

(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

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agreement entered into between the insured depository institution and the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its directors or trustees which would otherwise be a ground for termination of insured status under this section shall be a ground for termination if the Board of Directors finds:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia that, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice committed outside the United States, if proven, would adversely affect the insurance risk of the FDIC.

(c) *Failure of foreign bank to secure removal of personnel.* The failure of a foreign bank to comply with any order of removal or prohibition issued by the Board of Directors or the failure of any person associated with a foreign bank to appear promptly as a party to a proceeding pursuant to section 8(e) of the FDIA (12 U.S.C. 1818(e)), shall be a ground for termination of insurance of deposits in any branch of the bank.

§ 308.121 Notification to primary regulator.

(a) *Service of notification.* (1) Upon a determination by the Board of Directors or its designee pursuant to § 308.120 of an unsafe or unsound practice or condition or of a violation, a notification shall be served upon the appropriate Federal banking agency of the insured depository institution, or the State banking supervisor if the FDIC is the appropriate Federal banking agency.

The notification shall be served not less than 30 days before the Notice of Intent to Terminate Insured Status required by section 8(a)(2)(B) of the FDIA (12 U.S.C. 1818(a)(2)(B)), and § 308.122, except that this period for notification may be reduced or eliminated with the agreement of the appropriate Federal banking agency.

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(2) *Appropriate Federal banking agency* shall have the meaning given that term in section 3(q) of the FDIA (12 U.S.C. 1813(q)), and shall be the OCC in the case of a national bank, a District bank or an insured Federal branch of a foreign bank; the FDIC in the case of an insured nonmember bank, including an insured State branch of a foreign bank; the Board of Governors in the case of a state member bank; or the OTS in the case of an insured Federal or state savings association.

(3) In the case of a state nonmember bank, insured Federal branch of a foreign bank, or state member bank, in addition to service of the notification upon the appropriate Federal banking agency, a copy of the notification shall be sent to the appropriate State banking supervisor.

(4) In instances in which a Temporary Order Suspending Insurance is issued pursuant to section 8(a)(8) of the FDIA (12 U.S.C. 1818(a)(8)), the notification may be served concurrently with such order.

(b) *Contents of notification.* The notification shall contain the FDIC's determination, and the facts and circumstances upon which such determination is based, for the purpose of securing correction of such practice, condition, or violation.

§ 308.122 Notice of intent to terminate.

(a) If, after serving the notification under § 308.121, the Board of Directors determines that any unsafe or unsound practices, condition, or violation, specified in the notification, requires the termination of the insured status of the insured depository institution, the Board of Directors or its designee, if it determines to proceed further, shall cause to be served upon the insured depository institution a notice of its intention to terminate insured status not less than 30 days after service of the notification, unless a shorter time period has been agreed upon by the appropriate Federal banking agency.

(b) The Board of Directors or its designee shall cause a copy of the notice to be sent to the appropriate Federal banking agency and to the appropriate state banking supervisor, if any.