

# RESCINDED

Office of Thrift Supervision  
Department of the Treasury

December 3, 2009

## Regulatory Bulletin RB 18-3b

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(REV)



Handbook: **Examination**  
Subject: **Enforcement Actions**

**Section: 080**

### Enforcement Policy Statement on Civil Money Penalties

*Summary:* This Regulatory Bulletin sets forth the Office of Thrift Supervision's (OTS) policies governing the assessment of civil money penalties (CMPs). Included with the Bulletin is a new general CMP matrix form and instructions identifying the factors considered by OTS in deciding whether a CMP should be imposed, and if so, in what amount. This Bulletin supersedes and replaces Regulatory Bulletin 18-3a, dated July 30, 1993.

*For Further Information Contact:* Your OTS Regional Office or Susan Chomicz, Deputy Chief Counsel for Enforcement, Office of Thrift Supervision, Washington, D.C., (202) 906-7966.

#### *Regulatory Bulletin 18-3b*

#### **I. Introduction**

The assessment of CMPs is one of the enforcement tools available to OTS. OTS assesses CMPs to ensure the safety and soundness of savings associations and the industry's compliance with applicable laws, rules, and regulations. A CMP is particularly appropriate to remove the incentive for financial gain from misconduct, and to deter further misconduct involving a particular savings association and similar abuses elsewhere in the industry.

This policy statement briefly describes the statutory framework for civil money penalties, the factors that should be considered in the decision to assess a CMP for a violation, and the procedure for making that decision. Attached to this Bulletin are (1) a general CMP matrix form and instructions (Appendix A) and (2) a reporting CMP matrix form (Appendix B). OTS uses these forms as guidance in considering whether to assess CMPs and in determining the amount of such CMPs. The 13 assessment factors, which the Federal Financial Institutions Examination Council (FFIEC) recommended that the banking agencies consider in its June 3, 1998 revised policy statement on the Assessment of CMPs, are built into the forms and provide the basis for recommended actions or CMPs.

The policies and procedures discussed in this Bulletin and the CMP matrix forms and instructions are guidelines for the use of OTS, its staff and agents. These guidelines do not create any substantive or procedural rights enforceable at law or in any administrative proceeding. The CMP matrix forms are intended to cause CMPs to be levied in a consistent and equitable manner. The CMP matrix forms are, however, offered only as guidance and do not

# Regulatory Bulletin 18-3b

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reduce the CMP process to a mathematical equation. Accordingly, the CMP Matrix forms should not be a substitute for sound supervisory judgment. Individual cases may possess characteristics that remove them from the matrix or warrant a course of action different than suggested by the CMP Matrix forms. OTS's discretion in such instances is in no way limited by the CMP Matrix forms.

## II. Statutory CMP Scheme

### *General Civil Money Penalty Statute*

The general civil money penalty statute is set forth in Section 8(i) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(i)(2), and establishes three tiers of ascending penalties. In addition to establishing the three tiered structure, the general civil money penalty statute also provides for the manner in which OTS assesses and collects civil money penalties. See, 12 U.S.C. § 1818(i) (2) (E) and (I). The inflation adjusted dollar amount of CMPs that may be assessed under each of the three tiers is set forth in 12 C.F.R. § 509.103.

Tier 1 CMPs up to \$7,500 may be assessed against an institution-affiliated party (IAP), as defined in 12 U.S.C. § 1813(u), for violations of any:

- Statute 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
- Formal agreement.

Tier 2 CMPs up to \$37,500 may be assessed against an IAP for:

- Violations identified as a basis for Tier 1 CMPs;
- Reckless unsafe or unsound practices; or
- Breaches of fiduciary duties

that:

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

Tier 3 CMPs up to \$1,375,000 may be assessed against an IAP for knowing:

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

Which knowingly or recklessly cause:

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

### *Other Civil Money Penalty Statutes*

#### Flood Insurance Act

The Flood Insurance Act, 42 U.S.C. § 4012a (f), requires OTS to assess CMPs of up to \$385 per day (up to a maximum yearly amount of \$135,000) against any savings association found to have a pattern or practice of committing violations of 12 C.F.R. Part 572, mandatory flood insurance escrow requirements, notice requirements under 42 U.S.C. 4014a, or force placed flood insurance requirements.

