

institution-affiliated party concerned may request in writing an opportunity to appear before the Board to show that the continued service to or participation in the conduct of the affairs of the credit union by such party does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair public confidence in the credit union. Upon receipt of any such request, the Board shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before the Board or its designee to submit written materials (or, at the discretion of the Board, oral testimony) and oral argument. Within sixty days of such hearing, the Board shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the credit union will be continued, terminated or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's decision, if adverse to such party. The Board is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(j) Jurisdiction of hearing; procedure; judicial review

(1) Any hearing provided for in this section (other than the hearing provided for in subsection (i)(3) of this section) shall be held in the Federal judicial district or in the territory in which the principal office of the credit union is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. After such hearing, and within ninety days after the Board has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (j). Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it may deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the credit union or the institution-affiliated party concerned or an order issued under subsection (i)(1) of this section) by filing in the court of appeals of the United States for the cir-

cuit in which the principal office of the credit union is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Board.

(k) Jurisdiction and enforcement; penalty

(1) The Board may in its discretion apply to the United States district court, or the United States court of any territory within the jurisdiction of which the principal office of the credit union is located, for the enforcement of any effective and outstanding notice or order issued under this section or section 1790d of this title, and such courts shall have jurisdiction and power to order and require compliance therewith. However, except as otherwise provided in this section or section 1790d of this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section or section 1790d of this title or to review, modify, suspend, terminate, or set aside any such notice or order.

(2) CIVIL MONEY PENALTY.—

(A) **FIRST TIER.**—Any insured credit union which, and any institution-affiliated party who—

- (i) violates any law or regulation;
- (ii) violates any final order or temporary order issued pursuant to subsection (e), (f), (g), (i), or (q) of this section, or any final order under section 1790d of this title;
- (iii) violates any condition imposed in writing by the Board in connection with any action on any application, notice, or other request by the credit union or institution-affiliated party; or
- (iv) violates any written agreement between such credit union and such agency,

shall forfeit and pay a civil penalty of not more than \$5,000 for each day during which such violation continues.

(B) **SECOND TIER.**—Notwithstanding subparagraph (A), any insured credit union which, and any institution-affiliated party who—

- (i)(I) commits any violation described in any clause of subparagraph (A);
- (II) **recklessly engages in an unsafe or unsound practice** in conducting the affairs of such credit union; or

- (III) breaches any fiduciary duty;
 (ii) which violation, practice, or breach—
 (I) is part of a **pattern of misconduct**;
 (II) causes or is likely to cause **more than a minimal loss** to such credit union;
 or
 (III) results in **pecuniary gain or other benefit** to such party,

shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any insured credit union which, and any institution-affiliated party who—

- (i) **knowingly**—
 (I) commits any violation described in any clause of subparagraph (A);
 (II) engages in any unsafe or unsound practice in conducting the affairs of such credit union; or
 (III) breaches any fiduciary duty; and
 (ii) **knowingly or recklessly causes a substantial loss to such credit union or a substantial pecuniary gain or other benefit** to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

- (i) in the case of any person other than an insured credit union, an amount not to exceed \$1,000,000; and
 (ii) in the case of any insured credit union, an amount not to exceed the lesser of—
 (I) \$1,000,000; or
 (II) 1 percent of the total assets of such credit union.

(E) ASSESSMENT.—

(i) WRITTEN NOTICE.—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the Board by written notice.

(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Board may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) MITIGATING FACTORS.—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the Board shall take into account the appropriateness of the penalty with respect to—

- (i) the size of financial resources and good faith of the insured credit union or the person charged;
 (ii) the gravity of the violation;
 (iii) the history of previous violations; and
 (iv) such other matters as justice may require.

(H) HEARING.—The insured credit union or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION.—

(i) REFERRAL.—If any insured credit union or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the Board shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) “VIOLATE” DEFINED.—For purposes of this section, the term “violate” includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(L) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of a institution-affiliated party (including a separation caused by the closing of an insured credit union) shall not affect the jurisdiction and authority of the Board to issue any notice or order and proceed under this section against any such party, if such notice or order is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such credit union (whether such date occurs before, on, or after August 9, 1989).

(I) Criminal penalty for violation of certain orders

Whoever—

(1) under this chapter, is suspended or removed from, or prohibited from participating in the affairs of any credit union described in subsection (g)(5) of this section; and

(2) knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (g)(5) of this section) in the conduct of the affairs of such a credit union;

shall be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

(m) Definitions

As used in this section (1) the terms “cease-and-desist order which has become final” and

³So in original. Probably should be “not to”.