

**PPM 5000-7 (REV)**Section: **Bank Supervision**Subject: **Civil Money Penalties**

**To:** Deputy Comptrollers, Associate Deputy Comptrollers, Assistant Deputy Comptrollers, District Counsel, Department and Division Heads, and All Examining Personnel

**Purpose**

This *Policies and Procedures Manual* (PPM) sets forth the Office of the Comptroller of the Currency's (OCC) policies for the assessment of civil money penalties (CMP).<sup>1</sup> It revises PPM 5000-7 (REV), dated June 16, 1993, and supersedes PPM 5000-27 (REV), "Civil Money Penalty Assessment for Delinquent or Inaccurate Call Reports," dated May 21, 1993, and OTS Regulatory Bulletin 18-3b, "Enforcement Policy Statement on Civil Money Penalties," dated December 3, 2009. These policies are internal guidelines for the use of the OCC and do not create any substantive or procedural rights that are legally or administratively enforceable.

**Background**

The Financial Institutions Regulatory and Interest Rate Control Act of 1978, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, gave the OCC the authority to assess CMPs against any national bank or institution-affiliated party (IAP), as defined in 12 USC 1813(u). The passage of the International Banking Act of 1978 gave the OCC the authority to assess CMPs against federal branches and agencies licensed by the OCC and against IAPs of those institutions. The Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 transferred authority to assess CMPs against federal savings associations and their IAPs from the Office of Thrift Supervision to the OCC. The OCC may also assess CMPs against bank service companies and service providers pursuant to 12 USC 1861 et seq. and 12 USC 1464(d)(7). In this PPM, the term "institutions" will refer to national banks, federal branches and agencies, federal savings associations, and bank service companies collectively.

**Policy**

A CMP may serve as a deterrent to future violations of law, regulation, orders, conditions imposed in writing, and written agreements, as well as certain unsafe or unsound practices and

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<sup>1</sup> This PPM does not address CMPs for securities-related violations, which are addressed in PPM 5310-5 (REV), "Securities Activities Enforcement Policy," dated November 30, 2011. Questions concerning CMPs for securities-related violations should be addressed to the OCC's Securities and Corporate Practices Division.

breaches of fiduciary duty, both by the IAP or institution against which the CMP is assessed and by other IAPs and institutions. A CMP can also encourage correction of violations, unsafe or unsound practices, and breaches of fiduciary duty. A CMP against an IAP emphasizes the accountability of individuals. The OCC may use its CMP authority as deemed appropriate to achieve these objectives. This action may be independent or used in conjunction with other supervisory or enforcement actions. CMPs must be supported by adequate and thorough documentation.

## Statutory CMP Authority

### General CMP Statutes

The OCC's general CMP authority is set forth in 12 USC 1818(i).<sup>2</sup> This statute classifies CMPs into three tiers based on the severity of the actionable conduct and the level of culpability. The statute also sets maximum amounts that the OCC may assess for each day that the actionable conduct continues. These amounts are periodically adjusted for inflation. The current maximum penalty amount for each tier is in the implementing regulations for federal savings associations at 12 CFR 109.103 and for other OCC-regulated institutions at 12 CFR 19.240.

#### *Tier 1*

The OCC may assess tier 1 CMPs against an institution or IAP that engages in violations of any

- law or regulation,
- final or temporary order,
- condition imposed in writing in connection with the grant of any application or other request by the institution, or
- written agreement.

#### *Tier 2*

The OCC may assess tier 2 CMPs against an institution or IAP that engages in

- violations of law, regulation, orders, conditions imposed in writing, or written agreements,
- reckless unsafe or unsound practices, or
- breaches of fiduciary duty,

which

- are part of a pattern of misconduct,
- cause or are likely to cause more than a minimal loss to the institution, or
- result in a pecuniary gain to the party engaged in the violation, practice, or breach.

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<sup>2</sup> Although the OCC has additional CMP authority under 12 USC 93(b) and 12 USC 504, the authority in those statutes is redundant with that in 12 USC 1818(i), as amended. Accordingly, the OCC may rely exclusively on 12 USC 1818(i) in all cases that it would have formerly brought under 12 USC 93(b) or 12 USC 504.

*Tier 3*

The OCC may assess tier 3 CMPs against an institution or IAP that knowingly engages in

- violations of law, regulation, orders, conditions imposed in writing, or written agreements,
- unsafe or unsound practices, or
- breaches of fiduciary duty,

which knowingly or recklessly cause

- substantial loss to the institution, or
- substantial gain to the party engaged in the violation, practice, or breach.

The term “violation,” for the purpose of CMPs under 12 USC 1818(i), is defined by 12 USC 1813(v) to include “any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.”

**Other CMP Authority**

In addition to the OCC’s general statutory CMP authority in 12 USC 1818(i), the OCC also has separate statutory authority to assess CMPs for violations of certain specific laws and regulations, including change of control regulations, call report filing requirements, and flood insurance laws and regulations,<sup>3</sup> among others. The authorizing statutes and the maximum penalties for each of these statutory violations are set forth in the implementing regulations for federal savings associations in 12 CFR 109.103 and for other OCC-regulated institutions in 12 CFR 19.240.

**Statutory CMP Factors**

When determining CMP amounts under 12 USC 1818(i), the OCC is required to consider four statutory factors: (1) the size of financial resources and good faith of the institution or IAP charged; (2) the gravity of the violation; (3) the history of previous violations; and (4) such other matters as justice may require. The federal banking agencies have adopted the Federal Financial Institutions Examination Council’s (FFIEC) “Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies” (1998 FFIEC Interagency Policy), which sets forth 13 relevant factors that the agencies should consider in assessing CMPs, consistent with the four statutory factors.<sup>4</sup> To ensure the statutory and 1998 FFIEC Interagency Policy factors are considered in CMP decisions, and to enhance the consistency of CMP decisions, the OCC has developed institution and IAP CMP matrices for the agency to use when considering the appropriate amount of a CMP.

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<sup>3</sup> The CMP matrices appended to this PPM should not be used to determine whether violations of flood insurance laws and regulations constitute a pattern or practice for purposes of CMPs under 12 USC 4012a(f). A CMP matrix should only be completed for such violations if CMPs are being considered under the authority of 12 USC 1818(i).

<sup>4</sup> The OCC transmitted the 1998 FFIEC Interagency Policy in OCC Bulletin 1998-32, “Civil Money Penalties: Interagency Statement” (July 24, 1998).

