

will take appropriate action to advise the court or tribunal which issued the order, of the substance of this section.

(4) *Non-waiver of privilege.* The possession by any entity or individual described in paragraph (c)(4) of this section of OTS records covered by this section shall not waive any privilege of the OTS or the OTS's right to supervise the further dissemination of these records.

(f) *Orders and agreements protecting the confidentiality of unpublished OTS information—(1) Records.* Unless otherwise permitted by the OTS, release of records authorized pursuant to this section will be conditioned by the OTS upon entry of an acceptable protective order by the court or administrative tribunal presiding in the particular case, or, in non-litigated matters, upon execution of an acceptable confidentiality agreement. In cases where protective orders have already been entered, the OTS reserves the right to condition approval for release of information upon the inclusion of additional or amended provisions.

(2) *Testimony.* The OTS may condition its authorization of deposition testimony on an agreement of the parties that the transcript of the testimony will be kept under seal, or will be made available only to the parties, the court and the jury, except to the extent that the OTS may allow use of the transcript in related litigation. The party who requested the testimony shall, at its expense, furnish to the OTS a copy of the transcript of testimony of the OTS employee or former employee.

(g) *Limitation of burden on the OTS in connection with released records—(1) Authentication for use as evidence.* The OTS will authenticate released records to facilitate their use as evidence. Requesters who require authenticated records should request certified copies at least 30 days prior to the date they will be needed. The request should be sent to the OTS Public Disclosure Branch and shall identify the records, giving the office or record depository where they are located (if known) and include copies of the records and payment of the certification fee.

(2) *Responsibility of litigants to share released records.* The party who has

sought and obtained OTS records has the responsibility of:

(i) Notifying other parties to the case of the release and, after entry of a protective order, providing copies of the records to the other parties who are subject to the protective order; and

(ii) Retrieving any records from the court's file as soon as the records are no longer required by the court and returning them to the OTS. Where a party may be involved in related litigation, the OTS may, upon a request made to it pursuant to this section, authorize such party to transfer the records for use in that related case.

(h) *Fees—(1) Fees for records searches, copying and certifications.* Requesters shall be charged fees in accordance with Treasury Department regulations, 31 CFR 1.7. With certain exceptions, the regulations in 31 CFR 1.7 provide for recovery of the full direct costs of searching, reviewing, certifying and duplicating the records sought. An estimate of the statement of charges will be sent to requesters, and fees shall be remitted by check payable to the OTS prior to release of the requested records. Where it deems appropriate, the OTS may contract with commercial copying concerns to copy the records, with the cost billed to the requester.

(2) *Witness fees and allowances.* (i) Litigants whose requests for testimony of current OTS employees are approved shall, upon completion of the testimonial appearance, promptly tender a check payable to the OTS for witness fees and allowances in accordance with 28 U.S.C. 1821.

(ii) All litigants whose requests for testimony of former OTS employees are approved, shall also promptly tender witness fees and allowances to the witness in accordance with 28 U.S.C. 1821.

[54 FR 49456, Nov. 30, 1989, as amended at 60 FR 28031, May 30, 1995]

#### **§ 510.6 Civil money penalty inflation adjustment.**

Pursuant to the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321-358), OTS is required to

make inflationary adjustments for civil monetary penalties in statutes that it administers. The following

chart displays those adjustments, as calculated pursuant to the statute:

U.S. Code citation	CMP description	New maximum amount
12 U.S.C. 1464(v)(4)	Reports of Condition—1st Tier	\$2,000
12 U.S.C. 1464(v)(5)	Reports of Condition—2nd Tier	22,000
12 U.S.C. 1464(v)(6)	Reports of Condition—3rd Tier	1,100,000
12 U.S.C. 1467(d)	Refusal to Cooperate in Exam	5,500
12 U.S.C. 1467a(i)(3)	Holding Company Act Violation	5,500
12 U.S.C. 1467a(r)(1)	Late/Inaccurate Reports—1st Tier	2,000
12 U.S.C. 1467a(r)(2)	Late/Inaccurate Reports—2nd Tier	22,000
12 U.S.C. 1467a(r)(3)	Late/Inaccurate Reports—3rd Tier	1,100,000
12 U.S.C. 1817(j)(16)(A)	Change in Control—1st Tier	5,500
12 U.S.C. 1817(j)(16)(B)	Change in Control—2nd Tier	27,500
12 U.S.C. 1817(j)(16)(C)	Change in Control—3rd Tier	1,100,000
12 U.S.C. 1818(i)(2)(A)	Violation of Law or Unsafe or Unsound Practice—1st Tier.	5,500
12 U.S.C. 1818(i)(2)(B)	Violation of Law or Unsafe or or Unsound Practice—2nd Tier.	27,500
12 U.S.C. 1818(i)(2)(C)	Violation of Law or Unsafe or Unsound Practice—3rd Tier.	1,100,000
12 U.S.C. 3349(b)	Appraisals Violation—1st Tier	5,500
12 U.S.C. 3349(b)	Appraisals Violation—2nd Tier	27,500
12 U.S.C. 3349(b)	Appraisals Violation—3rd Tier	1,100,000
42 U.S.C. 4012a(f)	Flood Insurance	350/105,000

[61 FR 56119, Oct. 31, 1996]

**PART 512—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS**

Sec.

- 512.1 Scope of part.
- 512.2 Definitions.
- 512.3 Confidentiality of proceedings.
- 512.4 Transcripts.
- 512.5 Rights of witnesses.
- 512.6 Obstruction of the proceedings.
- 512.7 Subpoenas.

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1467, 1467a, 1813; 15 U.S.C. 78 l.

SOURCE: 54 FR 49457, Nov. 30, 1989, unless otherwise noted.

**§ 512.1 Scope of part.**

This part prescribes rules of practice and procedure applicable to the conduct of investigative proceedings under section 10(g)(2) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1467a(g)(2) ("HOLA") and to the conduct of formal examination proceedings with respect to savings associations and their affiliates under section 5(d)(1)(B) of the HOLA, as amended, 12 U.S.C. 1464(d)(1)(B) or section 7(j)(15) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1817(j)(15) ("FDIA"), section 8(n) of the FDIA, 12 U.S.C.

1818(n), or section 10(c) of the FDIA, 12 U.S.C. 1820(c). This part does not apply to adjudicatory proceedings as to which hearings are required by statute, the rules for which are contained in part 509 of this chapter.

**§ 512.2 Definitions.**

As used in this part:

- (a) *Office* means the Office of Thrift Supervision;
- (b) *Investigative proceeding* means an investigation conducted under section 10(g)(2) of the HOLA;
- (c) *Formal examination proceeding* means the administration of oaths and affirmations, taking and preserving of testimony, requiring the production of books, papers, correspondence, memoranda, and all other records, the issuance of subpoenas, and all related activities in connection with examination of savings associations and their affiliates conducted pursuant to section 5(d)(1)(B) of the HOLA, section 7(j)(15) of the FDIA, section 8(n) of the FDIA or section 10(c) of the FDIA; and
- (d) *Designated representative* means the person or persons empowered by the Office to conduct an investigative proceeding or a formal examination proceeding.