

may provide the person an opportunity to present written materials or request a conference with members of the Board's staff to show that the penalty should not be assessed or, if assessed, should be reduced in amount.

§ 263.62 Relevant considerations for assessment of civil penalty.

In determining the amount of the penalty to be assessed, the Board shall take into account the appropriateness of the penalty with respect to the financial resources and good faith of the person charged, the gravity of the misconduct, the history of previous misconduct, the economic benefit derived by the person from the misconduct, and such other matters as justice may require.

§ 263.63 Assessment order.

(a) In the event of consent to an assessment by the person concerned, or if, upon the record made at an administrative hearing, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue a final order of assessment of civil penalty. In its final order, the Board may modify the amount of the penalty specified in the notice of assessment.

(b) An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§ 263.64 Payment of civil penalty.

(a) The date designated in the notice of assessment for payment of the civil penalty will normally be 60 days from the issuance of the notice. If, however, the Board finds in a specific case that the purposes of the authorizing statute would be better served if the 60-day period is changed, the Board may shorten or lengthen the period or make the civil penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of civil penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If

an assessment order is issued, it will specify the date by which the civil penalty should be paid or collected.

(b) Checks in payment of civil penalties should be made payable to the "Board of Governors of the Federal Reserve System." Upon collection, the Board shall forward the amount of the penalty to the Treasury of the United States.

§ 263.65 Civil penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), the Board has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil money penalty provided by law within its jurisdiction. The adjusted civil penalty amounts provided in paragraph (b) of this section replace only the amounts published in the statutes authorizing the assessment of penalties. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The increased penalty amounts apply only to violations occurring after October 24, 1996.

(b) *Maximum civil money penalties.* The maximum civil money penalties as set forth in the referenced statutory sections are adjusted as follows:

(1) 12 U.S.C. 324:

(i) Inadvertently late or misleading reports, *inter alia*—\$2,000.

(ii) Other late or misleading reports, *inter alia*—\$22,000.

(iii) Knowingly or recklessly false or misleading reports, *inter alia*—\$1,100,000.

(2) 12 U.S.C. 504, 505, 1817(j)(16), 1818(i)(2) and 1972(2)(F):

(i) First tier—\$5,500.

(ii) Second tier—\$27,500.

(iii) Third tier—\$1,100,000.

(3) 12 U.S.C. 1832(c)—\$1,100.

(4) 12 U.S.C. 1847(b)—\$27,500.

(5) 12 U.S.C. 1847(d):

(i) First tier—\$2,000.

(ii) Second tier—\$22,000.

(iii) Third tier—\$1,100,000.

(6) 12 U.S.C. 1884—\$110.

(7) 12 U.S.C. 3909(d)—\$1,100.

(8) 15 U.S.C. 78u-2:

(i) 15 U.S.C. 78u-2(b)(1)—\$5,500 for a natural person and \$55,000 for any other person.

(ii) 15 U.S.C. 78u-2(b)(2)—\$55,000 for a natural person and \$275,000 for any other person.

(iii) 15 U.S.C. 78u-2(b)(3)—\$110,000 for a natural person and \$550,000 for any other person.

(9) 42 U.S.C. 4012a(f)(5):

(i) For each violation—\$350.

(ii) For the total amount of penalties assessed under 42 U.S.C. 4012a(f)(5) against an institution or enterprise during any calendar year—\$105,000.

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Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony is Charged or Proven

§ 263.70 Purpose and scope.

The rules and procedures set forth in this subpart apply to informal hearings afforded to any institution-affiliated party for whom the Board is the appropriate regulatory agency, who has been suspended or removed from office or prohibited from further participation in any manner in the conduct of the institution's affairs by a notice or order issued by the Board upon the grounds set forth in section 8(g) of the FDIA (12 U.S.C. 1818(g)).

§ 263.71 Notice or order of suspension, removal, or prohibition.

(a) *Grounds.* The Board may suspend an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is charged in any information, indictment, or complaint authorized by a United States attorney with the commission of, or participation in, a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law. The Board may remove an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an in-

stitution's affairs when the person is convicted of such an offense and the conviction is not subject to further direct appellate review. The Board may suspend or remove an institution-affiliated party or prohibit an institution-affiliated party from participation in an institution's affairs in these circumstances if the Board finds that continued service to the financial institution or participation in its affairs by the institution-affiliated party may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the financial institution.

(b) *Contents.* The Board commences a suspension, removal, or prohibition action under this subpart with the issuance, and service upon a institution-affiliated party, of a notice of suspension from office, or order of removal from office, or notice or order of prohibition from participation in the financial institution's affairs. Such a notice or order shall indicate the basis for the suspension, removal, or prohibition and shall inform the institution-affiliated party of the right to request in writing, within 30 days of service of the notice or order, an opportunity to show at an informal hearing that continued service to, or participation in the conduct of the affairs of, the financial institution does not and is not likely to pose a threat to the interests of the financial institution's depositors or threaten to impair public confidence in the financial institution. Failure to file a timely request for an informal hearing shall be deemed to be a waiver of the right to request such a hearing. A notice of suspension or prohibition shall remain in effect until the criminal charge upon which the notice is based is finally disposed of or until the notice is terminated by the Board.

(c) *Service.* The notice or order shall be served upon the affiliated financial institution concerned, whereupon the institution-affiliated party shall immediately cease service to the financial institution or further participation in any manner in the conduct of the affairs of the financial institution. A notice or order of suspension, removal, or prohibition may be served by any of the means authorized for service under § 263.11(c)(2) of subpart A.