## Institution and IAP CMP Matrices

The OCC's institution and IAP CMP matrices are tools to quantify the degree of severity of violations, unsafe or unsound practices, and breaches of fiduciary duty. The "CMP Matrix for Institutions" (see appendix A) and the "CMP Matrix for Institution-Affiliated Parties" (see appendix B) provide for consideration of three of the statutory factors set forth in 12 USC 1818(i)(2)(G) and the 13 assessment factors enumerated in the 1998 FFIEC Interagency Policy. Together with the final statutory factor in 12 USC 1818(i)(2)(G), "such other matters as justice may require," these factors provide the basis for recommended CMP actions. The matrices provide guidance in determining whether to assess a CMP and, if so, the appropriate amount of the CMP.

The OCC should use the CMP matrices in any case in which the relevant authorizing statute provides that penalties assessed pursuant to that statute shall be subject to the provisions of 12 USC 1818(i) or 12 USC 1818(i)(2)(G). With respect to CMPs assessed pursuant to 12 USC 1818 or statutes that refer to 12 USC 1818, the institution CMP matrix and the IAP CMP matrix apply to the assessment of tier 1 and tier 2 CMPs against institutions and IAPs, respectively. The matrices do not apply to the assessment of tier 3 CMPs, which the OCC must assess only in the most severe cases that have a substantial impact on the national banking system.

The OCC uses the institution CMP matrix and the IAP CMP matrix as tools to help ensure that CMPs are imposed consistently and equitably. **The matrices are only guidance; they do not reduce the CMP process to a mathematical equation and are not a substitute for sound supervisory judgment.** In some cases, consistent with the final statutory factor in 12 USC 1818(i)(2)(G), it may be appropriate to depart from the matrices to reach a fair and equitable result that achieves the agency's supervisory objectives.

## Procedures

When an examiner discovers serious potential violations of banking law or regulation, orders, conditions imposed in writing, or written agreements, or unsafe or unsound practices or breaches of fiduciary duty, the examiner consults with the institution's supervisory office and appropriate OCC legal staff to determine whether a CMP is legally supportable under 12 USC 1818 or other CMP authorizing statutes. The examiner and supervisory office may also consider an appropriate alternative supervisory response, which may include the issuance of a reprimand or supervisory letter to an IAP if certain criteria, described on page 5, are satisfied.

A reprimand is a strongly worded document used when a CMP against an IAP is legally supportable but the OCC chooses not to pursue the action. A reprimand is appropriate only when the IAP CMP matrix results in a small suggested CMP amount; a review of the CMP factors indicates that the misconduct was technical in nature, there was no history of misconduct, or there was no intent to engage in the misconduct; the issuance of a reprimand in lieu of a small CMP will achieve supervisory objectives; and the appropriate Supervision Review Committee (SRC) approves the issuance of a reprimand. In contrast, a supervisory letter generally should be

used when a CMP against an IAP is not warranted, but the OCC nonetheless wishes to call attention to a supervisory problem.

If there is a legal basis for a CMP under 12 USC 1818(i), the examiner, in consultation with the supervisory office and appropriate OCC legal staff, must complete the appropriate CMP matrix, if applicable, to determine the level of action suggested<sup>5</sup> and develop a recommendation for a CMP, reprimand, or supervisory letter, as appropriate. The examiner-in-charge (EIC) of the institution submits a CMP referral to the supervisory office for review. Whenever the OCC is considering the assessment of a CMP against the institution or its IAPs or the issuance of reprimands or supervisory letters to IAPs, the examiner also provides advance notice to the institution at the exit meeting and in the report of examination.<sup>6</sup>

The referral must include the EIC's memorandum containing his or her recommendations, the completed CMP matrix, if any, and supporting documentation. The supporting documentation must be sufficient to demonstrate the violations, unsafe or unsound practices, or breaches of fiduciary duty at issue. In cases involving IAPs, the documentation must also support the IAP's responsibility for the misconduct at issue. Recommendations for a reprimand must include documentation supporting the application of the criteria described above. Examiners may consult with legal staff on what documentation should be included.<sup>7</sup> If the supervisory office concurs with the EIC's recommendation, or otherwise recommends a CMP or reprimand, it sends the referral to the appropriate OCC legal staff for review.

If, after reviewing the referral, the supervisory office and legal staff determine that the OCC has established a basis for taking the recommended action, the supervisory office obtains any necessary approval from the appropriate SRC, in accordance with the relevant delegations of authority,<sup>8</sup> to send a 15-day letter to the IAP or institution against which it is actively considering assessing a CMP or issuing a reprimand. The OCC issues a 15-day letter before it assesses a CMP or issues a reprimand. In cases when only a reprimand is under consideration, the 15-day letter should reflect that fact and not indicate that the OCC is considering assessing a CMP. Alternatively, the supervisory office may resolve the matter by issuing a supervisory letter or taking no further action, after obtaining any necessary approval from the appropriate SRC.

An IAP or institution that receives a 15-day letter will have 15 days to respond. Upon request, the supervisory office may, at its discretion, extend this 15-day period. After the supervisory

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<sup>5</sup> In all cases in which a CMP is being considered and there is either unjust enrichment to the institution or an IAP or reckless disregard of the law or a prior order, a restitution action under 12 USC 1818(b)(6) should also be considered.

<sup>6</sup> Because the OCC sometimes identifies violations and assesses CMPs or issues reprimands or supervisory letters outside the normal examination process, such advance notice may not be applicable in every case. The absence of advance notice is not a barrier to a CMP action.

<sup>7</sup> The Enforcement and Compliance Division maintains lists of types of documents that should be obtained to support the citation of specific types of violations of law or regulation.

<sup>8</sup> The authority to initiate, negotiate, execute, modify, and terminate enforcement actions covered by this PPM has been delegated in many cases. Current delegations of authority are maintained on the relevant Senior Deputy Comptroller's page on the OCC intranet.

office receives the response to the 15-day letter, or the response period has ended, the supervisory office and legal staff complete their review of the referral, including consideration of the 15-day letter response and any additional relevant information, and legal staff prepares a memorandum of the legal basis of the recommended action. At this time, the supervisory office completes a new version of the appropriate CMP matrix, if applicable, updates the EIC recommendation memorandum, if necessary, and presents the case to the appropriate SRC.

