
Section: Bank Supervision**Subject: Civil Money Penalties**

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

Purpose

This *Policies and Procedures Manual* (PPM) issuance revises PPM 5000-7, “Civil Money Penalties,” dated November 13, 2018, which establishes general policies and procedures for Office of the Comptroller of the Currency (OCC) staff when the OCC assesses civil money penalties (CMP) in response to violations of laws, regulations, final agency orders, conditions imposed in writing, or written agreements (collectively, violations); unsafe or unsound practices; or breaches of fiduciary duty.¹

Background

The Financial Institutions Regulatory and Interest Rate Control Act of 1978 gave the OCC the authority, subsequently expanded by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, to assess CMPs against any national bank or institution-affiliated party (IAP), as defined in 12 USC 1813(u).² 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

¹ This PPM does not address CMPs for securities-related violations, which are addressed in PPM 5310-5, “Securities Activities Enforcement Policy.” Questions concerning CMPs for securities-related violations should be addressed to the OCC’s Bank Advisory group in the Chief Counsel’s Office. Other PPMs address the details of enforcement actions against institution-affiliated parties or other individuals and enforcement actions against banks. Refer to PPM 5310-3, “Bank Enforcement Actions and Related Matters”; PPM 5310-8, “Enforcement and Compliance: Fast Track Enforcement Program”; and PPM 5310-13, “Institution-Affiliated Party Enforcement Actions and Related Matters.”

² The resignation, termination of employment or participation, or separation of an IAP (including a separation caused by the bank’s closing) does not affect the OCC’s jurisdiction and authority to assess a CMP under 12 USC 1818 against the IAP if the CMP is finalized or a notice of assessment (to commence litigation) is served within six years of the date the IAP resigned, ceased employment or participation, or otherwise separated from the bank. Refer to 12 USC 1818(i)(3).

12 USC 1861 et seq. and 12 USC 1464(d)(7). In this PPM, the term “institutions” refers collectively to national banks, federal branches and agencies, federal savings associations, bank service companies, and service providers.

This PPM provides internal OCC guidance and does not create substantive or procedural rights enforceable at law or in any administrative proceeding. This PPM also does not supersede or limit the applicability of any other OCC policy that may provide more explicit guidance or establish supplemental procedures applicable to CMP actions.

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I. Policy

A CMP may serve as a deterrent to future violations, unsafe or unsound practices, and breaches of fiduciary duty by the institution or IAP against which the CMP is assessed and by other institutions and IAPs. 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. A CMP may be used on a stand-alone basis or in conjunction with other supervisory or enforcement actions. CMPs must be supported by adequate and thorough documentation.

II. Statutory CMP Authority

General CMP Statutes

The OCC's general CMP authority is in 12 USC 1818(i).³ This statute classifies CMPs into three tiers based on the severity of the actionable conduct and level of culpability. The statute also sets maximum amounts that the OCC may assess for each day the actionable conduct continues. These amounts are periodically adjusted for inflation (refer to 12 CFR 19.240 and 109.103).

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

³ 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.

- result in a pecuniary gain to the IAP engaged in the violation, practice, or breach.

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 IAP 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, among others.⁴

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.⁵ To ensure that 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.

⁴ 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).

⁵ The OCC transmitted the 1998 FFIEC Interagency Policy in OCC Bulletin 1998-32, “Civil Money Penalties: Interagency Statement” (July 24, 1998).

The statutory factor “such other matters as justice may require” may necessitate considering circumstances not fully captured by the matrix scoring. A CMP may be adjusted upward or downward on the basis of this factor, as the facts of the specific matter may warrant.

III. Institution and IAP CMP Matrices

The OCC uses the institution CMP matrix and IAP CMP matrix 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 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 when 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 and IAP CMP matrices 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 federal banking system.

The OCC uses the institution and IAP CMP matrices 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.

