

§ 308.131

the bank or its official. A cease-and-desist order issued upon consent shall become effective at the time specified therein. All cease-and-desist orders shall remain effective and enforceable, except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors or its designee or by a reviewing court.

(b) *Service on banks.* In cases where the bank is not the respondent, the cease-and-desist order shall also be served upon the bank.

§ 308.131 Temporary cease-and-desist order.

(a) *Issuance.* (1) When the Board of Directors or its designee determines that the violation, or the unsafe or unsound practice, as specified in the notice, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the bank, or is likely to weaken the condition of the bank or otherwise prejudice the interests of its depositors prior to the completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)) and § 308.128 of this subpart, the Board of Directors or its designee may issue a temporary order requiring the bank or an institution-affiliated party to immediately cease and desist from any such violation, practice or to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)).

(2) When the Board of Directors or its designee issues a Notice of charges pursuant to 12 U.S.C. 1818(b)(1) which specifies on the basis of particular facts and circumstances that a bank's books and records are so incomplete or inaccurate that the FDIC 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 the bank, then the Board of Directors or its designee may issue a temporary order requiring:

(i) The cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

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(ii) Affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)).

(3) The temporary order shall be served upon the bank or the institution-affiliated party named therein and shall also be served upon the bank in the case where the temporary order applies only to an institution-affiliated party.

(b) *Effective date.* A temporary order shall become effective when served upon the bank or the institution-affiliated party. Unless the temporary order is set aside, limited, or suspended by a court in proceedings authorized under section 8(c)(2) of the FDIA (12 U.S.C. 1818(c)(2)), the temporary order shall remain effective and enforceable pending completion of administrative proceedings pursuant to section 8(b) of the FDIA (12 U.S.C. 1818(b)) and entry of an order which has become final, or with respect to paragraph (a)(2) of this section the FDIC determines by examination or otherwise that the bank's books and records are accurate and reflect the financial condition of the bank.

(c) *Uniform Rules do not apply.* The Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary orders under this section.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

§ 308.132 Assessment of penalties.

(a) *Scope.* The rules and procedures of this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings to assess and collect civil money penalties, including civil money penalties for violation of section 7(a) of the FDIA (12 U.S.C. 1817(a)).

(b) *Relevant considerations.* In determining the amount of the civil penalty to be assessed, the Board of Directors

or its designee shall consider the financial resources and good faith of the bank or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount.* (1) The Board of Directors or its designee may assess civil money penalties pursuant to section 8(i) of the FDIA (12 U.S.C. 1818(i)), and § 308.01(e)(1) of the Uniform Rules.

(2) The Board of Directors or its designee may assess civil money penalties pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)) as follows:

(i) *Late filing—Tier One penalties.* In cases in which a bank fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than \$2,200 per day may be assessed where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the bank inadvertently transmitted a Call Report which is minimally late.

(A) *First offense.* Generally, in such cases, the amount assessed shall be \$300 per day for each of the first 15 days for which the failure continues, and \$600 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than \$25,000,000 in assets, the amount assessed shall be the greater of \$100 per day or $\frac{1}{4000}$ th of the bank's total assets ($\frac{1}{40}$ th of a basis point) for each of the first 15 days for which the failure continues, and \$200 or $\frac{1}{500}$ th of the bank's total assets, $\frac{1}{5}$ of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Second offense.* Where the bank has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current failure shall generally be \$500 per day for each of the first 15 days for which the failure continues, and \$1,000 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than \$25,000,000 in assets, those amounts, respectively, shall be $\frac{1}{500}$ th of the bank's total assets and $\frac{1}{250}$ th of the bank's total assets.

(C) *Mitigating factors.* The amounts set forth in paragraph (c)(2)(i)(A) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

(D) *Lengthy or repeated violations.* The amounts set forth in this paragraph (c)(2)(i) will be assessed on a case-by-case basis where the amount of time of the bank's delinquency is lengthy or the bank has been delinquent repeatedly in making or publishing its Call Reports.

(E) *Waiver.* Absent extraordinary circumstances outside the control of the bank, penalties assessed for late filing shall not be waived.

(ii) *Late filing—Tier Two penalties.* Where a bank fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than \$20,000 per day for each day the failure continues. Pursuant to the Debt Collection Improvement Act of 1996, for violations which occur after December 31, 2004, the maximum Tier Two penalty amount will increase to \$27,500 per day for each day the failure continues.

(iii) *False or misleading reports or information—(A) Tier One penalties.* In cases in which a bank submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than \$2,200 per day for each day the information is not corrected, where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the bank inadvertently transmits a Call Report or information which is false or misleading.

