

Enforcement Actions

Introduction

The FDIC may initiate informal or formal action when an insured depository institution is found to be in an unsatisfactory condition. Informal actions represent the final supervisory step before formal enforcement proceedings are initiated. The FDIC has broad enforcement powers under the Federal Deposit Insurance (FDI) Act to issue formal enforcement actions.

This section provides a brief summary of the types of informal and formal actions that the FDIC has the authority to issue. When considering an enforcement action, the consultation policy should be followed.

Types of Enforcement Actions

Informal actions are voluntary commitments made by the Board of Directors/trustees of a financial institution. They are designed to correct identified deficiencies and ensure compliance with federal and state banking laws and regulations. Informal actions are neither publicly disclosed nor legally enforceable.

The most common informal enforcement actions used by the FDIC are the following:

- **Board Resolution:** Informal commitments developed and adopted by a financial institution's Board of Directors/trustees, often at the request of an FDIC Regional Director, directing the institution's personnel to take corrective action regarding specific noted deficiencies. The FDIC is not a party to the resolution, but approves and accepts the resolution as a means to initiate corrective action.
- **Memorandum of Understanding:** Informal agreement between an institution and the FDIC that is drafted by the Regional Office staff to address and correct identified weaknesses in an institution's compliance or CRA posture. A Memorandum of Understanding is generally used in place of a Board Resolution when the FDIC has reason to believe that a Board Resolution would not adequately address the deficiencies noted during the examination.

Formal enforcement actions are those taken pursuant to the powers granted to the FDIC's Board of Directors under Section 8 of the FDI Act. Each situation and circumstance determines the most appropriate action(s) to be taken. It is of note that formal enforcement actions are publicly available records.

Formal actions used in connection with compliance matters may include the following:

- **Termination of Insurance:** Section 8(a).

- **Cease-and-Desist Order:** Section 8(b): Issued to halt violations of laws or regulations as well as to require affirmative action to correct any condition resulting from such violations. By ordering an institution or an institution affiliated party (IAP), including an individual officer or director of an institution, to cease and desist from practices and/or take affirmative actions, the FDIC may prevent the problems facing the institution from reaching such serious proportions as to require more severe enforcement actions. If an institution voluntarily agrees to the entry of a Cease-and-Desist Order, it is entitled a "Consent Order."
- **Order for Restitution:** Section 8(b)(6): Issued to require an institution or IAP to disgorge any unjust enrichment to consumers and/or take other affirmative action to redress consumer harm.
- **Temporary Cease-and-Desist Order:** Section 8(c): Issued in the most severe situations to halt particularly egregious practices pending a formal hearing on permanent Cease-and-Desist Orders issued pursuant to Section 8(b).
- **Removal and Prohibition Order:** Section 8(e)(1): The FDIC has the authority to order the removal of an IAP, i.e., director, officer, employee, controlling stockholder other than a bank holding company, or agent for an insured depository institution. The prohibition may be for specific activities or may be industry-wide.
- **Temporary Suspension Order:** Section 8(e)(3): The FDIC may order the temporary suspension of an IAP pending a hearing on an Order of Removal if the individual's continued participation poses an immediate threat to the institution or to the interests of the institution's depositors.
- **Suspension Order:** Section 8(g): Issued to IAPs who are charged with felonies involving dishonesty or a breach of trust pending the disposition of the criminal charges.
- **Civil Money Penalties:** Section 8(i)(2): CMPs are assessed to sanction an institution, IAP, or an individual for a violation, breach of a fiduciary duty, and/or practice. They are also assessed to deter future occurrences. In the case of a CMP assessed to an institution or IAP, twelve factors that measure the breadth and severity of the problem are considered, including consumer harm, cooperation, and supervisory history. Additionally, the asset size of the institution is taken into account. In the case of a CMP assessed to an individual, a similar analysis is performed. The FDIC utilizes separate matrices for institutions and individuals. In both cases, the CMP matrices are guidance intended to promote consistency in the assessment of CMPs. The matrices aid the examiner in determining the appropriateness and/or level of CMPs. Each CMP matrix is included at the end of this section