IV. CMP Assessment Procedures

The following procedures describe the OCC’s typical process for CMP actions, reprimands in lieu of CMPs, and supervisory letters. These procedures provide general guidance but do not establish any requirements for assessing a CMP or issuing a reprimand in lieu of a CMP or a supervisory letter, and the OCC may deviate from these procedures as appropriate. If additional actions against the institution or IAP are under consideration, refer to PPM 5310-3, “Bank Enforcement Actions and Related Matters,” and PPM 5310-13, “Institution-Affiliated Party Enforcement Actions and Related Matters,” for applicable procedures.

Identification of Misconduct and Consultation With Supervisory Office

When an examiner identifies or becomes aware of 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 appropriate supervisory

office and OCC legal staff in the appropriate District Counsel's office (District Counsel) or the Enforcement group (collectively, OCC legal staff).^{6, 7} Early and ongoing consultation with the supervisory office and OCC legal staff is important to determine whether a CMP is likely warranted and legally supportable under 12 USC 1818 or other CMP authorizing statutes based on known facts and circumstances before committing additional agency resources to the matter. The supervisory office may also consider an appropriate alternative supervisory response, which may include issuing a reprimand or supervisory letter to an IAP if certain criteria, described below, are satisfied. In certain cases, it may be appropriate to conduct a formal investigation to obtain relevant facts (refer to PPM 5310-3 and PPM 5310-13 for additional details on formal investigations). The determination of the need for a formal investigation may occur at any time before the OCC decision maker authorizes the enforcement action.

A reprimand is a strongly worded document used when a CMP or personal cease-and-desist order against an IAP is legally supportable but the OCC chooses not to pursue the action. A reprimand in lieu of a CMP is appropriate only when the IAP CMP matrix results in a small suggested CMP amount; a review of the CMP factors shows that the misconduct was technical in nature, there was no history of misconduct, or there was no intent to engage in the misconduct; and issuing a reprimand in lieu of a small CMP will achieve supervisory objectives.

In contrast, a supervisory letter may be issued to an IAP in any case when the OCC wishes to communicate a concern about a supervisory problem or issue. A supervisory letter generally should be used when a CMP or other enforcement action against an IAP may not be warranted, but the OCC nonetheless wishes to communicate a concern about a supervisory problem or issue. The OCC may issue a supervisory letter regardless of whether legal grounds exist for a CMP or other formal IAP enforcement action.

After consulting with OCC legal staff, if a CMP under 12 USC 1818(i) is likely warranted and legally supportable, the supervisory office, in consultation with OCC legal staff, must complete the appropriate CMP matrix, if applicable, to determine the level of action suggested and develop a recommendation for a CMP, reprimand, or supervisory letter, as appropriate. If, after consulting with OCC legal staff, a CMP under 12 USC 1818(i) or a reprimand is likely warranted and legally supportable (or if a supervisory letter is appropriate), the supervisory

⁶ For purposes of this PPM, "supervisory office" refers to the examiner-in-charge, problem bank specialist, assistant deputy comptroller, director, associate deputy comptroller, or deputy comptroller, as appropriate, depending on the OCC business unit.

⁷ The OCC legal staff responsible for a case varies by the supervision review committee review required or whether the case involves litigation. Generally, District Counsel are primarily responsible for cases that require District Supervision Review Committee or Midsize Supervision Review Committee review, while the Enforcement group has responsibility for cases that require Major Matters Supervision Review Committee or Washington Supervision Review Committee review or litigation. In certain cases, responsibility for a case may transfer (refer to PPM 5310-3 and PPM 5310-13 for more information). If District Counsel is primarily responsible for a case that may need to be presented to the Major Matters Supervision Review Committee or the Washington Supervision Review Committee or when there is a likelihood of litigation, then District Counsel should promptly notify and consult the Enforcement group early in the process, well before any supervision review committee consideration. District Counsel and the Enforcement group also consult with specialized counsel in certain types of cases (e.g., cases involving certain consumer laws, securities laws, or the Bank Secrecy Act) or when otherwise appropriate.

