



POLICIES & PROCEDURES MANUAL

Comptroller of the Currency
Administrator of National Banks

Section: Bank Supervision

Subject: Civil Money Penalties

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

I. Purpose

This issuance sets forth the OCC's policies governing the assessment of civil money penalties (CMPs). It replaces PPM-5000-7 (REV), dated April 8, 1991. These policies are internal guidelines for the use of the OCC and do not create any substantive or procedural rights which are legally or administratively enforceable.

II. 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 (FIRREA), gives the OCC the authority to assess CMPs against any "institution-affiliated party" (IAP), as defined in section 204(f)(6) of FIRREA, 12 U.S.C. § 1813(u), or national bank.

A. Tier 1

The OCC may assess tier 1 CMPs of up to \$5,000 per day for violations of any:

- o Statute or regulation;
- o Final or temporary order;
- o Condition imposed in writing in connection with the grant of any application or other request by the institution; or
- o Formal agreement.



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B. Tier 2

The OCC may also assess tier 2 CMPs of up to \$25,000 per day for:

- o The above violations;
- o Reckless unsafe or unsound practices; or
- o Breaches of fiduciary duty

which:

- o Are part of a pattern of misconduct;
- o Cause or are likely to cause more than a minimal loss to the institution; or
- o Result in a pecuniary gain to the IAP.

C. Tier 3

In addition, the OCC may assess tier 3 CMPs of up to \$1 million per day for knowing:

- o Violations of law, regulation, orders, conditions imposed in writing, or formal agreements;
- o Unsafe or unsound practices; or
- o Breaches of fiduciary duty

which knowingly or recklessly cause:

- o Substantial loss to the institution; or
- o Substantial gain to the IAP.



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The OCC's CMP authority is set out at 12 U.S.C. §§ 1817(j), 1972(2)(f) and 1818(I).¹

III. Policy

A CMP may serve as a deterrent to future violations of law, regulation, orders, conditions imposed in writing, and formal agreements, unsafe or unsound practices and breaches of fiduciary duty, both by the person or bank against whom the CMP is assessed and by other bankers and banks. A CMP can also encourage correction of violations, unsafe or unsound practices and breaches of fiduciary duty. 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 procedures. CMP referrals should be initiated with care and supported by adequate documentation (Appendix A).

In certain cases, the issuance of a reprimand or a supervisory letter (Appendix B) may be more appropriate than the assessment of a CMP. A reprimand is a strongly worded document to be used in cases that warrant a CMP but where the OCC has chosen not to pursue the action, e.g., where the assessment of a small CMP would consume excessive agency resources or where the individual or institution has recognized the supervisory problem and taken steps to correct it. This is distinguished from a supervisory letter which generally should be used

¹This PPM does not address CMPs for securities related violations, which will be addressed in a separate PPM, or against banks for call report violations, which are addressed in PPM 5000-27 (REV). Questions concerning CMPs for securities related violations should be addressed to the Securities, Investment and Fiduciary Practices Division. While the OCC has additional CMP authority under 12 U.S.C. §§ 93(b) and 504, the authority in those statutes is redundant with that in 12 U.S.C. § 1818(I), as amended by FIRREA. Accordingly, the OCC may rely exclusively on section 1818(I) in all post-FIRREA cases it would have formerly brought under sections 93(b) or 504.



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in cases where a CMP is not warranted but the office nonetheless wishes to call attention to a supervisory problem.

IV. The Matrix

The CMP matrix (Appendix C) is a tool that indicates the relative degree of severity of violations of law, reckless unsafe or unsound practices and breaches of fiduciary duty. It provides guidance in determining whether to assess, and, if so, the appropriate amount of, the CMP. The 13 assessment factors, which the Federal Financial Institutions Examination Council recommended that the agencies consider in its July 23, 1980, policy statement on CMPs, are built into the matrix and provide the basis for recommended actions or CMPs.

The matrix applies to the assessment of tier 1 and tier 2 CMPs. The matrix does not apply to the assessment of tier 3 CMPs. Tier 3 CMPs should be assessed only in the most severe cases having a substantial impact on the national banking system.

The matrix is intended to cause CMPs to be levied in a consistent and equitable manner. **The matrix is, however, offered only as guidance; it does not reduce the CMP process to a mathematical equation and should not be a substitute for sound supervisory judgment.** Individual cases may possess characteristics that remove them from the matrix, and the OCC's discretion is in no way limited by the matrix.

V. Procedures

If an examiner discovers serious violations of banking law and regulation, orders, conditions imposed in writing, or formal agreements, reckless unsafe or unsound practices or breaches of fiduciary duty, that examiner shall consider the matrix and guidelines (Appendix C) to determine the recommended level of action. If, after applying the matrix the examiner believes that a CMP or a reprimand is warranted, the examiner shall consult with the appropriate field



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manager, supervisory office and legal staff.² The examiner shall provide advance notice to the bank at the exit meeting and in the report of examination whenever he or she recommends the assessment of a CMP or the issuance of a reprimand.

Within 30 days following the close of the examination, the examiner-in-charge (EIC) shall submit the CMP referral to the supervisory office. The referral should consist of the EIC's memorandum containing his or her recommendations, plus the completed matrix and necessary supporting documentation. The EIC need not submit supporting documentation if he or she is only recommending that supervisory letters be sent.

The supervisory office and legal staff shall review the referral in accordance with the applicable CMP procedures. The district office is responsible for developing and communicating district CMP procedures to examiners. While the mechanics of such procedures are generally left to the districts' discretion, they should provide for timely and thorough supervisory and legal review.

After the supervisory office and legal staff have reviewed the referral, the director of the supervisory office, in consultation with legal staff, shall issue 15-day letters (Appendix B) in accordance with the guidance provided below or resolve the matter by issuing a supervisory letter or taking no further action. At the discretion of the appropriate deputy comptroller, only persons at the director level or above may sign 15-day letters. If the supervisory office has no director, then the field office director should sign the 15-day letter.

²In all cases where a CMP is being considered and there is loss to the institution plus either unjust enrichment to an IAP or reckless disregard of the law, a restitution action under 12 U.S.C. § 1818(b)(6) should also be considered.



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The supervisory office should only send 15-day letters to individuals or institutions against whom it is actively considering assessing CMPs or issuing reprimands and where the agency has established a basis for taking such action.³ In cases where only a reprimand is under consideration, the 15-day letter should reflect that fact and should not indicate that the OCC is considering assessing a CMP. The supervisory office should not send 15-day letters when only a supervisory letter is under consideration or as a discovery device. Where necessary, the supervisory office should send an "investigative letter" (Appendix B) to the institution or the individual in question in order to obtain additional information and to help determine whether further action is warranted.

The supervisory office and legal staff shall complete their review, including consideration of the 15-day letter responses and the matrix, and present the case to the appropriate Supervision Review Committee (SRC) within 90 days after receipt of the referral. In cases where a district has decided to assess a delegated CMP,⁴ it shall initiate the CMP by sending the individual or institution a letter disclosing that a CMP has been approved, the basis of the CMP and the dollar amount of the assessment (Appendix B), along with an unsigned copy of the notice of assessment and a draft stipulation and consent order. The letter should indicate that the individual or institution may either pay the

³As a general matter, under 12 CFR 7.5217(b), a bank may not indemnify its directors and officers for payment of a CMP or the expenses associated with defending a CMP proceeding provided that the action results in a final order of assessment. However, if properly provided for in its articles of association, a bank may indemnify its directors and officers for expenses associated with responding to 15-day letters. Questions concerning indemnification should be directed to legal staff.

⁴Enforcement delegations are set forth in memoranda dated June 17, 1992, from Robert R. Klinzing, Acting Senior Deputy Comptroller for Bank Supervision Operations, to the Deputy Comptrollers for Multinational Banking, Special Supervision and the districts.



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CMP or contest the action and explain that if the individual or institution does not pay the CMP within a fixed period of time, the notice will be served.

The district may negotiate the CMP for a reasonable period of time (not to exceed 30 days, except with the approval of the director of the Enforcement & Compliance Division (E&C) in cases where settlement is imminent). If the district is unable to reach a settlement, it should serve the notice and refer the matter to E&C.

In nondelegated actions involving delegated banks, the district shall submit the referral, along with its recommendations, to E&C. In cases where the district has approved a delegated CMP, a reprimand or a supervisory letter against one respondent, but recommends nondelegated CMPs against other respondents who are associated with the same institution, all of the actions will be deemed to be nondelegated and handled by E&C. Similarly, in cases involving a CMP and some other type of related action that is nondelegated, e.g., a removal, the entire matter shall be treated as nondelegated and handled by E&C. E&C shall complete its review and present the case to the Washington SRC within 90 days after receipt of the referral.

Exceptions to these time frames may be made in cases where demands in higher priority matters preclude compliance or where exigent circumstances exist, e.g., the presence of severe documentation deficiencies or novel legal issues.

Negotiation, settlement, and collection of CMPs shall be performed by legal staff and shall be accomplished based upon direction received from district or Washington supervision, as applicable. Settlement of delegated actions shall require the concurrence at the director level or higher, at the deputy comptroller's discretion. The districts may also request E&C's assistance with regard to any settlement offer. Settlement of nondelegated actions shall require the concurrence of the Deputy Comptroller for Special Supervision or Multinational Banking, as appropriate, and the Director of E&C. Settlement of



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nondelegated actions involving delegated banks shall also require consultation with the district.

E&C and the district counsel shall consult with the appropriate supervisory office and all interested parties, including the EIC, and keep them apprised of the progress of the case, until it is finally resolved through either settlement or litigation. In the event of an administrative hearing, the examiners who worked on the referral may be called on for litigation support and to serve as witnesses.

Further, upon approval by the Director of E&C, on a case-by-case basis, the districts may participate with E&C in the prehearing practice and litigation of a CMP proceeding. The Director of E&C shall be responsible for the management and supervision of prehearing practice and litigation in all CMP proceedings.

Oversight to promote efficiency, effectiveness, and consistency of actions taken shall be the duty of the Washington SRC, with respect to nondelegated actions, and the responsible district SRCs, with respect to delegated actions.

VI. Record keeping

The district office is responsible for maintaining accurate records with respect to delegated CMPs, including recording actions taken in the Supervisory Monitoring System (SMS) and ensuring that the ongoing status of pending CMPs is communicated to all interested OCC employees. The Washington office is responsible for Record keeping, including making appropriate SMS entries, with respect to nondelegated actions and keeping all interested parties apprised of the status of nondelegated cases.

VII. Records Management

Given the significance of the source material, the examiner who initiated the referral should retain a copy of the referral, including



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the supporting documentation. This requirement should be reviewed by the supervisory office, on a case-by-case basis, if the amount of supporting documentation would make such copying prohibitive.

The CMP case file is the OCC's official file on the CMP referral. If applicable (depending upon the nature of the referral), the case file consists of the examiner's original referral, supporting documentation, matrix, copies of the 15-day letters and responses, the supervisory office's analysis/matrix and transmittal memorandum to district legal staff, district legal staff's analysis/matrix and recommended decision memorandum to district SRC, district SRC's decision, and a copy of the end product (termination, supervisory letter, reprimand or stipulation and consent order). In nondelegated referrals, the CMP case file will also contain (if applicable) the district SRC's recommendation to E&C, E&C's analysis and recommendation to the Washington SRC, the Washington SRC's decision, legal pleadings and correspondence, and a copy of the end product.

The CMP case file will be updated and added to as the referral is processed. All documentation in the CMP case file should be in chronological order with the most recent information on the top, and appropriately referenced or indexed depending upon the volume of material.

The CMP case file should be transferred to the appropriate Federal Records Center after the case has been resolved against all of the respondents, through the issuance of a supervisory letter or reprimand, execution of a stipulation and consent order, issuance of a final order of assessment following an administrative hearing, or other written communication which closes out the case. The district records coordinator will transfer the case file involving delegated cases to the regional Federal Records Center. Central Records will transfer the case file involving nondelegated cases to the Washington National Records Center. However, at the discretion of the office handling the referral, the case file may be retained until the penalty



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is collected and the referral is terminated in the Enforcement Actions Application of SMS.

A signed copy of every supervisory letter, reprimand, stipulation and consent order, or other final action should also be filed in the National Filing System File #5 of the official bank file maintained by the supervisory office. In addition, a signed copy should be sent to Central Records in Washington for filing in the bank case file kept there.

VIII. Publicity

At the conclusion of all CMP cases that are resolved through a negotiated settlement, the district office, in delegated cases, and E&C, in nondelegated cases, shall forward a signed copy of the final stipulation and consent order to the Communications Division (Communications) in Washington for publication in its monthly listing of enforcement actions. In certain cases, an individual press release may also be considered. Such publicity may serve as a deterrent to future violations, unsafe or unsound practices and breaches of fiduciary duty. Press releases require the approval of the Senior Deputy Comptroller for Bank Supervision Operations. The district counsel, in delegated actions, and E&C, in nondelegated actions, should work directly with the supervisory office and Communications in preparing press releases.

For further information regarding the assessment of CMPs, please contact Special Supervision at (202) 874-4450 or E&C at (202) 874-4800.

Stephen R. Steinbrink
Senior Deputy Comptroller for
Bank Supervision Operations

Guidelines for Documenting CMP Referrals

CMP referrals should be supported by adequate documentation. While the compilation of documentation can be a burdensome and time-consuming exercise, it is important to recognize that adequate documentation is essential to determining whether there is a basis for assessing a CMP and is critical to the successful pursuit of a CMP action. In addition, by obtaining sufficient documentation at the outset, an examiner may accelerate the processing time and increase the likelihood that the agency will approve the recommended action.

Examiners should be sure to obtain complete copies of all documents, including front and back of notes and checks. Copies must also be legible and should not contain any stray marks or handwritten notations which might create hearsay problems if the document is introduced into evidence at an administrative hearing.

Attached are documentation guidelines for CMP referrals. The guidelines have been created to serve as a checklist to ensure that minimum standards of documentation are met with each referral. The guidelines cover violations that are often the basis of CMPs, including 12 U.S.C. §§ 84, 161, 371c, 375a and 375b, and 12 CFR Part 215, as well as violations of cease and desist orders and formal agreements. Please keep in mind that the guidelines only establish minimum standards of documentation; in some cases it may be necessary to obtain additional documentation, as required by the facts of the case.

The guidelines do not explicitly cover all violations, or reckless unsafe or unsound practices or breaches of fiduciary duty. It is suggested that similar documentation standards be applied to such actions as those set forth in the guidelines.

Questions concerning documentation should be directed to the district counsel or E&C.

¹
12 U.S.C. § 29 - OREO:

1. Board minutes reflecting approval of the transaction(s) or activity causing the violation.
2. Document representing acquisition or control of title, and timing of acquisition, e.g., warranty deed, contract for purchase, etc.
3. General ledger account.
4. Evidence of attempts to dispose of the property (or lack thereof).
5. Last appraisal.
6. Memorandum regarding any planned use or holding of the property.
7. Violations of law pages from the Report of Examination (ROE).
8. Examiner's workpapers supporting the violation(s).
9. Evidence of history and or previous administrative action, e.g., correspondence or memorandums reflecting OCC efforts to correct the violation(s) or similar violation(s); violations of law pages from prior ROE(s) citing same or similar violation(s); commitment letter, memorandum of understanding (MOU), formal agreement or cease and desist order (C&D) on point; supervisory letter or reprimand on point.
10. Financial statement(s) for each person subject to the referral.
11. Any other information considered relevant by the examiner.

12 U.S.C. § 60 - Payment of Dividends:

1. Board minutes reflecting approval of the transaction(s) or activity causing the violation.
2. The bank's call reports for the period in question. If the call reports cannot be reconciled to the violation cited, the examiner should obtain the information required below:
 - a. Daily statement or other document reflecting a breakdown of the capital accounts on the date the dividend was declared.
 - b. If applicable, copies of general ledger accounts reflecting transfers or a lack thereof, to the surplus account for the appropriate periods.
 - c. The bank's profit and loss statement for the calendar period preceding the date of declaration of the dividend.
 - d. Evidence of any tax effect in accordance with the format presented in 12 CFR 250.104.
3. Violations of law pages from ROE.
4. Examiner's workpapers supporting the violation(s).
5. Evidence of history and or previous administrative action, e.g., correspondence or memorandums reflecting previous OCC efforts to correct the violation(s) or similar violation(s); violations of law pages from prior ROE(s) citing same or similar violation(s); commitment letter, MOU, formal agreement, or C&D on point; supervisory letter or reprimand on point.
6. Financial statement(s) for each person subject to the referral.
7. Any other information considered relevant by the examiner.

12 U.S.C. 5 84 - Lending Limits:

1. Loan application(s) or loan memorandums for all advances on the line (both legal and excessive).
2. Note(s) for all advances and loan file comments.
3. Board and loan committee minutes reflecting approval of all advances.
4. If combinations:
 - a. Direct benefit; Evidence of disbursement of proceeds, e.g., cashier's check, wire transfer slip, etc.; deposit tickets and account statements.
 - b. Common enterprise:
 - i. Expected source of repayment: Loan application(s), memorandums or other information showing expected source of repayment and absence of other available repayment sources.
 - ii. Common control and financial interdependence: shareholder list, stock certificates, officer's and director's statement of interests or other evidence of 25 percent ownership; financial statements showing financial interdependence (50 percent of annual gross receipts and expenditures derived from transactions with the other person) between the two entities to be combined and evidence of interdependent business activities.
 - iii. Loans to acquire a business: Loan application(s), memorandums, note(s) showing purpose of loan(s); documentation showing use of the proceeds, e.g., checks, account statements, etc.; shareholder list, stock certificates, officer's and director's statement of interests or other evidence of 50 percent ownership.
 - c. Corporations: Shareholder list, stock certificates, officer's and director's statement of interests or other evidence of 50 percent ownership; documentation showing common enterprise as discussed in 4b above.
 - d. Partnerships, joint ventures, and associations: partnership, joint venture or association agreement; documentation showing direct benefit of loans to partnership, joint venture or association members to partnership, joint venture, association, or other members, or common enterprise between them, as discussed in 4a. and 4b. above.
5. Liability ledger(s) on date the violation occurred and for each date that additional excessive advances were made.

6. Daily statement(s) on date the violation occurred and for each date that additional excessive advances were made.
7. If overdrafts are involved, deposit account statement(s) and overdraft report.
8. Documents relevant to bank's claim to exemptions, if any.
9. If loss, individual charge-off ledger.
10. Violations of law pages from ROE.
11. Examiner's workpapers supporting violation(s).
12. Evidence of history and or previous administrative action, e.g., correspondence or memoranda reflecting OCC efforts to correct the violation(s) or similar violation(s); violations of law pages from prior ROE(s) citing same or similar violation(s); commitment letter, MOU, formal agreement, or C&D on point; supervisory letter or reprimand on point.
13. Financial statement(s) for each person subject to the referral.
14. Any other information considered relevant by the examiner.

12 U.S.C. § 161 - Call Reports:

1. Call report(s) for period in question.
2. If inadequate allowance for loan and lease losses (ALLL):
 - a. Bank's internal loan review, ALLL calculation and methodology.
 - b. Evidence of inadequacy, e.g., loan write-ups, line sheets, documentation from loan files, etc.
 - c. Examiner's workpapers showing ALLL calculation and methodology.
 - d. If available, evidence showing directors had reason to know or suspect the ALLL was inadequate.
3. If losses are not reflected, individual charge-off ledger or other evidence of losses.
4. Violations of law and other relevant pages from ROE.
5. Examiner's workpapers supporting violation(s).
6. Evidence of history and or previous administrative action, e.g., correspondence or memorandums reflecting previous OCC efforts to correct the violation(s) or similar violation(s); violations of law pages from prior ROE citing same or similar violation(s); commitment letter, MOU, formal agreement, or C&D on point; supervisory letter or reprimand on point.
7. Financial statement(s) for each person subject to the referral.
8. Any other information considered relevant by the examiner.

12 U.S.C. § 371c - Affiliate Transactions:

1. Documentation of affiliate relationship, e.g., shareholder list, stock certificates, officer's and director's statement of interests, etc.
2. Evidence of a covered transaction, e.g., note, repurchase agreement, investment, interest bearing instrument, etc.
3. Board minutes reflecting approval of the transaction(s) or activity causing the violation.
4. If applicable, evidence that proceeds of covered transaction were used for the benefit of or transferred to the affiliate, e.g., cashier's checks, wire-transfer slips, account statements, etc.
5. If violation of the 10 percent limitation (12 U.S.C. § 371c(a)(1)(A)):
 - a. Evidence of all covered transactions with that affiliate, e.g., notes, repurchase agreements, etc.
 - b. Liability ledger(s) on date the violation occurred and for each date that additional excessive advances were made.
 - c. Daily statement(s) on date the violation occurred and for each date that additional excessive advances were made.
6. If violation of the 20 percent limitation (12 U.S.C. § 371c(a) (1) (B)):
 - a. Evidence of all covered transactions with all affiliates.
 - b. Liability ledger(s) on date the violation occurred and for each date that additional excessive advances were made.
 - c. Daily statement(s) on date the violation occurred and for each date that additional excessive advances were made.
7. If purchase of "low-quality asset" (12 U.S.C. § 371c(a)(3)):
 - a. Evidence of purchase, e.g., sales contract or agreement, participation certificate, etc.
 - b. Evidence of asset quality, e.g., pages from ROE showing asset classification, line slips or other evidence of poor asset quality.
8. If inadequate collateral (12 U.S.C. § 371c(c)(1)):
 - a. Note or other evidence of loan amount.

- b. Loan memorandums, financing statement, appraisal, or other evidence showing value of collateral.
- 9. If loss, individual charge-off ledger.
- 10. Violations of law pages from ROE.
- 11. Examiner's workpapers supporting violation(s).
- 12. Evidence of history and or previous administrative action, e.g., correspondence or memorandums reflecting previous OCC efforts to correct the violation(s) or similar violation(s); violations of law pages from prior ROE(s) citing same or similar violation(s); commitment letter, MOU, formal agreement, or C&D on point; supervisory letter or reprimand on point.
- 13. Financial statement(s) for each person subject to the referral.
- 14. Any other information considered relevant by the examiner.

12 U.S.C. §§ 375a and 375b/12 CFR Parts 31 and 215 - Insider Loans:

1. Loan application or memorandum.
2. Instrument creating extension of credit, e.g., note, standby letter of credit, etc., and loan file comments.
3. Board and loan committee minutes reflecting approval of extension of credit.
4. If extension of credit to related interest of executive officer, director, etc., shareholder list, stock certificates, officer's and director's statement of interest, or other evidence that executive officer, director, etc., controls 25 percent or more of related interest.
5. If applicable, evidence that proceeds of extension of credit were used for benefit of, or transferred to, another person, e.g., cashier's check, wire transfer slip, deposit tickets, account statement, etc.
6. If preferential loan to insider (12 U.S.C. §§ 375a(1) and 375b(3)/12 CFR 215.4(a) and 215.5(d)), evidence that preferential treatment existed at inception or renewal, e.g., documentation showing loans to non-insiders that were on less favorable terms or reasons why an insider loan presented more than the normal risk of repayment or other unfavorable features.
7. If violation of the Regulation 0 (Reg 0) 15 percent aggregate lending limit (12 U.S.C. § 375b(1)/12 CFR 215.4(c)):
 - a. Document in the same manner as a violation of 12 U.S.C. § 84, with the following exceptions:
 - i. The combination rules of 12 CFR Part 32 do not apply. All loans to an executive officer, director, principal shareholder or their related interests are included in the aggregate lending limit for Regulation 0 (Reg 0) purposes. If applicable, documentation must be obtained to show that an entity is a related interest of an executive officer, director or principal shareholder, or that the proceeds of an extension of credit were used for the benefit of, or transferred to, that individual or entity (see 4 and 5 above).
 - ii. "Unimpaired capital and unimpaired surplus" must be calculated in the following manner: total equity capital and valuation reserves must be calculated using data from the bank's most recent call report, while subordinated notes and debentures must be calculated using loan date balance sheet data.
8. If violation of the 2.5 percent limit (12 U.S.C. 375a(4)/12 CFR 31.2(a)), and 5 percent limit (12 U.S.C. 375b(2)/12 CFR 31.2(b)):