(B) *Tier Two penalties.* Where a bank submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than \$20,000 per day for each day the information is not corrected. Pursuant to the Debt Collection Improvement Act of 1996, for violations which occur after December 31, 2004, the maximum Tier Two penalty amount will increase to \$27,500 per day

for each day the information is not corrected.

(C) *Tier Three penalties.* Where a bank knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of \$1,250,000 or 1 percent of the bank's total assets per day for each day the information is not corrected. Pursuant to the Debt Collection Improvement Act of 1996, for violations which occur after December 31, 2004, the maximum Tier Three penalty amount will increase to the lesser of \$1,250,000 per day or 1 percent of the bank's total assets per day for each day the information is not corrected.

(D) *Mitigating factors.* The amounts set forth in this paragraph (c)(2) may be reduced based upon the factors set forth in paragraph (b) of this section.

(3) *Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act.* Pursuant to section 31001(s) of the Debt Collection Improvement Act, for violations which occur after December 31, 2004, the Board of Directors or its designee may assess civil money penalties in the maximum amounts as follows:

(i) *Civil money penalties assessed pursuant to section 8(i)(2) of the FDIA.* Tier One civil money penalties may be assessed pursuant to section 8(i)(2)(A) of the FDIA (12 U.S.C. 1818(i)(2)(A)) in an amount not to exceed \$6,500 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to section 8(i)(2)(B) of the FDIA (12 U.S.C. 1818(i)(2)(B)) in an amount not to exceed \$32,500 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to section 8(i)(2)(C) (12 U.S.C. 1818(i)(2)(C)) in an amount not to exceed, in the case of any person other than an insured depository institution \$1,250,000 or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,250,000 or 1 percent of the total assets of such institution for each day

during which the violation, practice, or breach continues.

(A) Civil money penalties may be assessed pursuant to section 8(i)(2) of the FDIA in the amounts set forth in this paragraph (c)(3)(i) for violations of various consumer laws, including, the Home Mortgage Disclosure Act (12 U.S.C. 2804 *et seq.* and 12 CFR 203.6), the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*), the Truth in Savings Act (12 U.S.C. 4301 *et seq.*), the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.* and 12 CFR part 3500), the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*), the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*) in the amounts set forth in paragraphs (c)(3)(i) through (c)(3)(iii) of this section.

(ii) *Civil money penalties assessed pursuant to section 7(c) of the FDIA for late filing or the submission false or misleading certified statements.* Tier One civil money penalties may be assessed pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) in an amount not to exceed 2,200 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Two civil money penalties may be assessed pursuant to section 7(c)(4)(B) of the FDIA (12 U.S.C. 1817(c)(4)(B)) in an amount not to exceed \$27,000 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Three civil money penalties may be assessed pursuant to section 7(c)(4)(C) in an amount not to exceed the lesser of \$1,250,000 or 1 percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected.

(iii) *Civil money penalties assessed pursuant to section 10(e)(4) of the FDIA for refusal to allow examination or to provide required information during an examination.* Pursuant to section 10(e)(4) of the FDIA (12 U.S.C. 1820(e)(4)), civil money penalties may be assessed against any

affiliate of an insured depository institution which refuses to permit a duly-appointed examiner to conduct an examination or to provide information during the course of an examination as set forth in section 20(b) of the FDIA (12 U.S.C. 1820(b)), in an amount not to exceed \$6,500 for each day the refusal continues.

(iv) *Civil money penalties assessed pursuant to section 18(a)(3) of the FDIA for incorrect display of insurance logo.* Pursuant to section 18(a)(3) of the FDIA (12 U.S.C. 1828(a)(3)), civil money penalties may be assessed against an insured depository institution which fails to correctly display its insurance logo pursuant to that section, in an amount not to exceed \$110 for each day the violation continues.

(v) *Civil money penalties assessed pursuant to section 18(h) of the FDIA for failure to file a certified statement or to pay assessment.* Pursuant to section 18(h) of the FDIA (12 U.S.C. 1828(h)), a civil money penalty may be assessed against an insured depository institution which wilfully fails or refuses to file a certified statement or pay any assessment required under the FDIA in an amount not to exceed \$110 for each day the violation continues.

(vi) *Civil money penalties assessed pursuant to section 19b(j) of the FDIA for recordkeeping violations.* Pursuant to section 19b(j) of the FDIA (12 U.S.C. 1829b(j)), civil money penalties may be assessed against an insured depository institution and any director, officer or employee thereof who wilfully or through gross negligence violates or causes a violation of the recordkeeping requirements of that section or its implementing regulations in an amount not to exceed \$11,000 per violation.