When the OCC decides to assess a CMP after a presentation to the SRC, the supervisory office initiates the CMP by sending the IAP or institution a letter disclosing that a CMP has been approved, the basis of the CMP, and the dollar amount of the assessment, along with a draft stipulation and consent order. The letter indicates that the IAP or institution may either pay the CMP or contest the action and explains that if the IAP or institution does not pay the CMP within a fixed period, the OCC will serve a notice of assessment.

In nondelegated actions involving delegated institutions, the relevant OCC district office submits the referral, along with its recommendations, to the Enforcement and Compliance Division (E&C). In cases when the district has approved a delegated CMP, a reprimand, or a supervisory letter against one IAP but recommends nondelegated CMPs against other IAPs that are associated with the same institution, all of the actions are deemed to be nondelegated and are handled by E&C. Similarly, in cases involving a CMP and some other type of related action that is nondelegated, for example, a removal, the entire matter is treated as nondelegated and handled by E&C. E&C completes its review and presents the case to the appropriate Washington SRC.

Legal staff performs negotiation, settlement, and collection of CMPs upon direction from district or Washington supervision, as applicable. In delegated cases, district attorneys may negotiate the CMP for a reasonable period (not to exceed 30 days, except with the approval of the Director of E&C when settlement is imminent). Settlement of delegated actions requires approval by the deputy comptroller for the institution. If the district is unable to reach a settlement, it refers the matter to E&C. The districts may also request E&C's assistance with any settlement offer. Settlement of nondelegated actions requires the concurrence of the deputy comptroller for the institution and the Director of E&C.

If there is an administrative hearing, the examiners who worked on the examination or referral may be required to provide litigation support and serve as witnesses. The Director of E&C is responsible for the management and supervision of prehearing practice and litigation in all CMP proceedings.

OCC legal staff consults with the responsible supervisory office and all interested OCC employees, including the EIC, and keeps them apprised of the progress of the case until resolution through either settlement or litigation. Oversight to promote efficiency, effectiveness, and consistency of actions is the duty of the appropriate Washington SRC with respect to nondelegated actions and of the responsible district SRC with respect to delegated actions.

**Record Keeping**

The responsible supervisory office must maintain accurate records of CMPs, reprimands, and supervisory letters, including recording actions taken in the appropriate electronic supervisory information system and paper filing systems. Refer to OCC Records Management Program guidance, including the guidance contained in PPM 3120-1 (REV), “OCC Records Management Program,” dated July 23, 2015, and each supervisory office’s records management policies for further guidance on record-keeping requirements.

**Publicity**

At the conclusion of all CMP cases that are resolved through a negotiated settlement, the district counsel, in delegated cases, and E&C, in nondelegated cases, forward a signed copy of the final stipulation and consent order to the Communications Division in Headquarters for publication in the monthly listing of enforcement actions. In certain cases, a news release is issued. Such publicity may serve as a deterrent to future violations, unsafe or unsound practices, and breaches of fiduciary duty. News releases require the approval of the Senior Deputy Comptroller for Midsize and Community Bank Supervision or for Large Bank Supervision, as appropriate, and should also be reviewed by the Comptroller’s office. The district counsel, in delegated actions, and E&C, in nondelegated actions, work directly with the supervisory office and the Press Relations office in preparing news releases.

For further information regarding the assessment of CMPs, please contact Special Supervision at (202) 649-6900 or E&C at (202) 649-6200.

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Toney M. Bland  
Senior Deputy Comptroller for Midsize and Community Bank Supervision

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Martin Pfinsgraff  
Senior Deputy Comptroller for Large Bank Supervision

Bank Name \_\_\_\_\_  
Charter # \_\_\_\_\_

Date Matrix Completed \_\_\_\_\_  
Matrix User Initials \_\_\_\_\_

**CMP Matrix for Institutions**

**Note:** Boxes in the matrix should be used to reflect progressive levels of severity. For brevity, this matrix uses the term “violation” to refer to any violation of law, rule, regulation, order, condition imposed in writing, or written agreement; and any reckless unsafe or unsound practice. Refer to PPM 5000-7 (REV), “Civil Money Penalties,” for additional guidance before completing the matrix.

| <b>Factors</b>  | <b>0</b>                              | <b>1</b>   | <b>2</b>  | <b>3</b>   | <b>4</b>   | <b>Factor weight</b> | <b>Factor score</b> |
|---|---------------------------------------|--|---|--|--|----------------------|---------------------|
| Intent (1) <sup>a</sup>   | None                                  |  | Should have known   | Disregarded red flags or other warnings  | Clear intent or clearly disregarded the law or consequences to the bank              | 7                    |                     |
| Continuation after notification (3)   | Violation ceased before notification  | Violation ceased immediately upon notification                                       | Bank took timely steps to correct violation, but violation continued after notification | No timely corrective action; violation continued for short period of time after notification | Violation still continuing or continued for long period of time after notification   | 5                    |                     |
| Concealment (5)   | None, or self-disclosure of violation | Disclosure of relevant facts upon request  | Incomplete disclosure of relevant facts or materials                                    | Purposely complicated transaction to make it difficult to uncover                            | Actively took steps to conceal misconduct or relevant facts                          | 6                    |                     |
| Financial gain or other benefit as a result of violation (7)                          | None                                  | Minimal indirect gain to bank or related interest                                    | Indirect gain or benefit to bank or related interest                                    | Direct gain or benefit to bank or related interest   | Substantial direct benefit to bank or related interest                               | 4                    |                     |
| Loss or risk of loss to the bank (6)  | No loss and no risk of loss           | Minimal actual loss or minimal risk of loss  | Moderate risk of loss   | Moderate actual loss or substantial risk of loss   | Substantial actual loss  | 4                    |                     |
| Impact or harm other than financial loss to the bank (6)                              | No impact or harm to bank             | Minimal impact or minimal harm to bank   | Some impact or some harm to bank  | Moderate impact or moderate harm to bank   | Substantial impact or substantial harm to bank                                       | 4                    |                     |
| Loss or harm to consumers or the public (consumer law or Bank Secrecy Act violations) | No loss and no harm                   | Minimal loss or minimal harm   | Moderate loss or harm to moderate number of consumers or portion of the public          | Moderate loss or harm to substantial number of consumers or portion of the public            | Substantial loss or harm to substantial number of consumers or portion of the public | 5                    |                     |
| Previous concern or administrative action for similar violation (10) (13)             | None                                  | Concern in any matters requiring attention (MRA) for related deficiency or violation | Repeat or past due concern in an MRA for related deficiency or violation                | Concern in an informal enforcement action intended to prevent the violation                  | Concern in a formal enforcement action intended to prevent the violation             | 5                    |                     |

