

Federal Deposit Insurance Corporation

§ 308.503

(3) A claim will be considered made to the FDIC, recipient, or party when the claim is actually made to an agent, fiscal intermediary, or other entity, including any state or political subdivision thereof, acting for or on behalf of the FDIC, recipient, or party.

(4) Each claim for property, services, or money that constitutes any one of the elements in paragraph (a)(1) of this section is subject to a civil penalty regardless of whether the property, services, or money is actually delivered or paid.

(5) If the FDIC has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section will also be subject to an assessment of not more than twice the amount of such claim (or portion of the claim) that is determined to constitute a false, fictitious, or fraudulent claim under paragraph (a)(1) of this section. The assessment will be in lieu of damages sustained by the FDIC because of the claims.

(6) The amount of any penalty assessed under paragraph (a)(1) of this section will be adjusted for inflation in accordance with § 308.132(c)(3)(xv) of this part.

(7) The penalty specified in paragraph (a)(1) of this section is in addition to any other remedy allowable by law.

(b) *Statements.* (1) A person who submits to the FDIC a false, fictitious or fraudulent statement is subject to a civil penalty of up to \$5,000 per statement. A statement is false, fictitious or fraudulent if the person submitting the statement to the FDIC knows, or has reason to know, that:

(i) The statement asserts a material fact which is false, fictitious, or fraudulent; or

(ii) The statement omits a material fact that the person making the statement has a duty to include in the statement; and

(iii) The statement contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement will be considered made to the FDIC when the statement is actually made to an agent, fiscal intermediary, or other entity, including any state or political subdivision thereof, acting for or on behalf of the FDIC.

(4) The amount of any penalty assessed under paragraph (a)(1) of this section will be adjusted for inflation in accordance with § 308.132(c)(3)(xv) of this part.

(5) The penalty specified in paragraph (a)(1) of this section is in addition to any other remedy allowable by law.

(c) *Failure to file declaration/certification.* Where, as a prerequisite to conducting business with the FDIC, a person is required by law to file one or more declarations and/or certifications, and the person intentionally fails to file such declaration/certification, the person will be subject to the civil penalties as prescribed by this subpart.

(d) *Intent.* No proof of specific intent to defraud is required to establish liability under this section.

(e) *Liability.* (1) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held jointly and severally liable for a civil penalty under this section.

(2) In any case in which it is determined that more than one person is liable for making a claim under this section on which the FDIC has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 308.503 Investigations.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted:

(1) The subpoena will identify the person to whom it is addressed and the authority under which the subpoena is issued and will identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

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(3) The person receiving such subpoena will be required to provide the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available, and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the PFCRA may be warranted, the investigating official will submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section will preclude or limit an investigating official's discretion to refer allegations directly to the United States Department of Justice (DOJ) for suit under the False Claims Act (31 U.S.C. 3729 *et seq.*) or other civil relief, or to preclude or limit the investigating official's discretion to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 308.504 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 308.503(b) of this subpart, the reviewing official determines that there is adequate evidence to believe that a person is liable under § 308.502 of this subpart, the reviewing official will transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 308.506 of this subpart.

(b) Such notice will include:

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or de-

manded in violation of § 308.502 of this subpart;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known, or upon an absence of any information indicating that the person may be unable to pay such amount.

§ 308.505 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 308.506 of this subpart only if:

(1) The DOJ approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 308.502(a) of this subpart with respect to a claim (or a group of related claims submitted at the same time as defined in paragraph (b) of this section) the reviewing official determines that the amount of money or the value of property or services demanded or requested does not exceed \$150,000.

(b) For the purposes of this section, a group of related claims submitted at the same time will include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section will be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 308.506 Complaint.

(a) On or after the date the DOJ approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 308.507 of this subpart.

(b) The complaint will state: