

RB 18-1a was rescinded 4/18/94 by RB 18-1b. Click [HERE](#) to link to RB 18-1b.

**Handbook: Thrift Activities**  
**Subject: Enforcement Actions**

**Section: 150**  
**RB 18-1a**

June 13, 1990

## General Enforcement Policy

# RESCINDED

*Summary:* This Regulatory Bulletin describes the formal enforcement powers of the Office of Thrift Supervision, successor to the Federal Home Loan Bank Board, and provides general guidelines for the utilization of those powers. Regulatory Bulletin 18-1, dated September 27, 1989, is rescinded with the issuance of this Bulletin.

**OTS Identification:**  
 Resolution No. 90-331  
 EP-002A  
 February 12, 1990

**For Further Information Contact:**  
 Your District Office or Enforcement, Office of Thrift Supervision, Washington, D.C.: Rosemary Stewart, Director, (202) 906-7622 or John Downing, Assistant Director, (202) 906-7154.

**Supplementary Information:**  
 This Policy Statement supersedes EP-002 General Enforcement Policy, Resolution No. 88-264, dated April 11, 1988.

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**Purpose:**

This Bulletin sets forth the Office of Thrift Supervision's (OTS) policy for vigorous enforcement action by its regulatory staff.

**Policy:**

It is the policy of the OTS to fully utilize its statutory authorities to take prompt and vigorous enforcement action against thrift institutions, their directors, officers, agents, holding companies, service corporations and/or their officials where warranted to ensure the safety and soundness of such thrift institutions and the thrift industry in general. Further, it is OTS policy

that, when the requirements of law have otherwise been satisfied, thrift institutions with a composite MACRO rating of 3, 4 or 5 are presumed to warrant formal enforcement action unless the District Director documents that their problems are satisfactorily corrected or in the process of full correction.

**Background:**

*Enforcement Philosophy*

In applying this policy, the OTS wishes to establish a regulatory environment where deficiencies in thrift institutions are corrected before they result in significant problems or situations that threaten a thrift's ongoing viability or safety and soundness. This approach of intervening with regulatory restrictions and requirements at the first sign of deficiency, including a lack of prudent policies, procedures or controls, reflects OTS's understanding that the thrift industry is entrusted with federally insured deposits to prudently and safely provide home financing and community-based financial services to the public.

*Types of Enforcement Actions*

The OTS has both formal and informal enforcement tools to aid it in carrying out its supervisory and enforcement responsibilities. These tools range from advice and moral suasion to cease and desist orders.

OTS's formal enforcement tools include the following:

- Supervisory agreements
- Consent merger agreements
- Civil money penalties
- Cease and desist orders
- Temporary cease and desist orders
- Removal and/or prohibition orders
- Immediate suspensions during removal and prohibition proceedings
- Temporary suspensions for certain criminal indictments/convictions
- Capital directives
- Injunctive actions
- Receiverships

Informal enforcement tools include:

- Moral suasion
- Supervisory correspondence
- Board of directors resolutions
- Requests for voluntary management changes or reorganizations
- Supervisory directives

In order to determine which enforcement action(s) should be pursued, the OTS may conduct formal examinations and investigations. In conducting such examinations and investigations, regulatory staff may compel the production of documents and sworn testimony, and enforce subpoenas in U.S. District Court.

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## Procedures

Enforcement action against open institutions should promptly be initiated regardless of MACRO ratings, when:

- 1) There is serious insider abuse, even if the institution is not immediately or directly harmed.
- 2) The institution has failed to exercise due diligence in granting loans or making investments.
- 3) The institution has committed a significant violation of statutes or regulations.
- 4) An institution or any individual involved has disregarded or refused to respond to prior supervisory efforts to correct serious problems.
- 5) Any unsafe or unsound practice or any violation of conditions or agreements has occurred resulting in a significant risk or substantial loss.
- 6) A material violation of securities laws or the Change in Control Act has occurred.

This list is not exclusive. District Directors are expected to take or recommend appropriate enforcement action in any other situation in which they determine such action is warranted. In determining whether enforcement action is warranted and which type of action is most appropriate, consideration should be given to:

- The severity and materiality of the actual or potential violation or unsafe or unsound conduct;
- Whether the illegal action, unsafe or unsound conduct or failure to correct deficiencies has been repeated;

- The record of taking remedial or corrective action in the past;
- The extent of actual or potential damage, harm or loss to the thrift institutions as a result of the action or inaction;
- Whether adequate corrective action has been taken already;
- The likelihood that the conduct may occur again;
- The impact of the illegal or unsafe or unsound conduct on other institutions;
- The extent to which the identified problems were preventable and not solely the result of external factors; and
- The presence of unique circumstances.

The importance of each of these factors depends on the conduct or problems discovered, the person or entity against whom an action would be taken and the type of action or actions available.

Of course, legal matters such as the statutory grounds for taking action must be considered. In addition, when choosing the formal action, it is important to consider the remedy for violations of the available actions. For example, when choosing between a cease and desist order and a supervisory agreement, it is important to consider that violations of cease and desist orders may be redressed with court enforcement, whereas violations of supervisory agreements may not.

## Utilization of Enforcement Powers and Supervisory Responses

### General

The OTS uses its enforcement powers and supervisory responses for

three purposes: (1) prevention, (2) remedial/corrective action or (3), in the case of civil money penalties, punitive redress. The goals sought in a particular supervisory response or enforcement action are determined on a case-by-case basis by the considerations set out herein.

### Factual Basis and Statutory Grounds

Before taking or initiating formal enforcement, a determination must be made that the facts establish the applicable statutory grounds for initiating the action. Allegations of misconduct raised in the supervisory and enforcement process should be supported with specific instances of such misconduct or sufficient factual evidence to believe reasonably that such misconduct may have occurred or is likely to occur in the future. However, the OTS will not permit conduct for which an enforcement action is justified to continue while its staff documents all of the details of such conduct. It is imperative that the staff move promptly to correct or remedy illegal or unsafe or unsound conduct upon forming a reasonable factual basis of the details of such conduct, as well as a reasonable belief that it must be redressed.

### General Procedure for Formal Enforcement Actions

Washington Enforcement staff and the District Offices are expected to work closely together. District Offices are encouraged to develop legal counsel proficient in handling enforcement matters. Draft consent enforcement orders are required to be submitted to legal review prior to their submittal to the respondent as are final enforcement orders before they are approved and issued. That legal review is to be done as expeditiously as possible.

Knowledge that its conduct is being treated as an enforcement matter

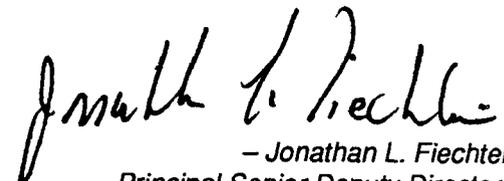
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does not relieve the subject institution of its obligation to deal with its District supervisory staff on that or other matters. The supervisory staff is expected to consult with Washington Enforcement staff concerning contacts related to a matter Enforcement is handling, and to stay involved in the case even after a referral has been made. Enforce-

ment is expected to keep the District Office or other referring office personnel fully informed as to the progress of enforcement matters it is handling, and closely involved with the settlement or resolution of any material aspect of these cases.

See Summary and Supplementary Information.

  
- Jonathan L. Fiechter  
Principal Senior Deputy Director