

Federal Deposit Insurance Corporation

§ 308.509

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:

(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

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§ 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 assessments imposed under paragraph (c) of this section, and the initial decision will become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision will be stayed pending the ALJ's decision on the motion.

(f) If, in the motion to reopen under paragraph (e) of this section, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ will withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and will grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion to reopen under paragraph (e) of this section is not subject to reconsideration under § 308.537 of this subpart.

(h) The decision denying the motion to reopen under paragraph (e) of this section may be appealed by the defendant to the Board by filing a notice of appeal with the Board within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal will stay the initial decision until the Board decides the issue.

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(i) If the defendant files a timely notice of appeal with the Board, the ALJ will forward the record of the proceeding to the Board.

(j) The Board will decide whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Board decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the Board will remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(1) If the Board decides that the defendant's failure to file a timely answer is not excused, the Board will reinstate the initial decision of the ALJ, which will become final and binding upon the parties 30 days after the Board issues such decision.

§ 308.510 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official will file the complaint and answer with the ALJ. The reviewing official will include the name, address, and telephone number of a representative of the Corporation.

§ 308.511 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ will promptly serve a notice of hearing upon the defendant in the manner prescribed by § 308.507 of this subpart. At the same time, the ALJ will send a copy of such notice to the representative of the Corporation.

(b) The notice will include:

(1) The tentative time, date, and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Corporation and of the defendant, if any; and

(6) Other matters as the ALJ deems appropriate.