies registered under the Exchange Act, for which the Securities and Exchange Commission (Commission) is not the appropriate regulatory agency under section 3(a)(34)(B) of the Exchange Act (bank clearing agencies).

§ 308.401 Applications for stays of disciplinary sanctions or summary suspensions by a bank clearing agency.

Applications to the Corporation for a stay of disciplinary action imposed by registered clearing agencies pursuant to section 17(b)(3)(G) of the Exchange Act, or summary suspension or limitation or prohibition of access under section 17(b)(5)(C) of the Exchange Act shall be made according to the rules adopted by the Commission (17 CFR 240.19d-2). References to the “Commission” in 17 CFR 240.19d-2 are deemed to refer to the “Corporation.”

§ 308.402 Applications for review of final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by bank clearing agencies.

Proceedings on an application to the Corporation under section 19(d)(2) of the Exchange Act for review of any final disciplinary sanctions, denials of

participation, or prohibitions or limitations of access to services imposed by bank clearing agencies shall be conducted according to the procedures set forth in rules adopted by the Commission (17 CFR 240.19d-3). References to the “Commission” in 17 CFR 240.19d-3 are deemed to refer to the “Corporation.”

Subpart T—Program Fraud Civil Remedies and Procedures

SOURCE: 66 FR 9189, Feb. 7, 2001, unless otherwise noted.

§ 308.500 Basis, purpose, and scope.

(a) *Basis.* This subpart implements the Program Fraud Civil Remedies Act, Pub. L. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801-3812, (PFCRA) and made applicable to the Federal Deposit Insurance Corporation (FDIC) by section 23 of the Resolution Trust Corporation Completion Act (Pub. L. 103-204, 107 Stat. 2369). 31 U.S.C. 3809 of the statute requires each Authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This subpart:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present or cause to be made, submitted, or presented false, fictitious, or fraudulent claims or written statements to the FDIC or to its agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

(c) *Scope.* This subpart applies only to persons who make, submit, or present or cause to be made, submitted, or presented false, fictitious, or fraudulent claims or written statements to the FDIC or to its agents acting on behalf of the FDIC in connection with FDIC employment matters, FDIC contracting activities, and the FDIC Asset Purchaser Certification Program. It does not apply to false claims or statements made in connection with programs (other than as set forth in the preceding sentence) related to the FDIC's regulatory, supervision, enforcement, insurance, receivership or

liquidation responsibilities. The FDIC is restricting the scope of applicability of this subpart because other civil and administrative remedies are adequate to redress fraud in the areas not covered.

§ 308.501 Definitions.

For purposes of this subpart:

(a) *Administrative Law Judge (ALJ)* means the presiding officer appointed by the Office of Financial Institution Adjudication pursuant to 12 U.S.C. 1818 note and 5 U.S.C. 3105.

(b) *Authority* means the Federal Deposit Insurance Corporation (FDIC).

(c) *Authority head* or *Board* means the Board of Directors of the FDIC, which is herein designated by the Chairman of the FDIC to serve as head of the FDIC for PFCRA matters.

(d) *Benefit* means, in the context of “statement” as defined in 31 U.S.C. 3801(a)(9), any financial assistance received from the FDIC that amounts to \$150,000 or less. The term does not include the FDIC's deposit insurance program.

(e) *Claim* means any request, demand, or submission:

(1) Made to the FDIC for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the FDIC or to a party to a contract with the FDIC;

(i) For property or services if the United States:

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services;

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States:

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the FDIC that has the effect of decreasing an obligation to pay