(vii) *Civil fine pursuant to 12 U.S.C. 1832(c) for violation of provisions forbidding interest-bearing demand deposit accounts.* Pursuant to 12 U.S.C. 1832(c), any depository institution which violates the prohibition on deposit or withdrawal from interest-bearing accounts via negotiable or transferable instruments payable to third parties shall be subject to a fine of \$1,100 per violation.

(viii) *Civil penalties for violations of security measure requirements under 12 U.S.C. 1884.* Pursuant to 12 U.S.C. 1884,

an institution which violates a rule establishing minimum security requirements as set forth in 12 U.S.C. 1882, shall be subject to a civil penalty not to exceed \$110 for each day of the violation.

(ix) *Civil money penalties assessed pursuant to the Bank Holding Company Act of 1970 for prohibited tying arrangements.* Pursuant to the Bank Holding Company Act of 1970, Tier One civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(i) in an amount not to exceed \$6,500 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(ii) in an amount not to exceed \$32,500 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) in an amount not to exceed, in the case of any person other than an insured depository institution \$1,250,000 for each day during which the violation, practice, or breach continues or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,250,000 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(x) *Civil money penalties assessed pursuant to the International Banking Act of 1978.* Pursuant to the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), civil money penalties may be assessed for failure to comply with the requirements of the IBA pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amounts set forth in paragraph (c)(3)(i) of this section.

(xi) *Civil money penalties assessed for appraisal violations.* Pursuant to 12 U.S.C. 3349(b), where a financial institution seeks, obtains, or gives any other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state certified or licensed appraiser in connection with a federally related transaction, a civil money penalty may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) in the amounts set forth in paragraph (c)(3)(i) of this section.

(xii) *Civil money penalties assessed pursuant to International Lending Supervision Act.* Pursuant to the International Lending Supervision Act (ILSA) (12 U.S.C. 3909(d)), the CMP that may be assessed against any banking institution or any officer, director, employee, agent or other person participating in the conduct of the affairs of such banking institution is amount not to exceed \$1,100 for each day a violation of the ILSA or any rule, regulation or order issued pursuant to ILSA continues.

(xiii) *Civil money penalties assessed for violations of the Community Development Banking and Financial Institution Act.* Pursuant to the Community Development Banking and Financial Institution Act (Community Development Banking Act) (12 U.S.C. 4717(b)) a civil money penalty may be assessed for violations of the Community Development Banking Act pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amounts set forth in paragraph (c)(3)(i) of this section.

(xiv) *Civil money penalties assessed for violations of the Securities Exchange Act of 1934.* Pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u–2), civil money penalties may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. Tier One civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(1) in an amount not to exceed \$6,500 for a natural person or \$65,000 for any other person for violations set forth in 15 U.S.C. 78u–2(a). Tier Two civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(2) in an amount not to exceed—for each violation set forth in 15 U.S.C. 78u–2(a)—\$65,000 for a natural person or \$325,000 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Tier Three civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(3) for each violation set forth in 15 U.S.C. 78u–2(a), in an amount not to exceed \$130,000 for a natural person or \$625,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regu-

latory requirement; and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(xv) *Civil money penalties assessed for false claims and statements pursuant to the Program Fraud Civil Remedies Act.* Pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3802), civil money penalties of not more than \$6,500 per claim or statement may be assessed for violations involving false claims and statements.

(xvi) *Civil money penalties assessed for violations of the Flood Disaster Protection Act.* Pursuant to the Flood Disaster Protection Act (FDPA)(42 U.S.C. 4012a(f)), civil money penalties may be assessed against any regulated lending institution that engages in a pattern or practice of violations of the FDPA in an amount not to exceed \$385 per violation, and not to exceed a total of \$125,000 annually.

[56 FR 37975, Aug. 9, 1991, as amended at 61 FR 57991, Nov. 12, 1996; 64 FR 62100, Nov. 16, 1999; 65 FR 64887, Oct. 31, 2000; 66 FR 9189, Feb. 7, 2001; 69 FR 61305, Oct. 18, 2004]

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

(a) *Effective date.* (1) Unless otherwise provided in the Notice, except in situations covered by paragraph (a)(2) of this section, civil penalties assessed pursuant to this subpart are due and payable 60 days after the Notice is served upon the respondent.

(2) 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.

(b) *Payment.* All penalties collected under this section shall be paid over to the Treasury of the United States.