

§ 308.502

12 CFR Ch. III (1-1-05 Edition)

(n) *Makes*, wherever it appears, includes the terms “presents”, “submits”, and “causes to be made, presented, or submitted.” As the context requires, “making” or “made” likewise includes the corresponding forms of such terms.

(o) *Person* means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

(p) *Representative* means an attorney, who is a member in good standing of the bar of any state, territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico, and designated by a party in writing.

(q) *Reviewing official* means the General Counsel of the FDIC or his designee who is:

(1) Not subject to supervision by, or required to report to, the investigating official;

(2) Not employed in the organizational unit of the FDIC in which the investigating official is employed; and

(3) Serving in a position that has a rate of basic pay under the pay scale utilized by the FDIC that is equal to or greater than 120 percent of the minimum rate of basic pay for grade 15 under the federal government’s General Schedule.

(r) *Statement* means any representation, certification, affirmation, document, record, or accounting or book-keeping entry made:

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for):

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit received, directly or indirectly, from the FDIC, or any state, political subdivision of a state, or other party, if the United States government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the government will reimburse such state, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 308.502 Basis for civil penalties and assessments.

(a) *Claims*. (1) A person who makes a false, fictitious, or fraudulent claim to the FDIC is subject to a civil penalty of up to \$5,000 per claim. A claim is false, fictitious, or fraudulent if the person making the claim knows, or has reason to know, that:

(i) The claim is false, fictitious, or fraudulent; or

(ii) The claim includes, or is supported by, a written statement that asserts a material fact which is false, fictitious or fraudulent; or

(iii) The claim includes, or is supported by, a written statement that:

(A) Omits a material fact; and

(B) Is false, fictitious, or fraudulent as a result of that omission; and

(C) Is a statement in which the person making the statement has a duty to include the material fact; or

(iv) The claim seeks payment for providing property or services that the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(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

(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