References

Federal Deposit Insurance Act, Section 8

II. Consumer Compliance Examinations — Enforcement Actions

12 CFR §308 (Rules of Procedure; multiple subparts)

Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies

Interagency Notification and Coordination of Enforcement Actions by the Federal Banking Regulatory Agencies

Joint statement of Policy: Administrative Enforcement of the Truth in Lending Act – Restitution

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MATRIX for CMPs AGAINST INSTITUTIONS

Factors to be Considered	0	1	2	3	4	Assigned Level	Weight Factor	Weight X Level
Consumer harm and/or harm to public confidence; unsafe or unsound banking practice; violation (6) (12)	Neither any actual harm nor any likelihood of harm to public confidence or to consumers; no unsafe/unsound practices	Minimal harm to consumers or public confidence; and/or technical violations	Moderate actual harm to public confidence or to consumers, or the likelihood of moderate harm to public confidence or consumers; and/or minimal number of substantive violations	Significant actual harm to public confidence or to consumers, or the likelihood of significant harm to consumer confidence or consumers; and/or moderate number of substantive violations	Substantial actual harm to public confidence or to consumers, or the likelihood of substantial harm to public confidence or consumers; and/or unsafe/unsound practices exist; and/or significant number of substantive violations. Violations of a final or temporary order or condition imposed in writing in granting an application or other request by an institution		10	
Intent (1)	No intent – occurred despite reasonable efforts and systems	Careless – made reasonable efforts but error due to inadequate diligence	Should have known – should have been aware of the risk	Reckless or willful disregard – put on specific notice, but institution did nothing	Deliberate – intentional misconduct		9	
Concealment (5)	Institution (or IAP) provides all the information requested by FDIC promptly.	Institution (or IAP) provides information requested by FDIC, after delay, but does not seriously impair FDIC ability to make determination.	Institution (or IAP) provides information requested by FDIC, after a significant delay, or cannot provide documents because it failed to keep records.	Institution (or IAP) recklessly/deliberately failed to keep records, or otherwise deliberately obstructs or complicates issues.	Institution (or IAP) falsifies or destroys documents or information or fails to produce all documents or provide all information.		8	
History of previous supervisory action/commitment to prevent misconduct (last 2 exams) (9) (13)	No history of previous supervisory actions or commitments	Institution's written commitment	Board Resolution	Memorandum of Understanding	Formal Enforcement Action		8	
Continuation after Notification (3)	Institution (or IAP) self- identifies misconduct and misconduct ceases 2 months or less after notification or as soon as reasonably practicable	FDIC or other party identifies misconduct and misconduct ceases 2 months or less after notification or as soon as reasonably practicable	FDIC, Institution (or IAP), or other party identifies misconduct and misconduct ceased more than 2 months to 4 months after notification	FDIC, Institution (or IAP), or other party identifies misconduct and misconduct ceased More than 4 months to 6 months after notification	FDIC, Institution (or IAP), or other party identifies misconduct and misconduct continued more than 6 months after notification		5	
Duration of misconduct prior to notification or discovery (2) (12)	0 to 6 months	Over 6 months to 12 months	Over 12 months to 18 months	Over 18 months to 24 months	Over 24 months		5	