office must develop and submit a referral to OCC legal staff for review.⁸ The determination of whether any and which type(s) of enforcement action is appropriate depends on case-specific facts, circumstances, and legal considerations. Based on specific facts and circumstances, it may be appropriate for the supervisory office to recommend multiple enforcement actions against an institution or IAP (refer to PPM 5310-3 and PPM 5310-13 for more information on enforcement actions against institutions and IAPs). If the OCC is considering the assessment of a CMP against the institution, the OCC may provide advance notice to the institution at the exit meeting and in the report of examination.⁹

The supervisory office's referral must detail its recommendation and include the completed CMP matrix, if any, along with 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 demonstrate the IAP's responsibility for the misconduct at issue. Recommendations for a reprimand must include documentation supporting the application of the criteria described above.

15-Day Letter

If, after consulting with OCC legal staff, the supervisory office is considering recommending assessing a CMP against an institution or IAP, the supervisory office obtains any necessary approval from the appropriate decision maker to send a 15-day letter to the institution or IAP. A 15-day letter provides the institution or IAP 15 calendar days to provide a written response. 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 decision maker.

The OCC issues a 15-day letter before it assesses a CMP or issues a reprimand. The 15-day letter typically

- informs the institution or IAP that the OCC is considering assessing a CMP against the institution or IAP,
- describes the misconduct giving rise to the potential CMP, and
- provides an opportunity for the institution or IAP to submit information relevant to the OCC's consideration of the CMP (including the size of the institution's financial resources or the IAP's personal financial information).

The supervisory office should consult with OCC legal staff regarding the content of a 15-day letter. OCC legal staff usually prepares 15-day letters. The 15-day letter should reference all formal enforcement actions being considered. The institution or IAP typically has 15 calendar days from receipt to respond to the 15-day letter. Upon request by the institution or IAP, the

⁸ While the referral should be written and well-supported, in some cases the referral may be submitted by email rather than as a formal memorandum.

⁹ Because the OCC sometimes identifies violations and assesses CMPs 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.

OCC may, at its discretion, extend this 15-day period, if doing so will not affect the OCC's time frames and ability to meet any statute of limitations deadline. The OCC also may, at its discretion, shorten this 15-day period when, for example, there are timing considerations that warrant expedited treatment.

Authorization of Enforcement Action

After the supervisory office receives the response to the 15-day letter or the response period has ended without a response, the supervisory office and OCC legal staff finalize their review of the facts and evidence, including consideration of the 15-day letter response and any additional relevant information. OCC legal staff (together with the supervisory office) then prepares a supervision review committee memorandum addressing the factual and legal basis of the recommended action, the supervisory office completes a new version of the appropriate CMP matrix (in consultation with OCC legal staff), if applicable, and OCC legal staff and the supervisory office present the case to the appropriate supervision review committee.

There may be cases when, after sending a 15-day letter, the supervisory office and OCC legal staff determine that assessing a CMP against an institution or IAP or issuing a reprimand to an IAP is not warranted or legally supportable based on the facts and circumstances known to the OCC. In such cases, the OCC may, after obtaining any required approval from the appropriate decision maker, resolve the matter by issuing a supervisory letter or taking no further action against the institution or IAP.

If the OCC decides not to take an enforcement action after sending a 15-day letter to an IAP, a "no action" letter stating that the OCC has decided not to pursue an enforcement action may be appropriate. A "no action" letter is not an adjudication on the merits and does not prevent the OCC from taking any action affecting or against the IAP if, at any time, the OCC deems it appropriate to do so. Nor does the "no action" letter constitute a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the U.S. Department of Justice, to bring other actions deemed appropriate.