The agency should assess and collect penalties imposed under these provisions in the manner provided in subparagraphs (E), (F), (G), and (I) of the general civil money penalty statute.

IAPs participating or engaging in violations of the Flood Insurance Act may be assessed personal CMPs under Section 8(i) of the FDIA.

#### Affiliate Refusal to Cooperate

OTS is authorized by HOLA to assess CMPs up to \$7,500 against an association if any affiliate of the association refuses to permit any examiner of OTS to conduct an examination, or refuses to provide any information required to be disclosed in the course of any examination. 12 U.S.C. 1467(d). Such CMPs may be assessed for each day that such refusal continues and are to be collected in the manner provided in the general civil money penalty statute.

#### Holding Company Act

OTS is authorized by HOLA to assess CMPs up to \$32,500 against any company that violates, or any person who participates in a violation, of any provision of the Holding Company Act or any regulation or order issued pursuant thereto. 12 U.S.C. 1467a (i) (2) and (3). Such CMPs may be assessed for each day the violation continues and are to be collected in the manner provided in subparagraphs (E), (F), (G), and (I) of the general civil money penalty statute.

# Regulatory Bulletin 18-3b

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## Change in Bank Control Act

OTS may assess civil money penalties against persons who violate any provision of the Change in Bank Control Act or any regulation or order issued there under. See, 12 U.S.C. 1817(j) (16). Such penalties are in the amounts provided under and assessed according to the three-tier structure and other provisions in the general civil money penalty statute.

## Non-Certified Appraisers

OTS is authorized by 12 U.S.C. § 3349(b) to assess civil money penalties against associations that seek, obtain, or give money or any other thing of value in exchange for the performance of an appraisal by a person the association knows is not a State-certified or State-licensed appraiser, as defined in 12 U.S.C. § 3345, in connection with a federally-related transaction, as defined in 12 U.S.C. § 3350. The type of federally-related transaction and the type of appraiser required are described in 12 U.S.C. §§ 3342 and 3343. Such penalties are assessed according to the three tier structure and other provisions contained in the general civil money penalty statute.

## Home Mortgage Disclosure Act

OTS is authorized to assess civil money penalties for violations of the Home Mortgage Disclosure Act. See, 12 U.S.C. § 2804. Such penalties are to be assessed in the amounts provided under and according to the three-tier structure and other provisions of the general civil money penalty statute.

## Late or Inaccurate Reports of Condition, Holding Company Reports or Certified Statement of Assessment Base

OTS is authorized by the Home Owners' Loan Act (HOLA) to assess civil money penalties against associations, holding companies and their subsidiaries that fail to submit or to publish any report within the time frame required by OTS or that submit or publish any false or misleading report or information. See, 12 U.S.C. § 1464(v) and 12 U.S.C. § 1467a(r). A similar penalty structure governs the failure to make a timely or accurate submission of a certified statement of assessment base. See, 12 U.S.C. § 1817(c) (5).

These statutory CMP provisions contain a separate three-tiered structure that OTS must apply when making an assessment under those sections. The attached Reporting Tier Matrix applies to civil money penalties assessed under these statutes.

Tier 1 reporting CMPs may be assessed where, despite procedures reasonably adapted to avoid inadvertent and unintentional error, and as a result of such error, a savings association fails to submit or publish a required report, information, or certified statement within the specified time; submits or publishes any false or misleading report, information, or certified statement; or inadvertently transmits or publishes any report or certified statement that is minimally late.

Tier 2 CMPs may be assessed where a savings association does not have procedures to avoid inadvertent and unintentional error and, as a result of such error, fails to submit or publish a required report, information, or certified statement within the specified time, or submits or publishes any false or misleading report, information or certified statement.

Tier 3 CMPs may be assessed if the savings association knowingly or with reckless disregard for accuracy submits or publishes a false or misleading report, information or certified statement.

CMPs may be assessed for each day that a violation continues. The agency should assess and collect CMPs imposed under these provisions in the manner provided in subparagraphs (E), (F), (G), and (I) of the general civil money penalty statute.

### Security Measures

Pursuant to 12 U.S.C. § 1884, OTS is authorized to assess a civil money penalty of up to \$110 per day against savings associations for violations of any rule or regulation regarding minimum standards with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

CMPs may be assessed for each day that a violation continues. CMPs imposed under these provisions are to be assessed and collected by the agency in the manner provided in subparagraphs (E), (F), (G), and (I) of the general civil money penalty statute.