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Appendix A

| <b>Factors</b>   | <b>0</b>   | <b>1</b>  | <b>2</b>  | <b>3</b>  | <b>4</b>  | <b>Factor weight</b> | <b>Factor score</b> |
|--|--|---|---|---|---|----------------------|---------------------|
| History of violations and tendency to engage in violations (9) (12)      | No prior similar violations or minimal history of unrelated violations | Prior unrelated violations                              | At least one prior similar violation                        | Prior unrelated repeat or recurring violations            | Prior similar repeat or recurring violations                        | 3                    |                     |
| Duration and frequency of violations before notification (2)             | Isolated violation   | Violation continued for up to 6 months                  | Several violations, or violation continued for up to 1 year | Frequent violations, or violation continued for 1–2 years | Pattern or practice, or violation outstanding for more than 2 years | 3                    |                     |
| Effectiveness of internal controls (IC) and compliance program (CP) (11) | Strong ICs and CP  | Generally effective ICs and CP with relevant weaknesses | ICs and CP have moderate weaknesses                         | Minimal, ineffective ICs and CP                           | ICs and CP are substantially lacking                                | 4                    |                     |
| <b>Subtotal 1</b>  |  |   |   |   |   |                      |                     |
| Good faith before notification   | Complete lack of good faith  |   | Some evidence of good faith                                 |   | Good faith shown throughout   | 2                    |                     |
| Full cooperation after notification (4)                                  | None   |   | Limited disclosure and cooperation after notification       |   | Full disclosure and cooperation after notification                  | 2                    |                     |
| Restitution, if applicable (8)   | No restitution   | Partial restitution                                     | Complete restitution under compulsion                       | Complete restitution timely after notification            | Complete restitution voluntarily before notification                | 1                    |                     |
| <b>Subtotal 2</b>  |  |   |   |   |   |                      |                     |
| <b>Total matrix score (subtract subtotal 2 from subtotal 1)</b>          |  |   |   |   |   |                      |                     |

<sup>a</sup> Parenthetical numbers refer to the numbered interagency factors listed in the FFIEC's "Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies," 63 Fed. Reg. 30227 (June 3, 1998).

**Suggested Action Based on Total Matrix Score and Total Assets of Bank**

| <b>Total matrix score</b> | <b>Total assets up to \$50 million</b>             | <b>Total assets \$50 million+ to \$250 million</b> | <b>Total assets \$250 million+ to \$1 billion</b>    | <b>Total assets \$1 billion+ to \$5 billion</b>      | <b>Total assets \$5 billion+ to \$25 billion</b>      | <b>Total assets \$25 billion+ to \$100 billion</b>    | <b>Total assets over \$100 billion</b>                 |
|---------------------------|--|--|--|--|---|---|--|
| <b>0–40</b>               | No CMP   | No CMP   | No CMP   | No CMP   | No CMP  | No CMP  | No CMP   |
| <b>41–70</b>              | Up to \$10,000                                     | Up to \$20,000                                     | Up to \$100,000                                      | Up to \$300,000                                      | Up to \$1.5 million                                   | Up to \$5 million                                     | Up to \$15 million                                     |
| <b>71–100</b>             | Up to \$25,000                                     | Up to \$50,000                                     | Up to \$250,000                                      | Up to \$1 million                                    | Up to \$5 million                                     | Up to \$15 million                                    | Up to \$30 million                                     |
| <b>101–130</b>            | Up to \$50,000                                     | Up to \$100,000                                    | Up to \$500,000                                      | Up to \$2 million                                    | Up to \$10 million                                    | Up to \$30 million                                    | Up to \$60 million                                     |
| <b>131–160</b>            | Up to \$100,000                                    | Up to \$200,000                                    | Up to \$1 million                                    | Up to \$4 million                                    | Up to \$20 million                                    | Up to \$75 million                                    | Up to \$150 million                                    |
| <b>161+</b>               | \$100,000+ but less than 1 percent of total assets | \$200,000+ but less than 1 percent of total assets | \$1 million+ but less than 1 percent of total assets | \$4 million+ but less than 1 percent of total assets | \$20 million+ but less than 1 percent of total assets | \$75 million+ but less than 1 percent of total assets | \$150 million+ but less than 1 percent of total assets |

Note: This CMP matrix is to be used as guidance; it does not reduce the CMP process to a mathematical equation and should not be a substitute for sound supervisory judgment. In some cases, it may be appropriate to depart from the matrix to reach a fair and equitable result that achieves the agency’s supervisory objectives.

Ability to pay: The bank’s ability to pay the CMP amount suggested on this page should be considered after completion of the CMP matrix and before the recommendation to assess a CMP.

## Guidance for Using the CMP Matrix for Institutions

- 1. Number of matrices:** One matrix should be completed per bank for all violations or reckless unsafe or unsound practices addressed in a CMP recommendation. When there are several violations or practices included in one matrix, the highest severity level applicable for any of them should be recorded for each factor in the matrix. Thus, if a bank engaged in violations of law and also engaged in reckless unsafe or unsound practices that will be addressed in a single CMP recommendation, only one matrix should be completed, with the highest severity level applicable for the violations and practices recorded for each matrix factor.
- 2. Application to tier 1 and tier 2 CMPs:** If an examiner discovers serious violations or unsafe or unsound practices, he or she should apply the matrix to determine the recommended level of action. The examiner need not initially determine whether the violation or practice provides a basis for a tier 1 or tier 2 CMP. Adjustments have been built into the matrix that should automatically result in the assessment of higher CMPs for tier 2 cases. If the matrix recommendation is for a CMP in excess of \$7,500 per day, as adjusted for inflation, or is based on a reckless unsafe or unsound practice, then the recommended CMP is, by definition, a tier 2 CMP. An unsafe or unsound practice may be considered reckless if it evidences disregard of, or indifference to, the consequences of the practice, even though no harm may be intended. Legal staff should be consulted at this point to ensure that the applicable criteria are met for a tier 2 CMP.