Enforcement Action

After the appropriate decision maker approves a CMP, reprimand, or supervisory letter, the supervisory office and OCC legal staff prepare the enforcement action documents. Supervisory letters and reprimands are effective upon issuance by the OCC. If a CMP is authorized, OCC legal staff generally sends the institution or IAP a letter disclosing that the OCC has approved a CMP and the dollar amount of the assessment and includes a proposed consent order. The letter typically provides that the IAP or institution may either consent to the CMP or contest the action, and that if the institution or IAP does not consent to the CMP within a fixed period, the OCC will file a notice of assessment to begin litigation. Upon request by the institution or IAP, the OCC may, at its discretion, extend the response period, if doing so will not affect the OCC's time frames and ability to meet any statute of limitations deadline.

The OCC will consider coupling any CMP against an institution with injunctive relief, such as business restrictions, pursuant to 12 USC 1818(b)(6), when appropriate. Such coupled relief

may be appropriate when, for example, the institution has failed to make effective or sustainable progress on corrective actions despite a prior enforcement action or CMP assessment or has widespread or systemic deficiencies that require curtailing growth or expansion into new products or services. The combined impact of the CMP and business restrictions may be considered when determining the CMP amount.

Consumer restitution is a separate consideration from other injunctive relief or the CMP analysis. The OCC will seek full restitution to harmed consumers when applicable, pursuant to 12 USC 1818(b)(6).

Action issued by consent: If the institution or IAP consents to the issuance of the CMP, the consent order will be effective upon execution by the institution or IAP and the OCC.

Action issued through litigation: If the response period has expired and the institution or IAP did not consent or respond to the proposed consent order, the OCC will file a notice of assessment, which formally begins the administrative hearing process (litigation). The OCC makes a notice of assessment public upon or shortly after filing, except when, at its discretion, the OCC determines that publication of the notice would be contrary to the public interest. Additionally, administrative hearings are public unless the OCC determines that an open hearing would be contrary to the public interest.¹⁰ When there is an administrative hearing, OCC examiners are generally required to provide litigation support and serve as witnesses. Enforcement attorneys represent the OCC in the administrative hearing process, and their work is managed and supervised by the Director of Enforcement. Throughout the process, the Enforcement group should update OCC stakeholders, including the responsible supervisory office, as appropriate, to keep them apprised of the progress of the case until its resolution through settlement or final decision after the administrative hearing process.

V. Documentation in OCC Supervisory Information Systems

The consistent administration of the OCC's enforcement action documentation is important. The responsible supervisory office and OCC legal staff must maintain accurate records of OCC CMPs, reprimands, and supervisory letters. This includes recording and maintaining actions, status, financial payment information (if applicable), relevant tracking dates, and supporting documents in the appropriate supervisory information systems. Supervisory offices and OCC legal staff must follow established procedures for entering, tracking, and closing CMPs, reprimands, and supervisory letters in the OCC's supervisory information systems.

The OCC's supervisory information systems must include the following relevant supporting documentation: the executed enforcement action documents; the decision to initiate or modify the enforcement action, including any supervision review committee memorandums and other supporting decision documents, relevant internal correspondence, correspondence with the institution or IAP (and, if applicable, documentation of the institution's or IAP's receipt of correspondence); and correspondence with other agencies (if applicable).

¹⁰ Refer to 12 CFR 19.33 and 109.33.

VI. Public Disclosure of CMP Actions

The OCC is generally required to publish and make available to the public final CMP actions. In addition, notices of assessments are typically posted on the OCC's website. The OCC may, at its discretion, choose not to publish a particular action or delay publication under exceptional circumstances.¹¹ Reprimands and supervisory letters are informal enforcement actions and typically are not published or made available to the public.¹²

The OCC's Public Affairs office issues a monthly news release listing recent public enforcement actions, including public CMP actions. The listing includes the name of the institution or IAP (listings for IAP CMPs also include the name of the institution with which the IAP is (or was) affiliated when the misconduct occurred), the type of action (including notices of assessment), and the date of the action. The monthly news release is available on the "News Releases" section of OCC.gov. Published CMP actions, including published notices of assessment, are also posted and available by searching on the "Enforcement Actions" page on OCC.gov.