### **III. Consideration and Assessment of CMPs**

A CMP against an IAP or association is an effective deterrent to violations of law, regulation, orders, conditions imposed in writing, and formal agreements, unsafe or unsound practices and breaches of fiduciary duty. A CMP is particularly appropriate to deter and address continuing or repetitive violations of law, regulation, conditions imposed in writing, unsafe or unsound practices and breaches of fiduciary duty and the violation of any order or formal agreement. For violations of outstanding orders or formal agreements, a new order or formal agreement should not be issued unless the violations of the previous order or formal agreement are addressed through CMPs or otherwise.

The length of time that a violation, particularly a violation of an order or formal agreement, remains uncorrected is a factor in determining CMP amounts. Accordingly, a CMP encourages the timely correction of violations, unsafe or unsound practices and breaches of fiduciary duty. New management does not toll the obligation to comply with laws or regulations or outstanding order or formal agreement. A CMP is an effective deterrent to others from engaging in the type of misconduct for which a CMP was assessed.

OTS may use its CMP authority as it deems appropriate to achieve its objectives and fulfill its statutory and regulatory responsibilities. A CMP assessment action may be undertaken independently or in conjunction with other supervisory or enforcement actions and procedures. A CMP assessment action also may be undertaken jointly with other regulatory agencies, such as the Department of Justice or Financial Crimes Enforcement Network (FinCEN).

### **IV. CMP Matrix Form**

The general and reporting CMP matrix forms are tools that indicate the relative degree of severity of violations of law, reckless unsafe or unsound practices and breaches of fiduciary duty. The CMP matrix forms provide guidance in determining whether to assess, and, if so, the

## Regulatory Bulletin 18-3b

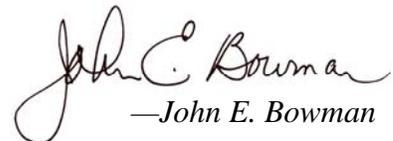
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appropriate amount of, the CMP. The general CMP matrix form (General Matrix) applies to the assessment of Tier 1 and Tier 2 CMPs. The General Matrix does not apply to the assessment of Tier 3 CMPs. Tier 3 CMPs should be assessed only in the most severe cases having a substantial impact on an association or the thrift industry.

### **V. Procedure Regarding Determination Whether to Assess a Civil Money Penalty**

Examination and supervisory staff should evaluate violations of law, regulation or order, violations of a condition imposed in writing or a written agreement, breaches of fiduciary duty, or unsafe or unsound practices for possible assessment of CMPs. The decision whether to assess CMPs should be based upon application of the appropriate CMP Matrix form to the identified misconduct, as well as consider the overall enforcement and supervisory strategies and objectives of the OTS.

If serious, continuing or repetitive violations of law and regulation, orders, conditions imposed in writing, or formal agreements, reckless unsafe, unsound practices or breaches of fiduciary duty or failure to file timely and accurate reports are discovered (including publication of false information), examination and supervisory staff shall use the appropriate CMP Matrix form and instructions to make an appropriate CMP recommendation. Where there are changes in directors and management, consideration should be given to the time period such persons were in place and an evaluation of their actions and conduct during that time period. The replacement of prior management and directors with new management and directors does not eliminate the need to make an appropriate CMP review and determination.

  
—John E. Bowman  
*Acting Director*

# CMP MATRIX

("Misconduct" refers to violations, unsafe and unsound practices and breaches of fiduciary duty.)

