

## Federal Deposit Insurance Corporation

## § 308.509

(1) The allegations of liability against the defendant, including the statutory basis for liability, or identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer and to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in §308.509 of this subpart.

(c) At the same time the reviewing official serves the complaint, he or she will provide the defendant with a copy of this subpart.

### §308.507 Service of complaint.

(a) Service of a complaint will be made by certified or registered mail or by delivery in any manner authorized by rule 4(c) of the Federal Rules of Civil Procedure (28 U.S.C. App.). Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

### §308.508 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer will be deemed to be a request for hearing.

(b) In the answer, the defendant:

(1) Must admit or deny each of the allegations of liability made in the complaint;

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided:

(1) The defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section.

(2) The reviewing official will file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in §308.510 of this subpart.

(3) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

### §308.509 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in §308.508(a) of this subpart, the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ will promptly serve on defendant in the manner prescribed in §308.507 of this subpart, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the ALJ will assume the facts alleged in the complaint to be true, and, if such facts establish liability under §308.502 of this subpart, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and