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Frequency of misconduct prior to notification or discovery (2) (12)	N/A	The misconduct/violation is isolated	The misconduct/violation is a pattern or practice or system wide with minimal impact	The misconduct/violation is a pattern or practice or system wide with moderate impact	The misconduct/violation is a pattern or practice or system wide with significant impact		5	
Financial gain and/or other benefit (7) and/or loss or risk of loss to the institution (6)	None	Financial benefit or actual loss is 0.025% or less of total assets; and/or minimal other benefit; and/or risk of minimal loss	Financial benefit or actual loss is > 0.025% but ≤0.050% of total assets; and/or moderate other benefit; and/or risk of moderate loss	Financial benefit or actual loss is >0.050% but ≤0.075% of total assets; and/or significant other benefit; and/or risk of significant loss	Financial benefit or , actual loss is >0.075% of total assets; and/or substantial other benefit		5	
Previous Misconduct or Criticism (last 2 exams) (10)	None	Same or similar criticism	Different misconduct, same root cause	Same root cause, similar misconduct	Same root cause, same misconduct		4	
Effectiveness of compliance programs (CP) and internal controls (IC) (11)	Institution has a fully effective CMS/IC	CMS is generally effective with weaknesses noted in only the Compliance Program; ICs are generally effective and any weaknesses noted are minor	CMS exists but is only moderately effective with weaknesses noted in both areas of the CMS, or weakness in management alone; ICs are present but need improvement	CMS exists but is minimally effective with significant weaknesses noted in both areas of the CMS; ICs are weak and require significant enhancements	No CMS exists, or one exists but is not implemented or is completely ineffective; ICs are ineffective or nonexistent		3	
SUBTOTAL 1								
Restitution or other remedial action (8)	No remedial action or restitution provided	Limited remedial action or partial restitution	Written commitment to provide full restitution and remedial action	Full restitution and remedial action	At least substantial restitution and remedial action before notification by a regulator; or a written commitment to provide restitution and remedial action beyond regulatory requirements.		(5)	
Cooperation (4)	Resists or fails to provide information, intentionally provides partial or incomplete answers, holds back evidence, or is otherwise uncooperative	Cooperation but with significant delays	Cooperation with few minor delays	Full and prompt cooperation	Institution identifies and notifies regulator of potential violation or proactively cooperates to resolve the violation during the examination		(5)	
SUBTOTAL 2								
TOTAL (subtract 2 from 1)								

Matrix for CMPs Against Institutions (continued)

Points from Matrix	Base Penalty Range	Formula
0 - 80	None	None
81 - 100	\$40,000 - \$110,000	Total Assets / 1 billion x penalty
101 - 120	\$110,000 - \$220,000	Total Assets / 1 billion x penalty
121 - 140	\$220,000 - \$370,000	Total Assets / 1 billion x penalty
141 - 160	\$370,000 - \$560,000	Total Assets / 1 billion x penalty
161 - 180	\$560,000 - \$790,000	Total Assets / 1 billion x penalty
181 - 200	\$790,000 - \$1,050,000	Total Assets / 1 billion x penalty
201 - 220	\$1,050,000 - \$1,360,000	Total Assets / 1 billion x penalty
221 - 240	\$1,360,000 - \$1,710,000	Total Assets / 1 billion x penalty
241 - 250	\$1,710,000 - \$1,900,000	Total Assets / 1 billion x penalty

NOTE: The Matrix for CMPs Against Institutions is offered only as guidance; it should not be a substitute for experience and sound supervisory judgment. The matrix in no way limits the discretion of the FDIC to factor in the precise facts and circumstances of each case, or other factors as justice requires, into the CMP determination. Also, to determine a CMP against an individual, refer to the Instructions and Matrix for Civil Money Penalties Against Individuals. The CMP amount may not exceed the statutory maximum set forth in section 8(i)(2) of the FDI Act, as adjusted by 12 C.F.R. § 308.132.

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Matrix for CMPs Against Individuals