|  | 0  | 1  | 2   | 3   | 4  | ASSIGNED LEVEL | 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             |              |
| Previous Administrative Action or Criticism  | None   | Previous Criticism for Similar Instance(s) of Misconduct       | Violation or Criticism on Point Cited in Exam or Visit Report                     | MOU or Supervisory Letter on Point  | 8(a), C&D, Agreement, Condition in Writing or Prior CMP Assessment on Point        |                | 3             |              |
| History  | None   | Unrelated Prior Instances of Misconduct                        | At Least One Similar Instance of Prior Misconduct                                 | Several Similar Instances of Prior Misconduct                                   | Frequent Similar Instances of Prior Misconduct                                     |                | 2             |              |
| Loss or Risk of Loss to Institution  | No Loss and No Risk of Loss                            | No Actual Loss or Risk of only a Minimal Loss <sup>1</sup>     | Minimal Actual Loss or Risk of Moderate Loss <sup>2</sup>                         | Moderate Actual Loss or Risk of Substantial Loss <sup>3</sup>                   | Substantial Actual or Potential Loss   |                | 6             |              |
| Number of Instances of Misconduct at Issue   | None   | One to Three   | Four to Six   | Seven to Ten  | Over Ten   |                | 2             |              |
| Duration of Misconduct Prior to Notification or Discovery                          | 0 to 3 Months  | Over 3 to 6 Months   | Over 6 to 12 Months   | Over 12 to 18 Months  | Over 18 Months   |                | 2             |              |
| Continuation after Notification  | Instance(s) of Misconduct Ceased Prior to Notification | Instance(s) of Misconduct Ceased Immediately Upon Notification | Instance(s) of Misconduct Continued for a Short Period of Time After Notification | Instance(s) of Misconduct Continued for Long Period of Time After Notification  | Instance(s) of Misconduct Still Continuing   |                | 3             |              |
| Concealment  | None   | Acted Without Proper Authority                                 |   | Purposely Complicated Transaction to Make it Difficult to Uncover               | Active Concealment   |                | 5             |              |
| Impact Other than Loss   | No Impact on Institution or Banking Industry           | Moderate Impact on Institution. No Impact on Banking Industry. | Substantial Impact on Institution. 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 Securities Holders or Consumers (Securities or Consumer Laws Only) | No Loss and No Harm                                    | No Loss or Minimal Harm  | Minimal Loss or Moderate Harm   |   | Substantial Loss or Harm   |                | 5             |              |
| <b>SUBTOTAL 1</b>  |  |  |   |   |  |                |               |              |
| Restitution  | No Restitution   | Partial Restitution  | Complete Restitution Under Compulsion   | Complete Restitution Immediately After Loss or Misconduct Brought to Attention  | Complete Restitution Voluntarily, Before Institution or Examiner Uncovered Loss    |                | 2             |              |
| Good Faith (Prior to Notification)   | None   |  | Should have Known Better  |   | Unintentional Misconduct   |                | 3             |              |
| Full Cooperation (After Notification)  | None   | Limited Disclosure and Cooperation under Compulsion            | Limited Voluntary Disclosure and Cooperation                                      | Full Disclosure and Cooperation under Compulsion                                | Full Voluntary Disclosure and Cooperation  |                | 2             |              |
| <b>SUBTOTAL 2</b>  |  |  |   |   |  |                |               |              |
| <b>TOTAL (SUBTRACT 2 FROM 1)</b>   |  |  |   |   |  |                |               |              |

<sup>1</sup> The term "minimal loss" is not defined, but it has been suggested that amounts of \$50,000 or less are considered minimal.

<sup>2</sup> The term "moderate loss" is not defined, but it has been suggested that amounts greater than \$50,000 but less than \$100,000 are considered moderate.

<sup>3</sup> The term "substantial loss" is not defined, but it has been suggested that amounts exceeding \$100,000 are considered substantial.

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**Recommended Action/Penalty Ranges Based on CMP Matrix Point Totals**

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| <u>Point Total</u> | <u>Suggested Action</u>                            |
|--------------------|--|
| 0-30               | Consider not making referral                       |
| 31-40              | Consider sending a Supervisory Letter or Reprimand |
| 41-50              | Consider Reprimand or CMP from \$1,000 to \$5,000  |
| 51-60              | Consider CMP assessment from \$5,000 to \$10,000   |
| 61-80              | Consider CMP assessment from \$10,000 to \$25,000  |
| 81-100             | Consider CMP assessment from \$25,000 to \$75,000  |
| 101-120            | Consider CMP assessment from \$75,000 to \$125,000 |
| over 120           | Consider CMP assessment greater than \$125,000     |

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**Section 8(i)(2) CMP Authorities and Amounts**

