

Federal Housing Finance Board

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action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings. Such order may include any requirement authorized under § 908.4(b)(2).

(b) *Incomplete records.* If a notice of charges specifies that the books and records of a Bank are so incomplete or inaccurate that the Finance Board is unable, through the normal supervisory process, to determine the financial condition of the Bank or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of a Bank, the Finance Board may issue a temporary order requiring a respondent to:

(1) Cease and desist from any activity or practice that caused or contributed to, whether in whole or in part, the incomplete or inaccurate state of the books or records of a Bank; or

(2) Take affirmative action to restore the books or records to a complete and accurate state.

(c) *Effective date.* Any temporary order issued pursuant to this section shall become effective upon service upon the respondent.

(d) *Effective period.* (1) Any temporary order issued under paragraph (a) of this section, unless set aside, limited, or suspended by a court in a proceeding under paragraph (e) of this section, shall remain in effect and enforceable pending the completion of the proceeding on the notice of charges and shall remain effective until the Board of Directors dismisses the charges specified in the notice of charges or it is superceded by a cease and desist order.

(2) Any temporary order issued under paragraph (b) of this section, unless set aside, limited, or suspended by a court in proceedings pursuant to paragraph (e) of this section, shall remain in effect and enforceable until the earlier of the completion of the proceeding on the notice of charges, or the date that the Finance Board determines, by examination or otherwise, that the books and records of the Bank are accurate and reflect the financial condition of the Bank.

(e) *Judicial relief.* As authorized by section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and sections 1372(d) and 1375(b) of the Safety and Soundness Act

(12 U.S.C. 4632(d) and 4635(b)), a respondent that has been served with a temporary order may apply to the United States District Court for the District of Columbia within ten days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the hearing pursuant to the notice of charges.

(f) *Enforcement of temporary order.* If a respondent violates, threatens to violate, or fails to obey, a temporary order issued pursuant to this section, the Finance Board may bring an action in the United States District Court for the District of Columbia for an injunction to enforce such temporary order, as authorized by sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1372(e) of the Safety and Soundness Act (12 U.S.C. 4632(e)).

§ 908.6 Civil money penalties.

(a) *Notice of assessment.* (1) *Grounds.* The Finance Board may issue and serve a notice of assessment of a civil money penalty on any Bank or any executive officer or director of a Bank that:

(i) Violates any provision of the Act, or any order, rule, or regulation issued under the Act;

(ii) Violates any final or temporary cease and desist order issued by the Finance Board pursuant to the Act;

(iii) Violates any written agreement between a Bank and the Finance Board; or

(iv) Engages in any conduct that causes or is likely to cause a loss to a Bank.

(2) *Content of notice.* A notice of assessment of a civil money penalty shall contain a statement of the facts constituting the alleged conduct or violation and otherwise conform to the requirements set forth in § 908.40.

(b) *Order assessing penalty.* An order assessing a civil money penalty shall be issued in writing and only after the respondent has been given the opportunity for a hearing on the record in accordance with the procedures set forth in § 908.9. If the Board of Directors finds, based on the record of the hearing, that any conduct or violation specified in the notice of assessment of

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a civil money penalty has been established or if a respondent consents (or is deemed to have consented pursuant to § 908.43), the Board of Directors may issue and serve upon the respondent an order assessing a civil money penalty.

(c) *Amount of penalty.* (1) The Finance Board may impose a civil money penalty under paragraph (b) of this section against a Bank for a violation described in paragraph (a)(i) through (iii) of this section in an amount not to exceed \$5,000.00 for each day that such violation continues;

(2) The Finance Board may impose a civil money penalty on an executive officer or director of a Bank in an amount not to exceed \$10,000.00, or on a Bank in an amount not to exceed \$25,000.00, for each day that a violation or conduct described in paragraph (a) of this section continues, if the Finance Board finds that the violation or conduct:

(i) Is part of a pattern of misconduct; or

(ii) Involved recklessness and caused or would be likely to cause a material loss to a Bank; or

(3) The Finance Board may impose a civil money penalty on an executive officer or director of a Bank in an amount not to exceed \$100,000.00, or on a Bank in an amount not to exceed \$1,000,000.00, for each day that a violation or conduct described in paragraph (a) of this section continues, if the Finance Board finds that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to a Bank.

(d) *Factors in determining the amount of the penalty.* In determining the amount of the civil money penalty to be assessed under this section, the Finance Board shall consider such factors as the gravity of the violation, any history of prior violations, the good faith of the officer or director of a Bank, the effect of the penalty on promoting or protecting the safety and soundness of a Bank or the Bank System, any injury to members of the subject Bank or to the public at large, any benefits received, and the potential for the deterrence of future violations.

