

(c) *Mitigating factors.* In assessing the amount of the penalty, the Board of Directors or its designee shall consider the gravity of the violation, the history of previous violations, respondent's financial resources, good faith, and any other matters as justice may require.

(d) *Failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice of disapproval. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file a recommended decision containing the findings and relief sought in the notice. A final order issued by the Board of Directors based upon a respondent's failure to answer is deemed to be an order issued upon consent.

[56 FR 37975, Aug. 9, 1991, as amended at 61 FR 57990, Nov. 12, 1996; 65 FR 64887, Oct. 31, 2000; 69 FR 61305, Oct. 18, 2004]

§ 308.117 Effective date of, and payment under, an order to pay.

If the respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable 60 days after an order to pay, issued after the hearing or upon default, is served upon the respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

§ 308.118 Collection of penalties.

The FDIC may collect any civil penalty assessed pursuant to this subpart by agreement with the respondent, or the FDIC may bring an action against the respondent to recover the penalty amount in the appropriate United States district court. All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

§ 308.119 Scope.

(a) *Involuntary termination of insurance pursuant to section 8(a) of the FDIA.* The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank depository institution or an insured branch of a foreign bank pursuant to section 8(a) of the FDIA (12 U.S.C. 1818(a)), except that the Uniform Rules and subpart B of the Local Rules shall not apply to the temporary suspension of insurance pursuant to section 8(a)(8) of the FDIA (12 U.S.C. 1818(a)(8)).

(b) *Involuntary termination of insurance pursuant to section 8(p) of the Act.* The rules and procedures in § 308.124 of this subpart F shall apply to proceedings in connection with the involuntary termination of the insured status of an insured depository institution or an insured branch of a foreign bank pursuant to section 8(p) of the FDIA (12 U.S.C. 1818(p)). The Uniform Rules shall not apply to proceedings under section 8(p) of the FDIA.

§ 308.120 Grounds for termination of insurance.

(a) *General rule.* The following are grounds for involuntary termination of insurance pursuant to section 8(a) of the FDIA:

(1) An insured depository institution or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such depository institution;

(2) An insured depository institution is in an unsafe or unsound condition such that it should not continue operations as an insured depository institution; or

(3) An insured depository institution or its directors or trustees have violated an applicable law, rule, regulation, order, condition imposed in writing by the FDIC in connection with the granting of any application or other request by the insured depository institution or have violated any written