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| <u>Citation</u>                                   | <u>Amount<sup>4</sup></u> | <u>Basis</u>  |
|---|---------------------------|---|
| 12 U.S.C. §<br>1818(i)(2)(A)<br><br><b>TIER 1</b> | \$7,500                   | Institution or IAP violates:<br>(a) any law or regulation;<br>(b) any final or temporary order;<br>(c) any written condition; or<br>(d) any written agreement with the OTS.   |
| 12 U.S.C. §<br>1818(i)(2)(B)<br><br><b>TIER 2</b> | \$37,500                  | Institution or IAP:<br>(a) violates law, regulation, order, written condition or agreement;<br>(b) recklessly engages in an unsafe or unsound practice in conducting the affairs of an institution; or<br>(c) breaches any fiduciary duty, which violation, practice or breach:<br><b>AND</b> such violation, practice or breach:<br>(a) is part of a pattern of misconduct;<br>(b) causes or is likely to cause more than a minimal loss to such institution; or<br>(c) results in a pecuniary gain or other benefit to such party |
| 12 U.S.C. §<br>1818(i)(2)(C)<br><br><b>TIER 3</b> | \$1,375,000               | Institution or IAP knowingly:<br>(a) violates any law, regulation, order, written condition or agreement;<br>(b) engages in any unsafe or unsound practice in conducting the affairs of such depository institution; or<br>(c) breaches any fiduciary duty;<br><br><b>AND</b> by reason of such conduct, knowingly or recklessly:<br>(a) causes a substantial loss to the institution or<br>(b) a substantial pecuniary or other benefit to such party.   |

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<sup>4</sup> Amount reflects inflation adjustments made to 12 C.F.R. § 509.103 on October 27, 2008 (73 FR 53625).

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## Instructions and Guidelines for using the General CMP Matrix

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The General CMP matrix is a tool to indicate the relative degree of severity of violations of law, reckless unsafe or unsound practices and breaches of fiduciary duty. The degree of severity is reflected by the severity level (from 0 to 5) assigned to the misconduct. The severity levels are noted at the top of each column. The CMP Matrix provides guidance in deciding whether a CMP proceeding should be initiated pursuant to 12 U.S.C. § 1818(i)(2), and, if so, the appropriate amount of the CMP that should be assessed.

The CMP matrix incorporates the 13 assessment factors recommended for consideration by the Federal Financial Institutions Examination Council (FFIEC) in its June 3, 1998 policy statement on CMPs for determining the appropriateness of initiating a civil money penalty assessment. These factors, along with those statutorily provided, are also used in determining the amount of the civil money penalty.

The CMP matrix is intended to cause CMPs to be levied in a consistent and equitable manner. However, this matrix and the FFIEC factors are provided solely as guides and do not replace sound supervisory judgment. The CMP matrix is not intended to reduce the CMP process to a mathematical equation as individual cases may possess characteristics that remove them from the matrix. The OTS's discretion and supervisory judgment is in no way limited by 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:
  - a. One CMP matrix per person should be completed for all violations, reckless unsafe and unsound practices or breaches of fiduciary duty. Where there are several violations, practices, or breaches of duty included in one matrix, the highest severity level applicable to any of the violations, practices or breaches of duty should be recorded for each factor on the Matrix. Thus, if a single director approved a loan in violation of Regulation O, another loan in violation of State lending limitations, and engaged in reckless unsafe practices, only 1 Matrix should be completed for that director, with the highest severity level applicable to either of the violations and any of the unsafe practices recorded for each Matrix factor.
  - b. One Matrix should be completed for a group of persons with similar culpability. Thus, if 6 directors approved a loan in violation of Regulation O, another loan in violation of State lending limitations, and engaged in reckless unsafe practices, and all were equally culpable, only 1 Matrix should be completed for the 6 directors. However, if 2 directors were more culpable than the other 4 directors, a separate Matrix should be completed for those 2 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 the CMP is based upon an unsafe or unsound practice or breach of fiduciary duty, staff should consult with the Regional Enforcement Counsel or Regional Counsel to ensure that the applicable criteria are met for a tier 2 or 3 CMP.
3. Definitions - One may use the following definitions as a guide in using the Matrix:
  - a. **Institution-affiliated party (IAP)** - (1) any director, officer, employee or controlling shareholder (other than a savings association holding company) of an insured depository institution, (2) any person who has filed or is required to file a change-in-control, (3) any shareholder, consultant, joint venture partner, or other person who participates in the institution's affairs, or (4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates 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 institution.
  - b. **Unsafe and unsound practice** - one in which there has been some conduct, whether act or omission, which is contrary to accepted standards of prudent banking operation, and which might result in exposure of the savings association 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.
  - c. **Fiduciary duty** - a duty of confidence and trust, which includes a high degree of good faith. The fiduciary duties for directors are discussed in detail in the OTS Directors Guide. For example, savings association officers and directors have a fiduciary duty to protect the savings association's assets, further the best interests of the savings association, and not place their interests above those of the savings association.
  - d. **Violations** - includes violations of law, regulation, final orders, conditions imposed in writing, and written agreements.
  - e. **Condition imposed in writing** - 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.