In certain cases, the OCC may issue a news release for a CMP action when appropriate. Examiners should consult with Public Affairs and OCC legal staff in these instances.

For additional guidance on disclosures of CMPs by institutions or IAPs or disclosures of reprimands or supervisory letters by IAPs, refer to PPM 5310-3 and PPM 5310-13.

For further information regarding the assessment of CMPs, please contact the Enforcement group at (202) 649-6200 or Specialty Supervision at (202) 649-6900.

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¹¹ Refer to 12 USC 1818(u).

¹² In certain cases in which an IAP receives an informal enforcement action, the OCC may notify the institution that the IAP has received an informal enforcement action from the OCC.

Appendix A: CMP Matrix for Institutions

Bank Name _____
Charter # _____

Date Matrix Completed _____
Matrix User Initials _____

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.

Factors	0	1	2	3	4	Factor weight	Factor score
Intent (1) ^a	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	

Factors	0	1	2	3	4	Factor weight	Factor score
History of violations and tendency to engage in violations (9) (12)	No prior related violations or minimal history of unrelated violations	Prior unrelated violations	Prior unrelated repeat or recurring violations	At least one prior related violation	Prior related 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	
Subtotal 1	0		2		4		
Self-Identification (5)	Inadequate or no self-identification		Meaningful or significant self-identification		Self-identification of all main deficiencies; full and timely disclosure; proactive further investigation	5	
Remediation/corrective action (4)	Inadequate or no remediation		Meaningful or significant remediation		Timely and complete remediation of root cause as well as like conduct or deficiencies	5	
Restitution, if applicable (8)	Inadequate or no restitution		Meaningful or significant restitution		Timely and complete restitution	3	
Subtotal 2							
Total matrix score (subtract subtotal 2 from subtotal 1)							

^a 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

Total matrix score	Total assets up to \$250 million	Total assets \$250 million+ to \$1 billion	Total assets \$1 billion+ to \$5 billion	Total assets \$5 billion+ to \$15 billion	Total assets \$15 billion+ to \$50 billion	Total assets \$50 billion+ to \$100 billion	Total assets \$100 billion+ to \$500 billion	Total assets \$500 billion+ to \$1 trillion	Total assets over \$1 trillion
0–40	No CMP	No CMP	No CMP	No CMP	No CMP	No CMP	No CMP	No CMP	No CMP
41–60	Up to \$10,000	Up to \$100,000	Up to \$500,000	Up to \$2 million	Up to \$4 million	Up to \$7 million	Up to \$15 million	Up to \$20 million	Up to \$40 million
61–80	Up to \$25,000	Up to \$250,000	Up to \$1 million	Up to \$4 million	Up to \$8 million	Up to \$14 million	Up to \$30 million	Up to \$40 million	Up to \$80 million
81–100	Up to \$50,000	Up to \$500,000	Up to \$2 million	Up to \$8 million	Up to \$16 million	Up to \$28 million	Up to \$60 million	Up to \$80 million	Up to \$160 million
101–120	Up to \$75,000	Up to \$1 million	Up to \$4 million	Up to \$14 million	Up to \$28 million	Up to \$49 million	Up to \$105 million	Up to \$140 million	Up to \$280 million
121–140	Up to \$100,000	Up to \$2.5 million	Up to \$7 million	Up to \$20 million	Up to \$40 million	Up to \$70 million	Up to \$150 million	Up to \$200 million	Up to \$400 million
141+	Over \$100,000 ^b	Over \$2.5 million ^b	Over \$7 million ^b	Over \$20 million ^b	Over \$40 million ^b	Over \$70 million ^b	Over \$150 million ^b	Over \$200 million ^b	Over \$400 million ^b

^b But less than 1 percent of total assets

Notes: 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 upwards or downwards from the matrix to reach a fair and equitable result that achieves the agency’s supervisory objectives, including in accordance with the statutory factor “such other matters as justice may require.”