- a. Document in the same manner as a violation of 12 U.S.C. § 84, with the following exceptions:
 - i. The combination rules of 12 CFR Part 32 do not apply. The 2.5 percent limit only pertains to loans to executive officers, and does not apply to loans to their related interests. The 5 percent limit applies to loans to executive officers, directors, principal shareholders and their related interests. If applicable, documentation must be obtained to show that an entity is a related interest of an executive officer, director or principal shareholder, or that the proceeds of an extension of credit were used for the benefit of, or transferred to, that individual or entity (see 4 and 5 above).
 - ii. The law is presently unclear regarding whether "unimpaired capital and unimpaired surplus" is calculated using data from a bank's most recent call report, or from its balance sheet on the date of the loan, for purposes of determining the 2.5 percent and 5 percent limits in 12 CFR Part 31. Therefore, when citing and documenting violations of the 2.5 percent and 5 percent limits, two calculations should be made: one calculation using the method set forth in 7a.ii. above, and a second calculation using loan date balance sheet data for all three capital components (total equity capital, subordinated notes and debentures and valuation reserves). Only those lines which are excessive when calculated under both methods should be cited as violations.
9. If illegal overdraft (12 U.S.C. § 375b(4)/12 CFR 215.4(d)):
 - a. Deposit account statement.
 - b. Overdraft reports.
10. If loss, individual charge-off ledger.
11. Violations of law pages from ROE.
12. Examiner's workpapers supporting violation(s).
13. Evidence of history and or previous administrative action, e.g., correspondence or memorandums reflecting previous OCC efforts to correct the violation(s) or similar violation(s); violations of law pages from prior ROE(s) citing same or similar violation(s); commitment letter, MOU, formal agreement, or C&D on point; supervisory letter or reprimand on point.
14. Financial statement(s) for each person subject to the referral.
15. Any other information considered relevant by the examiner.

12 U.S.C. § 1817(j)/12 CFR 5.50 - Change in Bank Control Act:

1. Purchase, assignment, transfer, pledge or other evidence of disposition of voting stock.
2. Bank's shareholder list with holdings of each shareholder.
3. Stock certificates, or other evidence of direct or indirect ownership aggregating 25 percent or more (or 10 percent or more if the institution has issued securities subject to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) or if immediately after the transaction no other person will own a greater percentage of that class of voting securities).
4. Evidence of any transaction, agreement or voting trust resulting in direct or indirect ownership or power to vote 25 percent or more of voting securities (or 10 percent or more if the institution has issued securities subject to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) or if immediately after the transaction no other person will own a greater percentage of that class of voting securities).
5. In cases where a notice was filed but the subsequent change in control occurred differently than disclosed in the Notice, copies of the notice and all documents evidencing the change in control transaction as it actually occurred.
6. Violations of law pages from ROE.
7. Financial statement(s) for each individual subject to the referral.
8. Any other information considered relevant by the examiner.

Noncompliance with C&D or Formal Agreement:

1. C&D or formal agreement.
2. Evidence of substantive noncompliance:
 - a. Capital: Call reports, daily statements or other evidence of noncompliance with requirements in C&D or agreement and any evidence of the bank's efforts to raise capital.
 - b. ALLL: Bank's internal loan review and ALLL calculation and methodology; evidence showing inadequacy of ALLL, e.g., loan write-ups, line sheets, examiner's workpapers, etc., and any evidence the bank's directors should have recognized the inadequacy.
 - c. Correction of violations of law: Evidence documenting violations and any efforts of the bank to prevent recurrence of the violations.
 - d. Credit and collateral deficiencies: Loan write-ups, line sheets, bank's loan files, examiner's workpapers, etc.; the number of deficiencies found and percent of sampled loans which contained deficiencies; and the number of deficiencies which occurred on new loans and any efforts the bank took to correct deficiencies on existing loans.
 - e. Inadequate policies and procedures: Bank's policies and procedures; examiner's workpapers; and any evidence the bank knew or should have known its policies and procedures were ineffective.
 - f. Classified assets: Bank's program to reduce level of classified assets, monthly reports, loan write-ups, line sheets, examiner's workpapers, etc.; evidence of additional extensions of credit to criticized borrowers, e.g., notes, board minutes, ROE excerpts, etc.
3. Board minutes reflecting approval of noncompliance.
4. If loss, individual charge-off ledger.
5. Relevant pages from ROE.
6. Examiner's workpapers documenting noncompliance.
7. Evidence of history and or previous administrative action, e.g., correspondence or memoranda reflecting previous OCC efforts to correct the noncompliance; excerpts from prior ROE(s) citing same or similar noncompliance; supervisory letter or reprimand on point.
8. Financial statement(s) for each person subject to the referral.
9. Any other information considered relevant by the examiner.

Guidelines for Issuing Reprimands, Supervisory Letters, 15-Day Letters, Investigative Letters, and Delegated CMP Cover Letters

Attached are model documents that are intended for use as a guide in drafting reprimands, supervisory letters, 15-day letters, investigative letters, and delegated CMP cover letters. The model documents should be tailored to accurately reflect the individual's specific acts or omissions. Many times those acts or omissions are very direct and it is accurate to say that the individual "caused, brought about, or participated in" a violation of law, an unsafe or unsound practice or a breach of fiduciary duty. However, other times, the basis for the document may turn more on a failure to heed warnings or to act to prevent or correct violations, practices, or breaches committed by others. In either case, the document should use language that is most descriptive of the individual's actual conduct and should specifically state what the nexus is between the individual's conduct and the violation, practice or breach.