- f. **Knowingly** – the respondent knew he/she was committing the act and did not act mistakenly or accidentally. It does not require the respondent to have known specifically that the conduct was wrong.
- g. **Recklessly** – the respondent acted with disregard of, or indifference to, the consequences of an act or omission. Such disregard or indifference should be an extreme departure from the standards of ordinary care and conduct that the respondent is expected to follow. It includes clear neglect for, or plain indifference to, requirements imposed by law, regulation or agency orders of which the respondent should have been aware. Negligence by itself does not constitute recklessness. By contrast, a conscious decision to act negligently could be reckless.
4. Pecuniary Gain or Other Benefit to IAP - 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 that IAP's family members or related interests, including organizations with which the IAP is involved or affiliated (church, charities, sports league teams, etc.). Misconduct that results in additional compensation, such as increased bonuses or perquisites, may be considered as pecuniary gain or other benefit.
5. Previous administrative action or criticism - Under severity level 1, "similar instances of misconduct" could refer to prior criticisms for misconduct or violations of the same statute or regulation, e.g., a previous lending limit violation and a current lending limit violation, a previous violation of a Section 23A provision and a current violation of a different Section 23A provision. 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 lending limits under 12 C.F.R. § 560.93.
6. History - Under severity level #2, the reference to "similar violation" has the same meaning as the reference to "similar violation" used in the Previous Administrative Action or Criticism factor explained above.
7. Loss - In assessing this factor, "potential loss" refers to any time at which the savings association was in danger of sustaining a loss. Accordingly, if the violation caused a possible loss in its first month, but posed no risk of loss in the second month, the savings association experienced a potential loss which falls with this category. The amount of loss should be the amount prior to any recovery, restitution or blanket bond or insurance coverage.
8. Continuation - The reference to "notification" in this factor includes notice of the violation, practice or breach by the OTS, other regulatory agencies, external auditors, internal auditors or other parties whose responsibilities include providing the savings association and/or its subsidiaries with information about its operations. In addition, notification includes discovery of the misconduct by the institution.

9. Concealment - This factor pertains to the concealment of a violation, practice or breach from the OTS, the savings association's board of directors or management, or its internal and external auditors. Falsification of records is considered active concealment.
10. Impact other than loss - In assessing this factor, it is appropriate to consider any possible negative impact or harm to the savings association, 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 savings association's liquidity. Any extraordinary costs or expenses incurred to investigate and/or resolve misconduct (e.g., a forensic audit or a third party review) may be considered under this factor.
11. Loss or Harm to Securities Holders or Consumers - This factor only applies in cases involving violations of securities laws, rules, or regulations applicable to stock institutions or holding companies (where securities holders have incurred loss or are otherwise harmed) or consumer banking laws, orders, agreements or conditions, unsafe or unsound practices, or breaches of duty.
12. Good faith (prior to notification) - In assessing a person's good faith, the general focus should be on facts and circumstances that occurred prior to notification of the violation, reckless unsafe or unsound practice, or breach of fiduciary duty by the OTS, other regulatory agencies, external auditors, internal auditors, or other parties whose responsibilities include providing the savings association or its subsidiaries with information about its operations.
13. Full Cooperation (after notification) - In assessing this factor, the general focus should be on facts and circumstances that occurred after notification of the violation, practice or breach by the OTS, other regulatory agencies, external auditors, internal auditors or other parties whose responsibilities include providing the savings association and/or its subsidiaries with information about its operations.

Payment – A respondent will be expected to pay the CMP at the time of consent to the assessment of the CMP. The form of payment will be certified check or cashiers check only.