(e) *Judicial relief.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1376(c)(3) of the Safety and

Soundness Act (12 U.S.C. 4636(c)(3)), an order of the Board of Directors imposing a civil money penalty under this subsection shall not be subject to judicial review except as otherwise provided in § 908.10, in accordance with section 1374 of the Safety and Soundness Act (12 U.S.C. 4634).

(f) *Judicial enforcement of an order imposing a penalty.* Pursuant to sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1376(d) of the Safety and Soundness Act (12 U.S.C. 4636(d)), if a Bank, or an executive officer or director of a Bank, fails to comply with an order of the Board of Directors imposing a civil money penalty, the Finance Board may seek to enforce the order as follows:

(1) After the order is final and no longer subject to judicial review under § 908.10, the Finance Board may bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against a Bank or the executive officer or director of a Bank;

(2) The Finance Board may, in addition, seek such other relief as may be available from the District Court;

(3) The monetary judgment may, in the discretion of the District Court, include any attorneys fees and other expenses incurred by the Finance Board in connection with the action; and

(4) The validity and appropriateness of the Board of Directors' order assessing a civil money penalty shall not be subject to review of the United States District Court for the District of Columbia.

(g) *Board of Directors' authority to review.* The Board of Directors may:

(1) Review any order to assess a civil money penalty or any interlocutory ruling arising from a hearing on the record, or

(2) Settle, modify, or remit in whole or in part, any civil money penalty, which may be or may have been assessed under this section.

(h) *Availability of other remedies.* Any civil money penalty assessed under this section shall be in addition to any other available civil remedy and may be assessed whether or not the Finance Board imposes other administrative sanctions pursuant to this part.

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(i) *Prohibition of reimbursement or indemnification.* A Bank shall not reimburse, indemnify, or otherwise compensate directly or indirectly any executive officer or director for any penalty imposed against such individual under paragraph (c)(3) of this section.

(j) *Applicability.* Any penalty under this part may be imposed only for conduct or violations occurring after November 12, 1999.

(k) *Adjustment of civil money penalties by the rate of inflation.* Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, Pub. Law No. 104-134 (1996) (collectively, the Inflation Adjustment Act) (to be codified at 28 U.S.C. 2461 note), the Finance Board is required to adjust each civil money penalty set forth herein by a prescribed cost-of-living adjustment at least once every four years. The adjustment is based on the formula prescribed in section 5(b) of the Inflation Adjustment Act (28 U.S.C. 2461 note).

§ 908.7 Service of notice.

In accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1379A of the Safety and Soundness Act (12 U.S.C. 4640), any service required or authorized to be made by the Finance Board under this part may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Finance Board may by regulation or otherwise provide.

§ 908.8 Subpoenas.

(a) *Authority.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1379B of the Safety and Soundness Act (12 U.S.C. 4641), the Finance Board, in the course of or in connection with a hearing under this part, shall have the authority:

- (1) To administer oaths and affirmations;
- (2) To take and preserve testimony under oath;
- (3) To issue subpoenas and subpoenas *duces tecum*; and
- (4) To revoke, quash, or modify subpoenas and subpoenas *duces tecum* issued by the Finance Board pursuant to this part.

(b) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) *Enforcement.* The Finance Board may file an action in the United States district court for the judicial district where the proceeding is being conducted or where the witness resides or conducts business, or in the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena *duces tecum* issued pursuant to this section. Such courts shall have jurisdiction over such actions and power to order and require compliance with such subpoenas and subpoenas *duces tecum*.

(d) *Fees and expenses.* Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by a Bank may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses shall be paid by the Bank or from its assets.

§ 908.9 Hearings on the record.

(a) *Requirements—(1) Venue and record.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1373 of the Safety and Soundness Act (12 U.S.C. 4633), any hearing conducted pursuant to §§ 908.4 or 908.6 shall be held on the record and in the District of Columbia.

(2) *Timing.* Any hearing shall be set for a date not earlier than thirty (30) days nor later than sixty (60) days after service of a notice, unless an earlier or a later date is set by the presiding officer at the request of the party served.

(3) *Procedure.* Any hearing held pursuant to §§ 908.4 or 908.6 shall be conducted in accordance with chapter 5 of Title 5 of the United States Code.

(4) *Failure to appear.* If a respondent fails to appear at a hearing individually or through a duly authorized representative, the respondent shall be deemed to have consented to the issuance of a cease and desist order or