

## Federal Deposit Insurance Corporation

## § 308.543

if the defendant files with the Board a request for an extension within the initial 30-day period and shows good cause.

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

(d) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Corporation may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Board.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Board will not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Board that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Board will remand the matter to the ALJ for consideration of such additional evidence.

(j) The Board may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The Board will promptly serve each party to the appeal with a copy of the decision of the Board and a statement describing the right of any person determined to be liable for a penalty or an assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this subpart and within 60 days after the date on which the Board serves the defendant with a copy of the Board's decision, a determination that a defendant is liable under §308.502 of this subpart is final and is not subject to judicial review.

### § 308.539 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Board a written finding that continuation of the administrative process described in this subpart with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Board will stay the process immediately. The Board may order the process resumed only upon receipt of the written authorization of the Attorney General.

### § 308.540 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Board.

(b) No administrative stay is available following a final decision of the Board.

### § 308.541 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Board imposing penalties or assessments under this subpart and specifies the procedures for such review.

### § 308.542 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this subpart and specify the procedures for such actions.

### § 308.543 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §308.541 or §308.542 of this subpart, or any amount agreed upon in a compromise or settlement under §308.545 of this subpart, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of federal taxes, then or later

**§ 308.544**

owing by the United States to the defendant.

**§ 308.544 Deposit in Treasury of United States.**

All amounts collected pursuant to this subpart will be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

**§ 308.545 Compromise or settlement.**

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this subpart at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Board has exclusive authority to compromise or settle a case under this subpart any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under §308.541 of this subpart or during the pendency of any action to collect penalties and assessments under §308.542 of this subpart.

(d) The Attorney General has exclusive authority to compromise or settle a case under this subpart during the pendency of any review under §308.541 of this subpart or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Board, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Board, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

**§ 308.546 Limitations.**

(a) The notice of hearing with respect to a claim or statement will be served in the manner specified in §308.507 of this subpart within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of notice under §308.509(b) of this subpart will be deemed a notice of a hearing for purposes of this section.

**12 CFR Ch. III (1–1–05 Edition)**

(c) The statute of limitations may be extended by agreement of the parties.

**Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Services**

SOURCE: 68 FR 48270, Aug. 13, 2003, unless otherwise noted.

**§ 308.600 Scope.**

This subpart, which implements section 36(g)(4) of the FDIA (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured depository institutions for which the FDIC is the appropriate Federal banking agency.

**§ 308.601 Definitions.**

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services.

(c) *Independent public accountant* (accountant) means any individual who performs or participates in providing audit services.

**§ 308.602 Removal, suspension, or debarment.**

(a) *Good cause for removal, suspension, or debarment.*

(1) *Individuals.* The Board of Directors may remove, suspend, or debar an independent public accountant under section 36 of the FDIA from performing audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if, after service of a notice of intention and opportunity for hearing in the