### 3. The following definitions apply when using the matrix:

**Violations** include violations of law, regulation, orders, conditions imposed in writing, and formal agreements. In the matrix, the term “violation” is used for brevity to refer to any violation of law, rule, regulation, condition imposed in writing, or written agreement, or any reckless unsafe or unsound practice.

An **enforceable condition imposed in writing** is a condition that is issued in connection with a decision on a corporate application. Such decisions typically state that the condition is “a condition imposed in writing within the meaning of 12 USC 1818(b)” or similar language.

An **unsafe or unsound practice** is one in which there has been some conduct, whether act or omission, that is contrary to accepted standards of prudent banking operation and might result in exposure of the bank or its shareholders to abnormal risk or loss.

### 4. The following guidance applies when using the matrix:

#### Misconduct Factors

**Intent (1):**<sup>9</sup> Assess this factor based on whether it can be shown that the bank clearly

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<sup>9</sup> Parenthetical numbers refer to the numbered interagency factors listed in the FFIEC’s “Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies,” 63 Fed. Reg. 30227 (June 3, 1998).

intended to commit the misconduct. Clear intent is demonstrated if the bank deliberately engaged in conduct that supports the finding of a violation or unsafe or unsound practice. It is not necessary that the bank intended to violate a law or regulation or intended that the conduct be unsafe or unsound. Lesser intent (such as “should have known”) can be demonstrated if, for example, the bank’s policies and procedures explained the correct conduct but management could have learned with reasonable inquiry that employees were engaging in unauthorized misconduct, management created a condition in which employees might have been expected to engage in misconduct (perhaps by creating financial incentives to do so), or the bank itself might have acted properly had it acted on its own behalf, but it engaged a third party that the bank should have been aware was acting improperly.

**Continuation after notification (3):** The reference to “notification” in this factor includes notice of the violation or reckless unsafe or unsound practice by the OCC, other regulatory agencies, law enforcement, external auditors, internal auditors, or other parties whose responsibilities include providing the bank or its subsidiaries with information about its operations. “Notification” may include receipt of information tending to show that a violation or unsafe or unsound practice is occurring, even if the information does not clearly establish the existence of a violation or unsafe or unsound practice.

**Concealment (5):** This factor pertains to the concealment of a violation or reckless unsafe or unsound practice from the OCC, the bank’s board of directors, internal and external auditors, or other regulatory agencies.

**Financial gain or other benefit as a result of violation (7):** Consider any direct or indirect monetary gain or other benefit to the bank (for example, a bank charges fees to consumers without providing any services for the fee or underfunds its Bank Secrecy Act (BSA)/anti-money laundering compliance program). This factor should be assessed without regard to any restitution made by the bank. A practice may have not resulted in monetary gain but may have resulted in some other benefit to the bank (for example, the bank provided discounted rent payments to a mortgage broker in exchange for referring federally related mortgage loans to the bank or helped a customer structure deposits to avoid filing requirements for currency transaction reports in order to retain a deposit relationship).

**Loss or risk of loss to the bank (6):** “Risk of loss” refers to any time when the bank was in danger of sustaining a financial loss as a result of the misconduct. For purposes of the matrix, “loss” does not include the amount of any potential CMP. Accordingly, if the violation or unsafe or unsound practice caused a risk of loss in its first month but posed no risk of loss in the second month, the bank experienced a potential loss, which falls within this category. “Minimal,” “moderate,” and “substantial” refer to the magnitude of the loss or potential loss with respect to the size of the bank and the effect that such a loss may have on the bank’s profitability or financial condition.

**Impact or harm other than financial loss to the bank (6):** It is appropriate to consider any possible negative impact or harm to the bank other than financial loss. Such harm may include, but is not limited to, increased reputation risk, litigation risk, operational risk, or compliance risk. Potential financial losses arising from these risks should be considered in

this factor rather than in “Loss or risk of loss to the bank.” For example, a violation of law involving insider abuse may result in adverse publicity for the bank, possibly causing a run on deposits and affecting the bank's liquidity.

**Loss or harm to consumers or the public (consumer law or BSA violations):** This factor applies in cases involving violations of consumer laws, rules, or regulations in which bank customers incur loss or are otherwise harmed and in cases involving harm to the public because of BSA violations. “Minimal,” “moderate,” and “substantial” refer to the magnitude of the loss or harm with respect to each individual consumer as well as to the number of consumers affected in relation to the bank’s customer base.

**Previous concern or administrative action for similar violation (10) (13):** In this factor, “concern” is used consistently with other OCC guidance, including the matters requiring attention (MRA) guidance in PPM 5400-11, “Matters Requiring Attention,” dated October 9, 2014, to refer to OCC criticism of deficient bank practices. In scoring this factor, “violation” refers to violations of law, rule, regulation, condition imposed in writing, or written agreement or any reckless unsafe or unsound practices; “similar violation” could refer to previous violations of the same statute or regulation, for example, a previous lending limit violation and a current lending limit violation. This phrase also could refer to violations or practices that are related in nature, for example, a previous violation of the aggregate lending limit under 12 CFR 215 and a current violation of the lending limit under 12 USC 84. Under severity levels 3 and 4, “enforcement action intended to prevent the violation” includes any enforcement action with provisions requiring bank policies, procedures, systems, or controls that should have prevented the violation or practice at issue, as well as enforcement actions more specifically addressing the violation or practice at issue. Evidence of previous misconduct that would otherwise be excluded from consideration because of the expiration of the statute of limitations may be considered under this factor.

**History of violations and tendency to engage in violations (9) (12):** Under severity levels 0, 2, and 4, “similar violation” has the same meaning as “similar violation” used in the “previous concern or administrative action for similar violation” factor explained previously. Violations or deficiencies need not have been continuous, and violations or deficiencies that were identified in earlier examinations should be considered in applying this factor, even if they have been corrected or if there have been intervening examinations in which no similar violation or deficiency was reported. If a previously corrected violation or deficiency resurfaces later, this may indicate a weakness in the bank’s compliance management system or internal controls. Examiners should review all factors surrounding the issue to determine whether there is a persistent problem that warrants a higher matrix score. Evidence of previous misconduct that would otherwise be excluded from consideration because of the expiration of the statute of limitations may be considered under this factor.

