

§ 908.5

12 CFR Ch. IX (1-1-04 Edition)

in, or, if the Finance Board has reasonable cause to believe is about to engage in:

- (i) An unsafe or unsound practice in conducting the business of the Bank;
- (ii) Any conduct that violates any provision of the Act or any applicable law, order, rule or regulation; or
- (iii) Any conduct that violates any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement between the Bank and the Finance Board.

(2) *Content of notice of charges.* A notice of charges shall contain a statement of the facts constituting the alleged conduct or violation and otherwise shall conform to the requirements set forth in §908.40.

(b) *Cease and desist order*—(1) *Issuance of order.* An order to cease and desist shall be issued in writing and only after the respondent has been given the opportunity for a hearing on the record in accordance with the requirements set forth in §908.9. If the Board of Directors finds, based on the record of the hearing, that any conduct or violation specified in the notice of charges has been established or if a respondent consents (or is deemed to have consented pursuant to §908.43), the Board of Directors may issue and serve upon the respondent an order requiring the respondent to cease and desist from any such practice, violation or conduct, to take affirmative action to correct or remedy the conditions resulting from any such practice, violation or conduct, or to comply with such limitations on activities or functions as may be prescribed therein.

(2) *Affirmative action.* The authority of the Board of Directors to issue and serve a cease and desist order that requires a respondent to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require a respondent to—

- (i) Make restitution or provide reimbursement, indemnification, or guarantee against loss if—
 - (A) The respondent was unjustly enriched in connection with the viola-

tion, conduct or practice described in the order; or

- (B) The violation, conduct or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Finance Board;
 - (ii) Restrict the growth of the Bank;
 - (iii) Dispose of any loan or asset involved;
 - (iv) Rescind any agreement or contract;
 - (v) Employ qualified officers or employees (who may be subject to approval by the Finance Board, as directed by the Finance Board); and
 - (vi) Take such other action as the Finance Board determines to be appropriate.

(3) *Authority to limit activities.* The authority of the Board of Directors to issue and serve a cease and desist order includes the authority to place limitations on the activities or functions of a respondent.

(c) *Effective date of order.* An order issued under paragraph (b) of this section shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the respondent, (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Board of Directors or otherwise as provided for in this part.

§ 908.5 Temporary cease and desist orders.

(a) *Grounds.* Whenever the Board of Directors determines that any conduct or violation, or threatened conduct or violation, specified in a notice of charges issued and served upon a respondent, or the continuation of such conduct or violation, is likely to cause insolvency, a significant depletion of total capital, or irreparable harm to a Bank prior to the completion of the cease and desist proceeding, the Board of Directors may issue a temporary order requiring the respondent to cease and desist from any such conduct or violation, or such threatened conduct or violation, and to take affirmative

Federal Housing Finance Board

§ 908.6

action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings. Such order may include any requirement authorized under § 908.4(b)(2).

(b) *Incomplete records.* If a notice of charges specifies that the books and records of a Bank are so incomplete or inaccurate that the Finance Board 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 a Bank, the Finance Board may issue a temporary order requiring a respondent to:

(1) Cease and desist from any activity or practice that caused or contributed to, whether in whole or in part, the incomplete or inaccurate state of the books or records of a Bank; or

(2) Take affirmative action to restore the books or records to a complete and accurate state.

(c) *Effective date.* Any temporary order issued pursuant to this section shall become effective upon service upon the respondent.

(d) *Effective period.* (1) Any temporary order issued under paragraph (a) of this section, unless set aside, limited, or suspended by a court in a proceeding under paragraph (e) of this section, shall remain in effect and enforceable pending the completion of the proceeding on the notice of charges and shall remain effective until the Board of Directors dismisses the charges specified in the notice of charges or it is superceded by a cease and desist order.

(2) Any temporary order issued under paragraph (b) of this section, unless set aside, limited, or suspended by a court in proceedings pursuant to paragraph (e) of this section, shall remain in effect and enforceable until the earlier of the completion of the proceeding on the notice of charges, or the date that the Finance Board determines, by examination or otherwise, that the books and records of the Bank are accurate and reflect the financial condition of the Bank.

(e) *Judicial relief.* As authorized by section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and sections 1372(d) and 1375(b) of the Safety and Soundness Act

(12 U.S.C. 4632(d) and 4635(b)), a respondent that has been served with a temporary order may apply to the United States District Court for the District of Columbia within ten days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the hearing pursuant to the notice of charges.

(f) *Enforcement of temporary order.* If a respondent violates, threatens to violate, or fails to obey, a temporary order issued pursuant to this section, the Finance Board may bring an action in the United States District Court for the District of Columbia for an injunction to enforce such temporary order, as authorized by sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1372(e) of the Safety and Soundness Act (12 U.S.C. 4632(e)).

§ 908.6 Civil money penalties.

(a) *Notice of assessment.* (1) *Grounds.* The Finance Board may issue and serve a notice of assessment of a civil money penalty on any Bank or any executive officer or director of a Bank that:

(i) Violates any provision of the Act, or any order, rule, or regulation issued under the Act;

(ii) Violates any final or temporary cease and desist order issued by the Finance Board pursuant to the Act;

(iii) Violates any written agreement between a Bank and the Finance Board; or

(iv) Engages in any conduct that causes or is likely to cause a loss to a Bank.

(2) *Content of notice.* A notice of assessment of a civil money penalty shall contain a statement of the facts constituting the alleged conduct or violation and otherwise conform to the requirements set forth in § 908.40.

(b) *Order assessing penalty.* An order assessing a civil money penalty shall be issued in writing and only after the respondent has been given the opportunity for a hearing on the record in accordance with the procedures set forth in § 908.9. If the Board of Directors finds, based on the record of the hearing, that any conduct or violation specified in the notice of assessment of