Respondent Institution: \_\_\_\_\_ Matrix Completed by: \_\_\_\_\_ Recommend CMP Assessment: \_\_\_\_\_  
 Docket Number: \_\_\_\_\_ Date: \_\_\_\_\_ Recommend Against CMP Assessment: \_\_\_\_\_

**Instructions:**

In column 1, identify the type of violation and report or information involved. Generally reporting violations will involve either the failure to submit a report or information in a timely fashion, or the submission or publication of a report or information that is false or misleading. In columns 2-6, answer "Y" for yes or "N" for no in each open square in a column for the row of the violation. Use the Tier Key in Column 7 to determine the tier of the violation.

## Reporting Violation Tier Matrix

|              | Column 1                                  | Column 2                       | Column 3  | Column 4  | Column 5  | Column 6  | Column 7   | Column 8          |
|--------------|---|--------------------------------|---|---|---|---|--|-------------------|
|              | Type of violation                         | Was the report minimally late? | Was the minimally late report transmitted or published inadvertently? | Was the violation a result of an inadvertent and unintentional error? | If the error was inadvertent and unintentional, does the respondent maintain procedures reasonably adapted to avoid any such error? | Did the respondent knowingly or with reckless disregard for accuracy submit or publish the false report or information? | Tier key   | Tier of violation |
| <b>Row A</b> | Report or Information Not Timely Filed    |                                |   |   |   |   | If both boxes are marked "Yes," or if the violation involves a certified statement of assessment base, and the box in Column 2 is marked "Yes," then the violation is Tier 1 and no higher tier applies. Otherwise, complete the next row. |                   |
| <b>Row B</b> | Report or Information False or Misleading |                                |   |   |   |   | If both boxes are marked "Yes," then the violation is Tier 1. If either box is marked "No," then the violation is Tier 2.  |                   |
|              |   |                                |   |   |   |   | If both boxes are marked "Yes," then the violation is Tier 1. If either box is marked "No," then the violation is Tier 2.  |                   |
|              |   |                                |   |   |   |   | If the box is marked "Yes," then the violation is Tier 3.  |                   |

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## Instructions and Guidelines for using the Reporting CMP Matrix

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The Reporting CMP matrix is completed column by column, beginning with Column 1 and ending with Column 8. Your answer in Column 1 will select a particular row, based on the type of violation, and your answers to subsequent columns should be placed within that row. The term “report” includes a statement of assessment base.

Column 1: Choose only one box. Briefly describe the violation (i.e. what type of report is involved) in the box. If the violation in question might fall within more than one box, choose the box where the evidence is strongest.

Column 2: “Minimally Late” means the report is only slightly or trivially late.

Column 3: “Inadvertently” means without intention and as a result of conduct that is heedless, negligent, or inattentive. If the minimally late report was transmitted or published recklessly, then the conduct may not have been inadvertent. The respondent has the burden of proving that the report was inadvertently transmitted or published late.

Column 4: The violation was the result of an inadvertent and unintentional error if such an error was the substantial cause of the violation. The statute assigns to the respondent association the burden of proof that the error was inadvertent and unintentional. Accordingly, you should answer this question affirmatively only if you have good reason to think the error was inadvertent and unintentional; otherwise, answer “no.”

Column 5: “Maintain procedures” requires that the respondent not only have the requisite procedures in place, but that the respondent have undertaken reasonable efforts to ensure that those procedures are implemented and adhered to in the institution’s operations.

Column 6: In order to find that the respondent knowingly or with reckless disregard for accuracy submitted or published a false report or information, you must determine that the respondent submitted or published the report or information either knowing that the report or information was false or with reckless disregard of or indifference to the possibility that the report or information was false. This includes circumstances where the risk that the report or information was false was such that the respondent knew it or it was so obvious that the respondent should have known it.

Columns 7 and 8: Enter the tier of the violation in the appropriate box. Determine all tiers that apply.

### Factual Summary: Tier Determination

Please describe the factual circumstances on which you based the determinations (both “Yes“ and “No”) you made in completing the Reporting Violation Matrix. You should

include a description of the violation and the evidence on which you based your conclusions regarding: whether the report was minimally late; whether a minimally late report was transmitted or published inadvertently; whether the violation was the result of an inadvertent and unintentional error; whether the respondent maintained procedures reasonably adapted to avoid any such error; and whether the respondent knowingly or with reckless disregard for accuracy submitted or published the false report or information.

RESCINDED