For example, where a director knowingly received the proceeds of a loan in violation of 12 U.S.C. § 84, it may be appropriate for the document to state that the director "caused, brought about or participated in a 12 U.S.C. § 84 violation, by receiving the proceeds of a loan in excess of the bank's legal lending limit." However, where the director approved a loan which exceeded the bank's lending limit after the bank had previously been cited for a 12 U.S.C. § 84 violation on the borrower's line, but the director did not know that the loan constituted a violation, the document should say that the director "failed to take action to prevent a violation of 12 U.S.C. § 84, after the bank was previously cited for a lending limit violation on the borrower's line" or similar language. It should not say that the director "caused, brought about or participated in a violation of 12 U.S.C. § 84.11

Reprimand

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF CURRENCY

REPRIMAND

To: (Name and title of respondent)

The Comptroller of the Currency of the United States of America (Comptroller) has determined, through his national bank examiners and the examination process, that you (describe individual's act or omission which resulted in a violation of law, an unsafe or unsound practice or, a breach of fiduciary duty). Accordingly, (a violation of (cite statute/regulation violated), an unsafe or unsound practice or a breach of fiduciary duty) occurred at (state bank name)-(Bank), as described in the Report of Examination of the Bank dated

You are reminded that it is incumbent upon each officer and director of a national bank to assume and fulfill his or her fiduciary responsibilities. Included with these responsibilities is the duty to (describe duty which was not adhered to). Your failure to do so was an abdication of your fiduciary duty to the Bank.

The issuance of this Reprimand will be considered as a formal prior supervisory warning should you be involved in future violations of law, unsafe and unsound practices, or breaches of fiduciary duty as a director, officer, employee, agent, or other "institution-affiliated party" (IAP), as defined by 12

Supervisory Letter

(date)

(Respondent's name and address)

Dear _____:

The Office of the Comptroller of the Currency (OCC) has considered the assessment of a civil money penalty (11CMP11) for (describe individual's act or omission which resulted in a violation of law, an unsafe or unsound practice, or a breach of fiduciary duty). Accordingly, (a violation of (cite statute/regulation violated), an unsafe or unsound practice or a breach of fiduciary duty) occurred at (state bank name) (Bank), as described in the Report of Examination of the Bank dated _____.

We have reviewed the circumstances and your subsequent representations concerning the violation, practice, or breach and have determined not to assess a CMP or issue a Reprimand. This (violation, practice, or breach) is of serious concern to the OCC. The decision not to assess a CMP or issue a reprimand is not to be interpreted as minimizing the seriousness of this (violation, practice, or breach) or as condoning it.

You are reminded that it is incumbent upon each director of a national bank to assume and fulfill his or her fiduciary responsibilities. The directorate is entirely responsible for supervising the Bank's affairs, ensuring competent management, adopting and enforcing appropriate policies and procedures and complying with laws and regulations. While performance of specific duties may be delegated, the responsibility for the condition of the Bank remains with the directorate.

The OCC will continue to monitor closely the bank's compliance with the law and with safe and sound banking practices. This supervisory letter should serve as a warning to you that should any future violations of law, unsafe or unsound practices, or breaches of fiduciary duty occur, the OCC will take whatever supervisory action it deems appropriate as authorized by law.

Sincerely,

15-Day Letter: CMP

(date)

(Respondent's name and address)

Dear _____:

The Office of the Comptroller of the Currency is considering whether to assess a civil money penalty (CMP) against you pursuant to 12 U.S.C. § 1818(i). Any such assessment will be founded upon our determination that you have (describe individual's act or omission which resulted in a violation of law, an unsafe or unsound practice, or a breach of fiduciary duty). Accordingly, (a violation of (cite statute/regulation violated), an unsafe or unsound practice, or a breach of fiduciary duty) occurred at (state bank name) (Bank), as described in the Report of Examination of the Bank dated

The purpose of this letter is to afford you the opportunity to submit information relevant to our penalty assessment decision in advance of any actual assessment. We solicit any facts which you believe would make an assessment of a CMP inappropriate on the basis of the described (violation, practice, or breach). In particular, you are invited to provide us with information bearing on the appropriate amount of the penalty assessed, including:

- (a) factors involving your financial resources (please complete the enclosed financial statement);
- (b) any good faith surrounding the (violation, practice, or breach);
- © the gravity of the (violation, Practice, or breach);
- (d) any history of previous (violations, practices, or breaches); and
- (e) such other matters as you believe justice may require.

Please provide us with any submission you intend to make in response to this letter within fifteen (15) days of its receipt. Your response should be in writing and directed to _____. A decision regarding a CMP assessment will be made after consideration of your submission, or in the absence of a submission, on the basis of the information currently available to us.

Sincerely,

15-Day Letter: Reprimand

(date)

(Respondent's name and address)

Dear _____:

The Office of the Comptroller of the currency is considering whether to issue a reprimand against you in lieu of a civil money penalty. Any such reprimand will be founded upon our determination that you have (describe individual's act or omission which resulted in a violation of law, an unsafe or unsound practice, or a breach of fiduciary duty). Accordingly, (a violation of (cite statute/regulation violated), an unsafe or unsound practice, or a breach of fiduciary duty) occurred at (state bank name)(Bank), as described in the Report of Examination of the Bank dated

The purpose of this letter is to afford you the opportunity to submit information relevant to our decision in advance of any actual reprimand. We solicit any facts which you believe would make the issuance of a reprimand inappropriate on the basis of the described (violation, practice or breach). In particular, you are invited to provide us with the following information:

- (a) any good faith surrounding the (violation, practice, or breach);
- (b) the gravity of the (violation, practice, or breach),
any history of previous (violations, practices, or breaches); and
- (d) such other matters as you believe justice may require.

