



POLICIES & PROCEDURES MANUAL

Comptroller of the Currency
Administrator of National Banks

Section: Bank Supervision Operations

Subject: Enforcement Action Policy

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

PURPOSE AND SCOPE

This PPM describes the OCC's policy for taking appropriate enforcement action in response to violations of law, rules, regulations, final agency orders and/or unsafe and unsound practices or conditions. It revises PPM 5310-3 (REV) dated November 19, 1993, PPM 5310-3 (REV) Supplement 1 dated November 19, 1993, and PPM 5310-3 (REV) Supplement 2, dated January 31, 1997. This PPM is applicable to all types of national banks, and federal branches and agencies of foreign banks ("banks"). This PPM is also applicable to enforcement actions that the OCC may take against bank service companies under 12 USC 1861. Actions may take the form of informal enforcement actions; formal enforcement actions under 12 USC 1818; prompt corrective action directives under 12 USC 1831o; safety and soundness orders under 12 USC 1831p-1; or some combination thereof. This PPM does not address civil money penalty actions against persons under 12 USC 1818(i) (*see* Civil Money Penalties Policy, PPM 5000-7, Revised, June 16, 1993); prohibition or removal actions, or personal cease and desist orders against individuals, under 12 USC 1818(e) or (b); actions taken to enforce the various securities laws and regulations (*see* OCC's Securities Activities Enforcement Policy, PPM 5310-5, Revised, February 8, 2001); or actions under the International Lending and Supervision Act (*see* 12 USC 3909).

These policies and procedures provide only internal OCC guidance. They are not intended, do not, and may not be relied upon to create rights, substantive or procedural, enforceable at law or in any administrative proceeding.

This PPM also is not intended to supercede or limit the applicability of any other PPM that may provide more explicit guidance and direction, or establish supplemental procedures, applicable to compliance-related violations or treatment of supervisory issues arising from the various speciality areas (*i.e.*, compliance, fiduciary, and asset management, or information technology).

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OVERVIEW AND GENERAL POLICY

Effective bank supervision requires clear communications between the OCC and the bank’s senior management and board of directors. The OCC uses a variety of enforcement actions to communicate problems or weaknesses and to prompt or require corrective measures by banks. Once problems or weaknesses are identified and communicated to the bank, the bank’s senior management and board of directors are expected to promptly correct them. Whenever possible, OCC enforcement action should deal with problems or weaknesses at an early stage, before they develop into more serious supervisory issues or adversely affect a bank’s performance and viability. This may mean taking action well before problems or weaknesses are reflected in a bank’s financial condition.

An OCC Report of Examination (“Report”) documents the OCC’s findings and conclusions with respect to its supervisory review of a bank. The actions a bank takes or agrees to take in response to its Report are important factors in determining whether the OCC will take enforcement action and the severity of that action. Although enforcement actions may be initiated as a result of findings contained in a Report, taking such actions are not necessarily correlated with the completion of the Report. In some cases, enforcement action may be warranted prior to the completion or transmittal of the Report to obtain correction of significant problems or weaknesses as quickly as possible. This policy provides guidance in selecting the action or combination of actions best suited to accomplish corrective or remedial measures. The policy also promotes consistency while preserving flexibility for specific circumstances.

The OCC’s long-range strategy for a bank that is experiencing difficulties is an important factor in determining what enforcement action to take. Long-term strategy takes into consideration not only the measures needed to address the bank’s problems currently but also what measures will be needed in the future if the bank’s problems develop into serious supervisory issues threatening the bank’s viability. Certain types of enforcement action also

may provide better transitions to more severe supervisory responses later if the condition of the bank warrants, including requiring the bank to raise capital, or other resolution options such as requiring the sale, merger, or liquidation of the bank, or appointing a receiver or conservator. This policy provides guidance on this aspect of selecting enforcement actions. It also provides guidance on the long-term strategy aspects of documentation for enforcement actions. The documentation of earlier enforcement actions, of failure to comply, and of the consequences for the bank of that failure is an important part of establishing the record for more severe subsequent action.

TYPES OF ENFORCEMENT ACTIONS

Enforcement actions fall into two broad categories: informal and formal. (See Appendix A for definitions of types of enforcement actions.)