**Duration and frequency of violations before notification (2):** This factor refers to the time period during which the violation(s) at issue continued and the number of the violations at issue. “Notification” in this factor means the same as that under “Continuation after notification.” Under severity level 4, “pattern or practice” considerations include, but are not limited to, whether the conduct appears to be grounded in a written or unwritten policy or

established policy, whether the conduct has some common source or cause within the bank's control, and the relationship of the number of instances of conduct to the bank's total activity. For example, a pattern or practice may include a bank not filing timely suspicious activity reports on applicable transactions, failing to review or order appraisals as required by the regulation, or failing to disclose a prepaid finance charge on all consumer loans.

**Effectiveness of internal controls and compliance program (11):** Evaluate whether and how a bank's internal controls or compliance programs, or lack thereof, contributed to the violation or deficiency in question. Internal control systems or compliance programs that are so lacking as to permit the violation or deficiency to occur and remain undetected should be accorded the most severe score. Internal control systems or compliance programs that identified the violation or deficiency, which allowed the bank to initiate timely corrective measures, may receive a lower score.

### **Mitigating Factors**

**Good faith before notification:** In assessing the bank's good faith, generally focus on facts and circumstances that occurred before notification. "Notification" in this factor means the same as that under "Continuation after notification."

**Full cooperation after notification (4):** Focus on facts and circumstances that occurred after notification of the misconduct. "Notification" in this factor means the same as that under "Continuation after notification." Higher scores may be given in instances when the bank fully and completely discloses the misconduct and cooperates in rectifying the situation. Lower scores may be accorded in instances when responses are incomplete or limited to only questions asked, and the bank does little to help rectify the root causes of the misconduct.

**Restitution, if applicable (8):** A bank that provides full restitution and implements corrective action voluntarily before notification should receive the maximum points assigned. In assessing this factor, "notification" means the same as that under "Continuation after notification." Partial restitution or corrective action would include instances when the bank did not make full corrective action, did not properly identify all affected consumers, or did not provide full and appropriate restitution.

IAP Name(s) \_\_\_\_\_  
Bank Name & Charter # \_\_\_\_\_

Date Matrix Completed \_\_\_\_\_  
Matrix User Initials \_\_\_\_\_

**CMP Matrix for Institution-Affiliated Parties**

**Note:** Boxes in the matrix should be used to reflect progressive levels of severity. For brevity, this matrix uses the term “violation” to refer to any violation of law, rule, regulation, order, condition imposed in writing, or written agreement, and any reckless unsafe or unsound practice or breach of fiduciary duty. Refer to PPM 5000-7 (REV), “Civil Money Penalties,” for additional guidance before completing the matrix.

| <b>Factors</b>  | <b>0</b>                                      | <b>1</b>   | <b>2</b>   | <b>3</b>  | <b>4</b>   | <b>Factor weight</b> | <b>Factor score</b> |
|---|---|--|--|---|--|----------------------|---------------------|
| Intent (1) <sup>a</sup>   | None  |  | Should have known  | Disregarded red flags or other warnings   | Clear intent or clearly disregarded the law or consequences to the bank            | 6                    |                     |
| Continuation after notification (3)   | Violation ceased before notification          | Violation ceased immediately upon notification                                       | IAP took timely steps to correct violation, but violation continued after notification | IAP did not timely correct violation, and violation continued for short time after notification | Violation still continuing or continued for long period of time after notification | 4                    |                     |
| Concealment (5)   | None, or self-disclosure of violation         | Disclosure of relevant facts upon request  | Incomplete or involuntary disclosure, or failure to escalate to appropriate authority  | Purposely complicated transaction to make it difficult to uncover                               | Actively took steps to conceal misconduct or relevant facts                        | 5                    |                     |
| Financial gain or other benefit as a result of violation (7)  | None  | Minimal indirect gain to IAP or related interest                                     | Indirect gain or benefit to IAP or related interest                                    | Direct gain or benefit to IAP or related interest   | Substantial direct benefit to IAP or related interest                              | 6                    |                     |
| Loss or risk of loss to the bank (6)  | No loss and no risk of loss                   | Minimal actual loss or minimal risk of loss  | Moderate risk of loss  | Moderate actual loss or substantial risk of loss  | Substantial actual loss  | 5                    |                     |
| Impact or harm other than financial loss to the bank, including harm to consumers or the public (6) | No harm to the bank, consumers, or the public | Minimal impact or minimal harm to bank; no harm to consumers or the public           | Some harm to bank or minimal harm to consumers or the public                           | Moderate harm to bank, consumers, or the public   | Substantial harm to bank, consumers, or the public                                 | 5                    |                     |
| Previous concern or administrative action for similar violation (10) (13)                           | None  | Concern in any matters requiring attention (MRA) for related deficiency or violation | Repeat or past due concern in an MRA for related deficiency or violation               | Concern in an informal enforcement action intended to prevent the violation                     | Concern in a formal enforcement action intended to prevent the violation           | 3                    |                     |

**PPM 5000-7 (REV)**  
Appendix B

| <b>Factors</b>  | <b>0</b>  | <b>1</b>   | <b>2</b>  | <b>3</b>   | <b>4</b>  | <b>Factor weight</b> | <b>Factor score</b> |  |
|---|---|--|---|--|---|----------------------|---------------------|--|
| History of violations and tendency to engage in violations (9) (12)             | No prior similar violations or minimal history of unrelated violations                              | Prior unrelated violations   | At least one prior similar violation  | Prior unrelated repeat or recurring violations   | Prior similar repeat or recurring violations  | 3                    |                     |  |
| Duration of violation before notification (2)                                   | Violation continued less than 1 month   | Violation continued for up to 6 months                                       | Violation continued for up to 1 year  | Violation continued for 1–2 years  | Violation outstanding for more than 2 years   | 2                    |                     |  |
| Number of instances of misconduct at issue                                      | None  | 1-3 instances  | 4-6 instances   | 7-10 instances   | More than 10 instances  | 2                    |                     |  |
| IAP responsibility for internal controls environment and its effectiveness (11) | IAP has no responsibility, and/or adequate programs/policies exist in area where violation occurred | IAP has responsibility for inadequate monitoring and reporting of exceptions | IAP has responsibility for inadequate programs/policies but has cooperated in bank's response to required corrective action | IAP has responsibility for absence of any programs/policies in area where violation occurred | IAP has responsibility for inadequate programs/policies and has not been responsive to required corrective action | 4                    |                     |  |
| <b>Subtotal 1</b>   |   |  |   |  |   |                      |                     |  |
| Good faith before notification  | Complete lack of good faith   |  | Some evidence of good faith   |  | Good faith shown throughout   | 2                    |                     |  |
| Full cooperation after notification (4)   | None  |  | Limited disclosure and cooperation after notification   |  | Full disclosure and cooperation after notification  | 2                    |                     |  |
| Restitution, if applicable (8)  | No restitution  | Partial restitution  | Complete restitution under compulsion   | Complete restitution timely after notification   | Complete restitution before notification  | 2                    |                     |  |
| <b>Subtotal 2</b>   |   |  |   |  |   |                      |                     |  |
| <b>Total matrix score</b> (subtract subtotal 2 from subtotal 1)                 |   |  |   |  |   |                      |                     |  |

<sup>a</sup> Parenthetical numbers refer to the numbered interagency factors listed in the FFIEC's "Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies," 63 Fed. Reg. 30227 (June 3, 1998).

