

**§ 308.114 Burden of proof.**

The ultimate burden of proof shall be upon the person proposing to acquire a depository institution. The burden of going forward with a *prima facie* case shall be upon the FDIC.

**Subpart E—Rules and Procedures  
Applicable to Proceedings  
Relating to Assessment of Civil  
Penalties for Willful Violations  
of the Change in Bank Control Act**

**§ 308.115 Scope.**

The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings to assess civil penalties against any person for willful violation of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)), or any regulation or order issued pursuant thereto, in connection with the affairs of an insured nonmember bank.

**§ 308.116 Assessment of penalties.**

(a) *In general.* The civil money penalty shall be assessed upon the service of a Notice of Assessment which shall become final and unappealable unless the respondent requests a hearing pursuant to § 308.19(c)(2).

(b) *Amount.* (1) Any person who violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto, shall forfeit and pay a civil money penalty of not more than \$5,000 for each day the violation continues.

(2) Any person who violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto; or recklessly engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or breaches any fiduciary duty; which violation, practice or breach is part of a pattern of misconduct; or causes or is likely to cause more than a minimal loss to such institution; or results in pecuniary gain or other benefit to such person, shall forfeit and pay a civil money penalty of not more than \$25,000 for each day such violation, practice or breach continues.

(3) Any person who knowingly violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto; or engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or breaches any fiduciary duty; and knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice or breach, shall forfeit and pay a civil money penalty not to exceed:

(i) In the case of a person other than a depository institution—\$1,000,000 per day for each day the violation, practice or breach continues; or

(ii) In the case of a depository institution—an amount not to exceed the lesser of \$1,000,000 or one percent of the total assets of such institution for each day the violation, practice or breach continues.

(4) *Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act.* After December 31, 2004:

(i) Any person who engages in a violation as set forth in paragraph (b)(1) of this section shall forfeit and pay a civil money penalty of not more than \$6,500 for each day the violation continues.

(ii) Any person who engages in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(2) of this section, shall forfeit and pay a civil money penalty of not more than \$32,500 for each day such violation, practice or breach continues.

(iii) Any person who knowingly engages in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(3) of this section, shall forfeit and pay a civil money penalty not to exceed:

(A) In the case of a person other than a depository institution—\$1,250,000 per day for each day the violation, practice or breach continues; or

(B) In the case of a depository institution—an amount not to exceed the lesser of \$1,250,000 or one percent of the total assets of such institution for each day the violation, practice or breach continues.