Please provide us with any submission you intend to make in response to this letter within fifteen (15) days of its receipt. Your response should be in writing and directed to_____. A decision regarding the issuance of a Reprimand will be made after consideration of your submission, or in the absence of a submission, on the basis of the information currently available to us.

Sincerely,

Investigative Letter

(date)

(Director's or Officer's name and address)

Dear _____:

The recent examination of the (bank name) (Bank) disclosed a violation of 12 U.S.C. § 84 on the [customer A] line. Specifically, the examination findings revealed that the proceeds of a loan to [customer B] appeared to have been diverted to [customer A]. This finding is based on the fact that on the same day that the cashier's check representing the disbursement of the proceeds was deposited in [customer B's] account, the funds were wire-transferred to an account of [customer A] at the state bank. If aggregated with [customer A's] other outstanding indebtedness, total loans to [customer A] exceeded the Bank's lending limit on April 15, 1992, by \$50,000.

The Office of the Comptroller of the Currency (OCC) is seeking the following additional information in order to ascertain whether or not the loan to [customer B] constituted a lending limit violation:

- (a) the purpose of the loan to [customer B];
- (b) the reasons why [customer B] wire-transferred the proceeds;

whether [customer A] in fact owned the account at the state bank;
- (d) whether anything of value was given by [customer A] in exchange for the loan proceeds;

(e) whether, as loan officer, you were aware of the ultimate disposition of the loan proceeds; and
- (f) whether the loan was ever presented to the board of directors for approval and, if so, whether they approved the loan.

Please provide us with responses on (a) - (f) above and any other information that you have which may be relevant to the violation by no later than _____. Your response should be in writing and directed to _____.

Sincerely,

Delegated CMP Cover Letter

(date)

(Respondent's name and address)

Dear _____ :

The Office of the Comptroller of the Currency (OCC) has decided to assess a civil money penalty (CMP) against you pursuant to the provisions of 12 U.S.C. § 1818(i). This decision is based upon the agency's determination that you (describe individual's act or omission which resulted in a violation of law, an unsafe or unsound practice, or a breach of fiduciary duty). Accordingly, (a violation of (cite statute/regulation violated), an unsafe or unsound practice, or a breach of fiduciary duty) occurred at (state bank name) (Bank), as described in the Report of Examination of the Bank dated _____.

Under 12 U.S.C. § 1818(i), the OCC may assess CMPs of up to \$5,000 per day [\$25,000 per day for tier 2 CMPs] for each day that the (violation, practice, or breach) was outstanding. In determining the appropriate amount of the CMP, the OCC is legally obligated to consider the size of the respondent's financial resources, any good or bad faith, the gravity of the (violation, practice, or breach), the history of previous (violations, practices, or breaches), and such other matters as justice may require. Based on our review of the circumstances surrounding this (violation, practice, or breach), the OCC has decided to assess a \$ __CMP against you.

If you wish to settle this matter without further proceedings, please execute the attached Stipulation and Consent Order which acknowledges your obligation to pay the \$___assessment and forward it to my attention, along with a check in the above amount, payable to the Treasurer of the United States, within ten (10) days of the receipt of this letter.

If you elect to contest the CMP, the attached Notice of Assessment will be executed and served on you. The notice will initiate the administrative process set forth in 12 U.S.C. § 1818(i) and 12 CFR Part 19. If you choose to contest the CMP, you will be entitled to an administrative hearing before an administrative law judge.

Sincerely,

CMP MATRIX

Note: Boxes on the matrix (including the empty boxes) should be used to reflect progressive levels of severity. As used in the matrix, the term “violation” also refers to reckless unsafe or unsound practices, and breaches of fiduciary duty.

	0	1	2	3	4	Weight Factor	Final Figure
Intent	No		Should have known		Clear intent	5	
Pecuniary gain or other benefit to IAP or related interest	No			Indirect benefit to IAP or related interest	Direct benefit to IAP or related interest	4	
Prev. admin. action or criticism	None	Prev. criticism for similar violation	Violation or criticism on point cited in ROE	MOU, Commitment Letter or Supervisory Letter on point	C&D, Agreement, Condition in Writing, Reprimand, or prior CMP on point	3	
History	None	Unrelated prior violation	At least one similar violation	Several similar violations	Frequent similar violations	2	
Loss or risk of loss to the bank	No loss and no risk of loss	No loss or minimal risk	Minimal loss or moderate risk		Substantial actual or potential loss	6	
No. Of violations at issue					Numerous violations	2	
Duration of violation prior to notification					Violation outstanding for long period	2	
Continuation after notification	Violation ceased prior to notification	Violation ceased immediately upon notification		Violation continued for period of time after notification	Violation still continuing	3	
Concealment	None			Purposely complicated transaction to make it difficult to uncover	Active concealment	5	
Impact other than loss	No impact on bank or banking industry		Substantial impact on bank; no impact on banking industry	Moderate impact on banking industry or on public perception of banking industry	Substantial impact on banking industry or on public perception of banking industry	6	
Loss or harm to consumers (consumer laws only)	No loss and no harm	No loss or minimal harm	Minimal loss or moderate harm		Substantial loss or harm	5	
Subtotal 1							
Restitution	No restitution	Partial restitution	Complete restitution under compulsion (e.g., threat of losing job)	Complete restitution immed. after loss or violation brought to attention	Complete restitution voluntarily, before bank or examiner uncovered loss	2	
Good faith (prior to notification)	None				Unintentional violation	3	
Full cooperation (after notification)	None				Forthcoming in interviews	2	
Subtotal 2							
Total (Subtract 2 from 1)							