A. *Informal Enforcement Actions*

When a bank's overall condition is sound, but it is necessary to obtain written commitments from a bank's board of directors to ensure that identified problems and weaknesses will be corrected, the OCC may use *informal* enforcement actions. These enforcement actions provide a bank with more explicit guidance and direction than is normally contained in a Report. Agreement to an informal action can be evidence of the board's commitment to correct identified problems before they adversely affect the bank's performance or cause further decline in the bank's condition.

Informal enforcement actions include commitment letters, memoranda of understanding, and approved safety and soundness plans submitted pursuant to the part 30 safety and soundness process. (See Appendix A for a more complete description of informal enforcement actions.)

B. *Formal Enforcement Actions*

The OCC may use a wide variety of *formal* enforcement actions to support its supervisory objectives. Unlike most informal actions, formal enforcement actions are authorized by statute (mandated in some cases), are generally more severe, and are disclosed to the public. Also, formal actions are enforceable through the assessment of civil money penalties and, with the exception of formal agreements, through the federal court system.

For purposes of this PPM, formal actions against a bank include: orders and formal written agreements within the meaning of 12 USC 1818(b); capital directives under 12 USC 3907; Prompt Corrective Action (PCA) directives under 12 USC 1831o; and safety and soundness orders under 12 USC 1831p-1 (See Appendix A for a more complete description of formal enforcement actions, and Appendix B for a description of mandatory and discretionary actions under PCA. Also, refer to Banking Circular 268, Prompt Corrective Action, February 25, 1993).

1. *Enforcement Actions under 12 USC 1818(b)*

Formal enforcement actions under 12 USC 1818(b) include cease and desist orders and formal agreements. These types of actions are available when a bank violates a law, rule, or regulation; engages in an unsafe or unsound banking practice; or violates a written condition imposed by the OCC in connection with the granting of an application. A cease and desist order can also be issued, by consent of the bank¹ or following an administrative hearing, for violating the terms of a formal agreement. In addition to requiring a bank to take corrective measures to remedy a violation of law or an identified problem or weakness, formal enforcement actions under 12 USC 1818(b) include, under certain circumstances, the authority to require a bank to: (i) make restitution or provide reimbursement; (ii) restrict asset growth; (iii) dispose of a loan or other asset; (iv) rescind an agreement or contract; (v) employ qualified officers or employees; and (vi) take other action the OCC determines to be appropriate.

As discussed below, the presumption for formal action under 12 USC 1818 is particularly strong, regardless of a bank's composite CAMELS rating or capital levels, when it is experiencing significant problems or weaknesses in its systems and controls; serious insider abuse; substantial violations of law or serious compliance problems; material noncompliance with prior commitments to take corrective action; or failure to maintain satisfactory books and records or provide examiner access to books and records when, as a result, the OCC is unable to determine the bank's true financial condition.

2. *PCA Directives and Related Actions*

PCA actions are triggered by a bank's capital category as defined in 12 USC 1831o and 12 CFR 6. Depending on a bank's PCA capital category, certain restrictions and actions are automatically imposed by operation of law. Discretionary PCA actions include the issuance of directives that impose actions or restrictions permitted or otherwise required under 12 USC 1831o and 12 CFR 6. Except in rare instances, the OCC provides prior notice of intent to issue a PCA directive. However, there is no provision for a hearing for PCA directives. (See Appendix B for a full description of PCA provisions.)

For banks that are in the *undercapitalized*, *significantly undercapitalized*, or *critically undercapitalized* categories, the supervisory office should consider using a PCA directive in preference to a section 1818 enforcement action. In particular, PCA directives are preferred when there are concerns that the bank's problems may develop into serious supervisory issues that threaten viability, and the supervisory office anticipates that it may be necessary to exercise an early resolution option in the future. A PCA directive can enhance the office's use of resolution options later because failure to submit or implement a capital restoration plan required in a PCA directive is a ground for receivership. Thus, a PCA directive should be used in such situations, unless action under section 1818 clearly would better achieve the purposes of prompt

¹ A cease and desist order issued with consent of the bank through its board of directors is termed a "consent order." Cease and desist orders and consent orders are legally indistinguishable in their effects.

corrective action. Similarly, PCA directives may be appropriate in cases where the need for prompt action is present.