FACTORS	0	1	2	3	4	Assigned Level	Weight Factor	Final Figure
Intent	None / Good Faith		Negligence	Continuing or Willful Disregard	Clear Intent / Personal Dishonesty / Bad Faith		6	
Pecuniary Gain or Other Benefit to IAP or Related Interest	No Direct/Indirect Gain/Benefit (\$0)	Intangible Benefit	Direct/Indirect Gain/Benefit between \$0 and \$50,000	Direct/Indirect Gain/Benefit between \$50,000 and \$100,000	Direct/Indirect Gain/Benefit greater than \$100,000		6	
History, Including Previous Administrative Action or Criticism	None	History or Criticism of Unrelated Instance(s) of Misconduct	History or Criticism of Similar Instance(s) of Misconduct	History of Repeated Instances of Misconduct or Criticism of Same Misconduct	Violation of 8(b), 8(c), Agreement, Condition in Writing or Prior Assessment on Point		5	
Loss or Risk of Loss to Institution	No Actual/Risk of Loss (\$0)	No Actual Loss (\$0) / Risk of Loss (\$0 - \$50,000)	Actual Loss (\$0-\$50,000) / Risk of Loss (\$50,000-\$100,000)	Actual Loss (\$50,000-\$100,000)/ Risk of Loss (\$100,000 and \$250,000)	Actual Loss (greater than \$100,000) / Risk of Loss (greater than \$250,000)		6	
Number of Instances of Misconduct at Issue	None	1- 3 instances	4-6 instances	7-10 instances	More than 10 instances		2	
Duration of Misconduct Prior to Notification or Discovery	0 - 3 Months	>3- 6 Months	>6 -9 Months	>9 -12 Months	>12-Months		2	
Continuation after Notification	Immediately Ceased	>0-1 months	1-3 months	3-6 months	More than 6 months		3	
Concealment	None		Lack of Voluntary Disclosure or Failure to Escalate to Appropriate Authority	Efforts To Obscure Nature of Transaction	Active Concealment		5	
Impact Other than Loss to the Bank	No Impact on Institution, Banking Industry or Harm to Consumers	Minimal or Moderate Impact on Institution or Minimal Consumer Harm. No Impact on Banking Industry	Substantial Impact on Institution or Moderate Consumer Harm. No Impact on Banking Industry	Moderate Impact on Banking Industry or on Public Perception of Banking Industry or Substantial Consumer Harm	Substantial Impact on Banking Industry or on Public Perception or Substantial Consumer Harm related to a Significant Business Line		6	
IAP Has Responsibility for Presence or Absence of Internal Control Environment and its Effectiveness	IAP Has No Responsibility, and/or Adequate Programs and Policies Exist in Area Where Wrongdoing Occurred	IAP Has Responsibility for Inadequate Monitoring and Reporting of Exceptions, Despite Adequate Programs and Policies	IAP Has Responsibility for Inadequate Programs and Policies, but IAP Has Cooperated in Management's Responsiveness to Supervisory Recommendations	IAP Has Responsibility for Absence of any Programs and Policies in Area Where Wrongdoing Occurred	IAP Has Responsibility for Inadequate Programs and Policies, and IAP Has Not Been Responsive to Supervisory Recommendations		4	
SUBTOTAL 1								
Restitution and Corrective Actions	No Restitution or Corrective Action	Partial Restitution or Substantial Corrective Action	Complete Restitution Under Compulsion	Complete Restitution Immediately After Notification	Complete Restitution Voluntarily, Before Notification		3	
Cooperation and Disclosure	None	Limited Disclosure and Limited Cooperation After Notification	Full Disclosure and Limited Cooperation or Limited Disclosure and Full Cooperation After Notification	Full Disclosure and Cooperation After Notification	Individual Voluntarily Fully Discloses to Management or Regulator and Fully Cooperates		4	
SUBTOTAL 2								
TOTAL (SUBTRACT 2 FROM 1)								

Matrix for CMPs Against Individuals (continued)**Recommended Penalty Ranges Based on CMP Matrix Point Totals**

<u>Points</u>	<u>Suggested Action</u>
0-30	Consider not making referral
31-40	Consider sending supervisory letter
41-50	Consider assessing from \$1,000 to \$7,000
51-60	Consider assessing more than \$7,000 (up to \$15,000)
61-80	Consider assessing more than \$15,000 (up to \$35,000)
81-90	Consider assessing more than \$35,000 (up to \$70,000)
91-100	Consider assessing more than \$70,000 (up to \$105,000)
101-110	Consider assessing more than \$105,000 (up to \$140,000)
111-120	Consider assessing more than \$140,000 (up to \$175,000)
Over 120	Consider assessing more than \$175,000