

**§509.103**

**12 CFR Ch. V (1–1–10 Edition)**

(f) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States Government is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

(g) *Deposition subpoenas—(1) Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(2) *Service.* The party requesting the subpoena must serve it on the person named therein or upon that person's counsel, by any of the methods identified in §509.11(d) of this part. The party serving the subpoena must file proof of service with the administrative law judge.

(3) *Motion to quash.* A person named in the subpoena or a party may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party that requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(4) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of §509.27(d) of this part.

[56 FR 38306, Aug. 12, 1991, as amended at 61 FR 20356, May 6, 1996]

**§509.103 Civil money penalties.**

(a) *Assessment.* In the event of consent, or if upon the record developed at the hearing the Office finds that any of the grounds specified in the notice issued pursuant to §509.18 of this part have been established, the Office may serve an order of assessment of civil money penalty upon the party concerned. The assessment order shall be

effective immediately upon service or upon such other date as may be specified therein and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by the Office or by a reviewing court.

(b) *Payment.* (1) Civil penalties assessed pursuant to subpart A of this part and this subpart B are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Office fixes a different time for payment where it determines that the purpose of the civil money penalty would be better served thereby; however, if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party may not be required to pay such penalty until the Office has issued a final order of assessment following the hearing. In such instances, the penalty shall be paid within 60 days of service of such order unless the Office fixes a different time for payment. Notwithstanding the foregoing, the Office may seek to attach the party's assets or to have a receiver appointed to secure payment of the potential civil money penalty or other obligation in advance of the hearing in accordance with section 8(i)(4) of the FDIA (12 U.S.C. 1818(i)(4)).

(2) Checks in payment of civil penalties shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Office. Upon receipt, the Office shall forward the check to the Treasury of the United States.

(c) *Inflation adjustment.* Under the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), OTS must adjust for inflation the civil money penalties in statutes that it administers. The following chart displays the adjusted civil money penalties. The amounts in this chart apply to violations that occur after October 27, 2008:

U.S. Code citation	CMP description	New maximum amount
12 U.S.C. 1464(v)(4).	Reports of Condition—1st Tier.	\$2,200
12 U.S.C. 1464(v)(5).	Reports of Condition—2nd Tier.	32,500
12 U.S.C. 1464(v)(6).	Reports of Condition—3rd Tier.	1,375,000
12 U.S.C. 1467(d)	Refusal to Cooperate in Exam.	7,500

U.S. Code citation	CMP description	New maximum amount
12 U.S.C. 1467a(i)(2).	Holding Company Act Violation.	32,500
12 U.S.C. 1467a(i)(3).	Holding Company Act Violation.	32,500
12 U.S.C. 1467a(r)(1).	Late/Inaccurate Reports—1st Tier.	2,200
12 U.S.C. 1467a(r)(2).	Late/Inaccurate Reports—2nd Tier.	32,500
12 U.S.C. 1467a(r)(3).	Late/Inaccurate Reports—3rd Tier.	1,375,000
12 U.S.C. 1817(j)(16)(A).	Change in Control—1st Tier.	7,500
12 U.S.C. 1817(j)(16)(B).	Change in Control—2nd Tier.	37,500
12 U.S.C. 1817(j)(16)(C).	Change in Control—3rd Tier.	1,375,000
12 U.S.C. 1818(i)(2)(A).	Violation of Law or Unsafe or Unsound Practice—1st Tier.	7,500
12 U.S.C. 1818(i)(2)(B).	Violation of Law or Unsafe or Unsound Practice—2nd Tier.	37,500
12 U.S.C. 1818(i)(2)(C).	Violation of Law or Unsafe or Unsound Practice—3rd Tier.	1,375,000
12 U.S.C. 1820(k)(6)(A)(ii).	Violation of Post Employment Restrictions.	275,000
12 U.S.C. 1884 ....	Violation of Security Rules.	110
12 U.S.C. 3349(b)	Appraisals Violation—1st Tier.	7,500
12 U.S.C. 3349(b)	Appraisals Violation—2nd Tier.	37,500
12 U.S.C. 3349(b)	Appraisals Violation—3rd Tier.	1,375,000
42 U.S.C. 4012a(f)	Flood Insurance .....	<sup>1</sup> 385 <sup>2</sup> 135,000

<sup>1</sup> Per day.  
<sup>2</sup> Per year.

[56 FR 38306, Aug. 12, 1991, as amended at 65 FR 61262, Oct. 17, 2000; 69 FR 64251, Nov. 4, 2004; 73 FR 63626, Oct. 27, 2008]

#### § 509.104 Additional procedures.

(a) *Replies to exceptions.* Replies to written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order pursuant to § 509.39 of this part shall be filed within 10 days of the date such written exceptions were required to be filed.

(b) *Motions.* All motions shall be filed with the administrative law judge and an additional copy shall be filed with the Secretary to the Office, who receives adjudicatory filings, ("Secretary"); provided, however, that once the administrative law judge has certified the record to the Director pursuant to § 509.38 of this part, all motions must be filed with the Director, to the attention of the Secretary, within the 10 day period following the filing of ex-

ceptions allowed for the filing of replies to exceptions. Responses to such motions filed in a timely manner with the Director, other than motions for oral argument before the Director, shall be allowed pursuant to the procedures at § 509.23(d) of this part. No response is required for the Director to make a determination on a motion for oral argument.

(c) *Authority of administrative law judge.* In addition to the powers listed in § 509.5 of this part, the administrative law judge shall have the authority to deny any dispositive motion and shall follow the procedures set forth for motions for summary disposition at § 509.29 of this part and partial summary disposition at § 509.30 of this part in making determinations on such motions.

(d) *Notification of submission of proceeding to the Director.* Upon the expiration of the time for filing any exceptions, any replies to such exceptions or any motions and any ruling thereon, and after receipt of certified record, the Office shall notify the parties within ten days of the submission of the proceeding to the Director for final determination.

(e) *Extensions of time for final determination.* The Director may, *sua sponte*, extend the time for final determination by signing an order of extension of time within the 90 day time period and notifying the parties of such extension thereafter.

(f) *Service upon the Office.* Service of any document upon the Office shall be made by filing with the Secretary, in addition to the individuals and/or offices designated by the Office in its Notice issued pursuant to § 509.18 of this part, or such other means reasonably suited to provide notice of the person and/or office designated to receive filings.

(g) *Filings with the Director.* An additional copy of all materials required or permitted to be filed with or referred to the administrative law judge pursuant to subpart A and B of this part shall be filed with the Secretary. This rule shall not apply to the transcript of testimony and exhibits adduced at the hearing or to proposed exhibits submitted in advance of the hearing pursuant to an order of the administrative