POINTS	SUGGESTED ACTION	RESPONSIBILITY
0-30	Consider not making a referral.	Examiner reviews violation and applies matrix. Work papers should support decision not to refer.
31-50	Consider sending Supervisory Letter.	Examiner reviews violation, applies matrix and prepares referral to supervisory office. ¹ Supervisory office applies matrix and takes appropriate action.
51-60	Consider sending Reprimand or CMP of \$1M up to \$5M.	Examiner reviews violation, applies matrix, consults with field manager, supervisory office and legal staff, ² and prepares referral to supervisory office. Supervisory office and legal staff review referral and director of supervisory office sends 15-day letter in consultation with legal staff. After consideration of response, supervisory office and legal staff apply matrix. If recommendation is to send a reprimand or assess a CMP, case should be presented to SRC. SRC considers supervisory and legal staff recommendations and takes appropriate action. If delegated bank, district may assess CMP or send reprimand. If nondelegated bank, submit referral to E&C. E&C reviews referral and presents case to WSRC. WSRC considers E&C recommendation and takes appropriate action.
61-70	Consider CMP of greater than \$5M up to \$10M.	See as immediately above.
71-80	Consider CMP of greater than \$10M up to \$25M.	Examiner reviews violation, applies matrix, consults with field manager, supervisory office and legal staff, and prepares referral to supervisory office. Supervisory office and legal staff review referral and director of supervisory office sends 15-day letter in consultation with legal staff. After consideration of response, supervisory office and legal staff apply matrix. If recommendation is to assess a CMP, case should be presented to SRC. SRC considers supervisory and legal staff recommendations and takes appropriate action. If delegated bank and CMP is \$20,000 or less, district may assess CMP. Otherwise, referral is submitted to E&C. E&C reviews referral and presents case to WSRC. WSRC considers E&C recommendation and takes appropriate action.
81-90	Consider CMP of greater than \$25M up to \$50M.	Same as immediately above.
91-100	Consider CMP of greater than \$50M up to \$100M.	Same as above.
100+	Consider CMP of greater than \$100M.	Same as above.

¹District or Washington, as appropriate.

²The district counsel, in the case of delegated banks, or E&C, in the case of nondelegated banks.

Guidelines for Using the CMP Matrix

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.** Where 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. Thus, if a director approved a loan in violation of 12 U.S.C. § 84, another loan in violation of 12 U.S.C. § 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.** Thus, if six directors approved a loan in violation of 12 U.S.C. § 84, and all were equally culpable, only one matrix should be completed for the six directors. However, if two directors were more culpable than the other four directors, a separate matrix should be completed for those two directors.

In other words, if six directors violated 12 U.S.C. §§ 84, and 371c and engaged in reckless unsafe or unsound practices, and all were similarly culpable, only one matrix need be completed. However, if two of the directors were more culpable than the other four directors, two matrices should be completed, i.e., one for the two directors that were more culpable, and one for the remaining four directors. Finally, if two of the directors engaged in the 12 U.S.C. § 84 violation, but not the section 371c violation or the reckless unsafe or unsound practices, two matrices should be completed, i.e., one for the two directors who engaged in only the section 84 violation, and one for the other four 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 which should automatically result in the assessment of higher CMPs for tier 2 cases. If, after applying the matrix, the recommendation is for a CMP in excess of \$5,000 per day, or for a reckless unsafe or unsound practice, or a breach of fiduciary duty, the CMP is, by definition, a tier 2 CMP. 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" includes:

- 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

which 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.
- An enforceable condition imposed in writing is one 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 U.S.C. § 1818(b)" or similar language.
- An unsafe or unsound practice is one in which (1) there has been some conduct, whether act or omission, (2) which is contrary to accepted standards of prudent banking operation, and (3) which might result in exposure of the bank or its shareholders to abnormal risk or loss. 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.
- **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 U.S.C. § 84 after it had been brought to his attention. The duty of loyalty would be breached if a director conspired with a borrower to receive the proceeds of a nominee loan.

4. **Pecuniary gain or other benefit to IAP or related interest:** In assessing this factor, the monetary gain or other benefit may be to the IAP who committed the violation, recklessly engaged in an unsafe or unsound practice, or who breached any fiduciary duty, or to other IAPs or their related interests.
5. **Previous administrative action or criticism:** Under severity level 1, "similar violation" could refer to prior criticisms for violations of the same statute or regulation, e.g., a previous lending limit violation and a current lending limit violation. This could also refer to violations that are similar in nature, e.g., a previous violation of the aggregate lending limit under 12 CFR Part 215 and a current violation of the lending limit under 12 U.S.C. § 84.
6. **History:** Under severity level 2, "similar violation" has the same meaning as "similar violation" used in the **Previous Administrative Action or Criticism** factor explained above.
7. **Loss or risk of loss to the bank:** In assessing this factor, "potential loss" refers to any time at which the bank was in danger of sustaining a loss. Accordingly, if the violation caused the possibility 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.
8. **Continuation after notification:** The reference to "notification" in this factor includes notice of the violation, reckless unsafe or unsound practice, or breach of fiduciary duty by the OCC, other regulatory agencies, external auditors, internal auditors, or other parties whose responsibilities include providing the bank or its subsidiaries with information about its operations.
9. **Concealment:** 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, or internal and external auditors.

10. **Impact other than loss:** In assessing this factor, it is appropriate to consider any possible negative impact or harm to the bank, other than loss. For example, a violation of law involving insider abuse may result in adverse publicity for the institution, possibly causing a run on deposits and affecting the bank's liquidity.
11. **Loss or harm to consumers (consumer laws only):** This factor applies only in cases involving violations of consumer banking laws, rules, or regulations (where bank customers incur loss or are otherwise harmed).
12. **Good faith (prior to notification):** In assessing a person's good faith, the examiner should generally focus on facts and circumstances which occurred prior to notification of the violation, reckless unsafe or unsound practice, or breach of fiduciary duty by the OCC, other regulatory agencies, external auditors, internal auditors, or other parties whose responsibilities include providing the bank or its subsidiaries with information about its operations.
13. **Full cooperation (after notification):** In assessing this factor, the examiner should generally focus on facts and circumstances which occurred after notification of the violation, reckless unsafe or unsound practice, or breach of fiduciary duty by the OCC, other regulatory agencies, external auditors, internal auditors, or other parties whose responsibilities include providing the bank and/or its subsidiaries with information about its operations.