**Suggested Action Based on Total Matrix Score**

| <b>Total matrix score</b> | <b>Suggested action</b>                             |
|---------------------------|---|
| 0–40                      | No CMP, but consider supervisory letter             |
| 41–50                     | Consider reprimand or CMP up to \$5,000             |
| 51–60                     | Consider CMP greater than \$5,000 up to \$15,000    |
| 61–80                     | Consider CMP greater than \$15,000 up to \$35,000   |
| 81–100                    | Consider CMP greater than \$35,000 up to \$100,000  |
| 101–120                   | Consider CMP greater than \$100,000 up to \$175,000 |
| 121+                      | Consider CMP greater than \$175,000                 |

Note: This CMP matrix is to be used as guidance; it does not reduce the CMP process to a mathematical equation and should not be a substitute for sound supervisory judgment. In some cases, it may be appropriate to depart from the matrix to reach a fair and equitable result that achieves the agency's supervisory objectives.

Ability to pay: The IAP's ability to pay the CMP amount suggested on this page should be considered after completion of the CMP matrix and before the recommendation to assess a CMP.

## Guidance for Using the CMP Matrix for Institution-Affiliated Parties

1. **Number of matrices:** As a general rule, the following guidelines should be used in determining how many matrices should be completed:
  - One matrix should be completed per person for all violations, reckless unsafe or unsound practices, or breaches of fiduciary duty. When there are several violations, practices, or breaches included in one matrix, the highest severity level applicable for any of them should be recorded for each factor on the matrix. For example, if a director approved a loan in violation of 12 USC 84 and another loan in violation of 12 USC 371c and engaged in reckless unsafe or unsound practices, only one matrix should be completed for that director, with the highest severity level applicable for the violations and practices recorded for each matrix factor.
  - One matrix should be completed for each group of persons with similar culpability. For example, if six directors violated 12 USC 84 and 12 USC 371c and engaged in reckless unsafe or unsound practices, and all were similarly culpable, only one matrix should be completed. If two of the directors, however, were more culpable than the four other directors, two matrices should be completed—one for the two directors who were more culpable and one for the four other directors. Finally, if two of the directors engaged in the 12 USC 84 violation but not in the 12 USC 371c violation or the reckless unsafe or unsound practices, two matrices should be completed—one for the two directors who engaged in only the 12 USC 84 violation and one for the four other directors.
2. **Application to tier 1 and tier 2 CMPs:** If an examiner discovers serious violations, unsafe or unsound practices, or breaches of fiduciary duty, he or she should apply the matrix to determine the recommended level of action. The examiner need not initially determine whether the violation, practice, or breach provides a basis for a tier 1 or tier 2 CMP. Adjustments have been built into the matrix that should automatically result in the assessment of higher CMPs for tier 2 cases. If the matrix recommendation is for a CMP in excess of \$7,500 per day, as adjusted for inflation, or is based on a reckless unsafe or unsound practice, then the recommended CMP is, by definition, a tier 2 CMP. An unsafe or unsound practice may be considered reckless if it evidences disregard of, or indifference to, the consequences of the practice, even though no harm may be intended. Legal staff should be consulted at this point to ensure that the applicable criteria are met for a tier 2 CMP.
3. **The following definitions apply when using the matrix:**

The term “**IAP**” is defined in 12 USC 1813(u) to include the following:

- Directors, officers, employees, or controlling shareholders (other than a bank holding company) of, or agents for, a bank;
- Persons who have filed or are required to file a change-in-control notice;
- Shareholders, consultants, joint venture partners, and any other persons participating in a bank’s affairs; and
- Independent contractors (including attorneys, appraisers, or accountants) who knowingly or recklessly participate in violations of law or regulation, breaches of fiduciary duty, or

unsafe or unsound practices that caused or are likely to cause more than a minimal financial loss to, or a significant adverse effect on, the bank.

**Violations** include violations of law, regulation, orders, conditions imposed in writing, and formal agreements. In the matrix, the term “violation” is used for brevity to refer to any violation of law, rule, regulation, condition imposed in writing, or written agreement, and any reckless unsafe or unsound practice or breach of fiduciary duty.

An **enforceable condition imposed in writing** is a condition that is issued in connection with a decision on a corporate application. Such decisions typically state that the condition is “a condition imposed in writing within the meaning of 12 USC 1818(b)” or similar language.

An **unsafe or unsound practice** is one in which there has been some conduct, whether act or omission, that is contrary to accepted standards of prudent banking operation and might result in exposure of the bank or its shareholders to abnormal risk or loss.

A **fiduciary duty** is a duty of great confidence and trust, which includes a high degree of good faith. Fiduciary duties owed by directors and officers of an institution include the duty of care and the duty of loyalty. The duty of care requires that directors and officers, in the performance of their official duties, exercise the care that an ordinarily prudent person would exercise under similar circumstances. The duty of loyalty requires that directors and officers place the bank’s interests above their own or the interests of any third party. For example, the duty of care would be breached if a director failed to take action to prevent or correct a violation of 12 USC 84 after it had been brought to his or her attention. The duty of loyalty would be breached if a director conspired with a borrower to receive the proceeds of a nominee loan.

#### 4. The following guidance applies when using the matrix.

##### **Misconduct Factors**

**Intent (1):**<sup>10</sup> Assess this factor based on whether it can be shown that the IAP clearly intended to commit the misconduct. Clear intent or disregard for law is demonstrated if the IAP deliberately engaged in the conduct that supports the finding of a violation, unsafe or unsound practice, or breach of fiduciary duty. It is not necessary that the IAP intended to violate a law or regulation or intended that the conduct be unsafe or unsound or in breach of his or her fiduciary duty. Lesser intent (such as “should have known”) can be demonstrated if, for example, the bank’s policies and procedures explained the correct conduct but the IAP disregarded policies or procedures or otherwise failed to ensure that the policies were followed.