There may be cases when a bank’s total assets are not an appropriate proxy for determining the bank’s correct placement in a column on this table. For example, the asset size of trust banks and federal branches of foreign banks often do not reflect the size of the financial resources of these institutions or the impact of the conduct at issue. Similarly, there may be cases when the relevant conduct reflects transaction volume on par with that of a much larger institution. In such cases, it may be appropriate to consider the table’s suggested CMP amount for an institution in a higher total asset category.

Further consideration of the bank’s financial resources to pay the CMP amount suggested on this page should be given after completing the CMP matrix and before the recommendation to assess a CMP.

Guidance for Using the CMP Matrix for Institutions

- 1. Number of matrices:** Typically, one matrix should be completed per bank for all violations or reckless unsafe or unsound practices addressed in a CMP recommendation. When several violations or practices are 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, the examiner 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. OCC 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 laws, regulations, 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 any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the Deposit Insurance Fund.

4. The following guidance applies when using the matrix:

Misconduct Factors

Intent (1):¹³ Assess this factor based on whether it can be shown that the bank clearly 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 external 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

¹³ 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).

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 when 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. When there is public harm but no quantifiable loss to specific individual consumers, examiners should use their judgment to determine the level of harm to the public as “minimal,” “moderate,” or “substantial” based on the scope and severity of the violation. In redlining cases, the presumption is that the harm is substantial because redlining represents a failure to lend to minority consumers on a systemic basis.

Previous concern or administrative action for similar violation (10) (13): In this factor, “concern” is used consistently with other OCC guidance 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 related previous misconduct that would otherwise be excluded from consideration because the statute of limitations has expired may be considered under this factor.

History of violations and tendency to engage in violations (9) (12): “Related 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 related 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 related previous misconduct that would otherwise be excluded from consideration because the statute of limitations has expired 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, unwritten, 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

Self-identification (5): The only available columns are 0, 2, or 4. In assessing this factor, consider the extent to which the bank self-identified and disclosed fully and in a timely manner the conduct or deficiencies underlying the violations of law or unsafe or unsound practices at issue to the OCC. A practice is considered self-identified when the bank discovers the deficiency or conduct without prompting from a regulatory or law enforcement agency and alerts the OCC to the existence of the conduct or deficiency in a timely manner. When the OCC or another regulatory or law enforcement agency prompts the bank to perform a review, the bank will not receive credit for self-identifying that conduct or deficiency. If, during such a review, a bank identifies and discloses separate and distinct conduct or deficiencies, including across other lines of business, it will be eligible for self-identification credit as to any penalty based on those separate deficiencies. To receive full credit under this factor, the bank must take proactive steps to further investigate like conduct or deficiencies in other parts of the bank, as applicable.

In assessing the disclosure of the self-identified conduct or deficiency to the OCC, it is

appropriate to consider the totality and circumstances of such disclosures and the bank's level of good faith. For example, while a bank is expected to disclose the conduct or deficiency upon discovery, the bank may not be able to make an additional, more complete disclosure until it has performed additional investigation. A bank should not, however, receive full credit under this factor if it undertakes a lengthy investigation before making any disclosure to the OCC. A bank will receive no credit under this factor if it withholds relevant information or intentionally provides incomplete information.

When a bank only self-identifies minor or tangential conduct or deficiencies, or its disclosure to the OCC is inadequate, the agency has the discretion to score this factor as 0 rather than 2. Similarly, if the self-identification is short of that required to achieve a 4, the agency has the discretion to award full credit, based on the particular facts and circumstances of the matter.

Remediation or corrective action (4): The only available columns are 0, 2, or 4. In assessing this factor, consider the extent to which the bank timely and effectively implements remediation (corrective action). The timeliness of the remediation should be evaluated in relation to when the bank first had notification of the conduct or deficiency, as notification is defined under "Continuation after notification." To receive full credit, the bank must proactively remediate the root cause of the conduct or deficiency from an operational and risk management standpoint, and the bank must also remediate like conduct or deficiencies.

