

§ 308.16

§ 308.16 FDIC's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the FDIC to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the FDIC to conduct or continue any form of investigation authorized by law.

§ 308.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 308.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1)(i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), a proceeding governed by this subpart is commenced by issuance of a notice by the FDIC.

(ii) The notice must be served by the Executive Secretary upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with the OFIA.

(2) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) commence with the issuance of an order by the FDIC.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the FDIC's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the FDIC is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

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(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing shall be filed with OFIA.

§ 308.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default—(1) Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board of Directors based upon a respondent's failure to answer is deemed to be an order issued upon consent.