

**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, In-
cluding 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.

(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 institution or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Authority of the Board of Directors.* The Board of Directors or its designee may assess civil money penalties under section 8(i) of the FDIA (12 U.S.C. 1818(i)), and § 308.1(e) of the Uniform Rules (this part).

(d) *Maximum civil money penalty amounts.* Under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Board of Directors or its designee may assess civil money penalties in the maximum amounts using the following framework:

(1) *Statutory formula to calculate inflation adjustments.* The FDIC is required by statute to annually adjust for inflation the maximum amount of each civil money penalty within its jurisdiction to administer. The inflation adjustment is calculated by multiplying the maximum dollar amount of the civil money penalty for the previous calendar year by the cost-of-living inflation adjustment multiplier provided annually by the Office of Management and Budget and rounding the total to the nearest dollar.

(2) *Notice of inflation adjustments.* By January 15 of each calendar year, the FDIC will publish notice in the FEDERAL REGISTER of the maximum penalties that may be assessed after each January 15, based on the formula in

paragraph (d)(1) of this section, for conduct occurring on or after November 2, 2015.

(e) *Civil money penalties for violations of 12 U.S.C. 1464(v) and 12 U.S.C. 1817(a)—(1) Late filing—Tier One penalties.* Where an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, but where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error, or where the institution inadvertently transmitted a Call Report that is minimally late, the Board of Directors or its designee may assess a Tier One civil money penalty. The amount of such a penalty shall not exceed the maximum amount calculated and published annually in the FEDERAL REGISTER under paragraph (d)(2) of this section. Such a penalty may be assessed for each day that the violation continues.

(i) *First offense.* Generally, in such cases, the amount assessed shall be an amount calculated and published annually in the FEDERAL REGISTER under paragraph (d)(2) of this section. The FEDERAL REGISTER notice will contain a presumptive penalty amount per day for each of the first 15 days for which the failure continues, and a presumptive amount per day for each subsequent days the failure continues, beginning on the 16th day. The annual FEDERAL REGISTER notice will also provide penalty amounts that generally may be assessed for institutions with less than \$25,000,000 in assets.

(ii) *Subsequent offense.* The FDIC will calculate and publish in the FEDERAL REGISTER a presumptive daily Tier One penalty to be imposed where an institution has been delinquent in making or publishing its Call Report within the preceding five quarters. The published penalty shall identify the amount that will generally be imposed per day for each of the first 15 days for which the failure continues, and the amount that will generally be imposed per day for each subsequent day the failure continues, beginning on the 16th day. The annual FEDERAL REGISTER notice will

§ 308.133

12 CFR Ch. III (1–1–23 Edition)

also provide penalty amounts that generally may be assessed for institutions with less than \$25,000,000 in assets.

(iii) *Lengthy or repeated violations.* The amounts set forth in this paragraph (e)(1) will be assessed on a case-by-case basis where the amount of time of the institution's delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

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

(2) *Late-filing—Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a Tier Two civil money penalty for each day the failure continues. The amount of such a penalty will not exceed the maximum amount calculated and published annually in the FEDERAL REGISTER under paragraph (d)(2) of this section.

(3) *False or misleading reports or information—(i) Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a Tier One civil money penalty for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error, or where the institution inadvertently transmits a Call Report or information that is false or misleading. The amount of such a penalty will not exceed the maximum amount calculated and published annually in the FEDERAL REGISTER under paragraph (d)(2) of this section.

(ii) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a Tier Two civil money penalty for each day the information is not corrected. The amount of such a penalty will not exceed the maximum amount calculated and published annually in the FEDERAL REGISTER under paragraph (d)(2) of this section.

(iii) *Tier Three penalties.* Where an institution 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 Tier Three civil money penalty for each day the information is not corrected. The penalty shall not exceed the lesser of 1 percent of the institution's total assets per day or the amount calculated and published annually in the FEDERAL REGISTER under paragraph (d)(2) of this section.

(4) *Mitigating factors.* The amounts set forth in paragraphs (e)(1) through (e)(3) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

[77 FR 74577, Dec. 17, 2012, as amended at 81 FR 42239, June 29, 2016; 81 FR 95416, Dec. 28, 2016; 83 FR 1522, Jan. 12, 2018; 83 FR 61114, Nov. 28, 2018]

§ 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.