In assessing remediation, it is appropriate to consider the totality and circumstances of the bank's efforts and level of good faith. Consideration should be given to the extent to which the bank works openly, transparently, and cooperatively in good faith with the OCC to address the conduct or deficiency.

When the corrective action made is less than meaningful or significant, the agency has the discretion to score this factor as 0. Similarly, if the corrective action is short of that required to achieve a 4, the agency has the discretion to award full credit, based on the particular facts and circumstances of the matter.

Restitution, if applicable (8): The only available columns are 0, 2, or 4. In assessing this factor, consider the extent to which the bank timely provides complete restitution (as determined by the OCC) to all affected customers.

In assessing restitution, it is appropriate to consider the totality and circumstances of the bank's efforts and the bank's level of good faith. Consideration should be given to the bank's timeliness, proactiveness, and good faith in ensuring that all affected customers receive restitution.

When the restitution made is less than meaningful or significant, the agency has the discretion to score this factor as 0. Similarly, if restitution is short of "complete," the agency has the discretion to award full credit under this factor, based on the particular facts and circumstances of the matter. For example, an institution may receive full credit when it has

completed restitution in accordance with the OCC's written no supervisory objection or other written instructions, has made adequate attempts to locate affected customers, or has made reasonable efforts to ensure that all affected customers receive restitution, but restitution is not 100 percent complete.

Appendix B: CMP Matrix for Institution-Affiliated Parties

IAP Name(s) _____
Bank Name & Charter # _____

Date Matrix Completed _____
Matrix User Initials _____

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.

Factors	0	1	2	3	4	Factor weight	Factor score
Intent (1) ^a	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 MRAs 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	

Factors	0	1	2	3	4	Factor weight	Factor score
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, or adequate programs and policies exist in area where violation occurred	IAP has responsibility for inadequate monitoring and reporting of exceptions	IAP has responsibility for inadequate programs and policies but has cooperated in bank's response to required corrective action	IAP has responsibility for absence of any programs and policies in area where violation occurred	IAP has responsibility for inadequate programs and policies and has not been responsive to required corrective action	4	
Subtotal 1							
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	
Subtotal 2							
Total matrix score (subtract subtotal 2 from subtotal 1)							

^a 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

Total matrix score	Suggested action
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 addressed in a CMP recommendation. When several violations, practices, or breaches are 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, the examiner 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. OCC 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**,” as defined in 12 USC 1813(u), includes

- any director, officer, employee, or controlling stockholder (other than a bank holding company or savings and loan holding company) of, or agent for, an insured depository institution;
- any other person who has filed or is required to file a change-in-control notice (refer to 12 USC 1817(j) and 12 CFR 5.50);

- any shareholder (other than a bank holding company or savings and loan holding company), consultant, joint venture partner, and any other person as determined by the OCC (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and
- any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any violation of law or regulation, breach of fiduciary duty, or unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.¹⁴

Violations include violations of laws, regulations, 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 any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the Deposit Insurance Fund.

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 their attention. The duty of loyalty would be breached if a director conspired with a borrower to receive the proceeds of a nominee loan.

¹⁴ Examiners considering an action against an individual affiliated with an uninsured national banking association, an uninsured federal branch or agency, or a third-party service provider (including an independent contractor) should consult with OCC legal staff in the appropriate District Counsel’s office or the Enforcement group.

4. The following guidance applies when using the matrix:

Misconduct Factors

Intent (1):¹⁵ 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 their 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 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 their 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

¹⁵ 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).

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 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 related previous misconduct that would otherwise be excluded from consideration because the statute of limitations has expired 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 related previous misconduct that would otherwise be excluded from consideration because the statute of limitations has expired 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 because the statute of limitations has expired 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.