**Continuation after notification (3):** The reference to “notification” in this factor includes notice to the IAP of the violation, reckless unsafe or unsound practice, or breach of fiduciary

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<sup>10</sup> Parenthetical numbers refer to the numbered interagency factors listed in the FFIEC’s “Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies,” 63 Fed. Reg. 30227 (June 3, 1998).

duty by the OCC, other regulatory agencies, law enforcement, external auditors, internal auditors, or other parties whose responsibilities include providing the bank or its subsidiaries with information about its operations. “Notification” may include receipt of information tending to show that a violation or unsafe or unsound practice is occurring, even if the information does not clearly establish the existence of a violation or unsafe or unsound practice.

**Concealment (5):** This factor pertains to the concealment of a violation, reckless unsafe or unsound practice, or breach of fiduciary duty from the OCC, the bank’s board of directors, internal and external auditors, or other regulatory agencies. A score of “3” is appropriate when an IAP actively obscures the nature of the facts or misconduct but does not affirmatively falsify records or misstate or refuse to disclose material facts. A score of “4” should be imposed when an IAP deliberately falsifies records, misstates facts, or refuses to disclose material facts.

**Financial gain or other benefit as a result of violation (7):** Consider any direct or indirect monetary gain or other benefit to the IAP or related interests. This factor should be assessed without regard to any restitution made by the IAP. A practice may not have resulted in monetary gain but may have resulted in some other benefit to the IAP (for example, the IAP was able to keep his or her position or earn a promotion because of the misconduct).

**Loss or risk of loss to the bank (6):** “Risk of loss” refers to any time when the bank was in danger of sustaining a financial loss as a result of the IAP’s misconduct. Accordingly, if the violation, practice, or breach caused a risk of loss in its first month but posed no risk of loss in the second month, the bank experienced a potential loss, which falls within this category. While “minimal,” “moderate,” and “substantial” are not defined, it has been suggested that amounts of \$50,000 or less can be considered minimal, while amounts exceeding \$100,000 can be considered substantial.

**Impact or harm other than financial loss to the bank (6):** It is appropriate to consider any possible negative impact or harm other than financial loss to the bank. Such harm may include, but is not limited to, increased reputation risk, litigation risk, operational risk, or compliance risk to the bank. Potential financial losses arising from these risks should be considered in this factor rather than in “Loss or risk of loss to the bank.” This factor may also include harm to consumers or to the public resulting from violations of consumer law or the BSA.

**Previous concern or administrative action for similar violation (10) (13):** In this factor, “concern” is used consistently with other OCC guidance, including the matters requiring attention (MRA) guidance in PPM 5400-11, to refer to OCC criticism of deficient bank practices. This factor considers previous OCC concerns with an IAP that were communicated to the IAP and documented in the supervisory record or were communicated to the bank in an MRA if the IAP was or should have been aware of the communication. In scoring this factor, “violation” refers to violations of law, rule, regulation, condition imposed in writing, or written agreement, any reckless unsafe or unsound practices, or breaches of fiduciary duty; “similar violation” could refer to previous violations of the same statute or regulation, for

example, a previous lending limit violation and a current lending limit violation. This phrase also could refer to violations, practices, or breaches that are related in nature, for example, a previous violation of the aggregate lending limit under 12 CFR 215 and a current violation of the lending limit under 12 USC 84. Under severity levels 3 and 4, “enforcement action intended to prevent the violation” includes any enforcement action with provisions requiring policies, procedures, systems, or controls that should have prevented the misconduct at issue, as well as enforcement actions more specifically addressing the misconduct at issue. Evidence of previous misconduct that would otherwise be excluded from consideration because of the expiration of the statute of limitations may be considered under this factor.

**History of violations and tendency to engage in violations (9) (12):** Under severity levels 0, 2, and 4, “similar violation” has the same meaning as “similar violation” used in the “previous concern or administrative action for similar violation” factor explained previously. Violations or deficiencies need not have been continuous, and violations or deficiencies that were identified in earlier examinations should be considered in applying this factor if the IAP had some responsibility for them, even if they have been corrected or if there have been intervening examinations in which no similar violation or deficiency was reported. Evidence of previous misconduct that would otherwise be excluded from consideration because of the expiration of the statute of limitations may be considered under this factor.

**Duration of violation before notification (2):** This factor refers to the time period during which the violation(s) at issue continued. “Notification” in this factor means the same as that under “Continuation after notification.”

**Number of instances of misconduct at issue:** In assessing this factor, each instance or transaction that is considered misconduct is counted individually. Conversely, a single transaction that violates multiple laws or regulations, or results in multiple reckless unsafe or unsound practices or breaches, is considered one instance of misconduct. Misconduct that is excluded due to expiration of the statute of limitations should *not* be considered when scoring this factor.

**IAP responsibility for internal control environment and its effectiveness (11):** This factor should be considered in cases when it has been determined that the institution’s internal control policies or procedures are inadequate in the area in which the misconduct occurred (for example, mortgage lending, BSA program, or consumer compliance), but only when assessing CMPs against an IAP responsible for ensuring adequate internal controls are in place for that area (for example, an IAP that has significant influence over, or participation in, major policymaking decisions).

### **Mitigating Factors**

**Good faith before notification:** In assessing the IAP’s good faith, generally focus on facts and circumstances that occurred before notification. “Notification” in this factor means the same as that under “Continuation after notification.”

**Full cooperation after notification (4):** Focus on facts and circumstances that occurred after notification of the misconduct. “Notification” in this factor means the same as that under

“Continuation after notification.” Higher scores may be given in instances when the IAP fully and completely discloses the misconduct and cooperates in rectifying the situation. Lower scores may be given in instances when responses are incomplete or limited to only questions asked, and the IAP does little to rectify the situation.

**Restitution, if applicable (8):** An IAP that provides full restitution voluntarily before notification should receive the maximum points assigned. In assessing this factor, “notification” means the same as that under “Continuation after notification.” Partial restitution would include instances when the IAP did not properly identify parties harmed by the misconduct or did not provide full and appropriate restitution.