When an *undercapitalized*, *significantly undercapitalized*, or *critically undercapitalized* bank is already subject to a formal enforcement action under section 1818, the OCC may elect to: (i) modify the section 1818 document to reflect any additional requirements deemed necessary in view of the bank's condition and capital category; (ii) replace the document with a PCA directive; or (iii) impose a PCA directive while also maintaining the formal enforcement action against the bank. Whatever option is chosen, mandatory PCA restrictions applicable to such banks will apply automatically.

The OCC may also impose more severe limitations than a bank's PCA capital category would otherwise permit or require if it is determined that the bank is in an unsafe or unsound condition or engaging in an unsafe or unsound practice; or it is determined, with respect to *undercapitalized* or *significantly undercapitalized* banks that the use of more severe measures is necessary to carry out the purposes of PCA.

The OCC will consider imposing these discretionary PCA actions whenever it is consistent with the PCA's purpose, which is to "resolve the problems of problem institutions at the least possible long-term cost to the deposit insurance fund."

a. *More Stringent Treatment based on other Supervisory Criteria*

Under 12 USC 1831o(g), if the OCC determines, after written notice and an opportunity for an informal hearing (*See* 12 CFR 19.221), that a bank is in an unsafe or unsound condition or is engaging in an unsafe or unsound practice, the OCC may:

- reclassify a *well-capitalized* bank as an *adequately capitalized* bank;
- require an *adequately capitalized* bank to comply with one or more requirements applicable to an *undercapitalized* bank, except the requirement to have a capital restoration plan; or
- require an *undercapitalized* bank to take one or more actions applicable to *significantly undercapitalized* banks.

b. *Discretion to Impose Additional Restrictions*

The OCC may apply corrective measures to undercapitalized or significantly undercapitalized banks otherwise only available under the next lower PCA category if the OCC determines that such measures are necessary to carry out the purposes of prompt corrective action. *See* 12 USC 1831o(e)(5) and (f)(5). In addition, for significantly undercapitalized banks and undercapitalized banks that fail to submit and implement an acceptable capital restoration plan, the OCC may also require any other action the OCC determines will better carry out the purposes of prompt corrective action. *See* 12 USC 1831o(f)(2)(J). The actions required under the authority of section 1831o(f)(2)(J) should address the

unsafe and unsound practices that are of concern and be commensurate with the bank's overall condition.

3. *Orders Requiring Compliance with Safety and Soundness Standards*

Under 12 USC 1831p-1, when a bank fails to comply with any established safety and soundness standard (see 12 CFR 30) the OCC may issue a Notice of Deficiency. The Notice of Deficiency requires the bank to submit to the OCC a plan to correct the deficiency, and the OCC must approve the plan. If the bank does not file a timely, acceptable plan, or fails in any material respect to implement it, the OCC must issue an order requiring the bank to correct the deficiency cited in the notice. A determination that the bank is not in compliance with an approved plan should be based on a finding that the bank has failed in a material respect to implement the plan. This failure must be substantial enough to jeopardize or preclude achieving the objective of the plan. The OCC may also order the bank to take any additional action that the OCC determines will better carry out the purposes of 12 USC 1831o, provided such actions are consistent with deficiencies cited in the notice. The OCC must also take certain additional action against a bank that has not corrected a deficiency if the bank experienced extraordinary growth over the past 18 months, or commenced operations or underwent a change in control within the past 24 months.

Unlike PCA, which is triggered by capital categories, the safety and soundness process is designed so that the OCC can require banks to address problems in their operations regardless of the bank's capital levels.

DETERMINING SEVERITY OF ENFORCEMENT ACTIONS

A. *General*

Enforcement actions should be specifically tailored to the institution, and designed to correct deficiencies and return the bank to a safe and sound condition as soon as possible. The severity of the enforcement action is based on several factors.

Determining whether an informal action is the appropriate response, and deciding upon which informal action to use, will depend on: (i) the overall condition of the bank (both current and projected); (ii) the nature, extent, and severity of the bank's problems and weaknesses; and (iii) whether the bank's board and management demonstrate the commitment and ability to correct the identified problems and weaknesses within an appropriate time frame.

Unlike other informal enforcement actions, the safety and soundness order process provides the OCC with the ability to issue a formal action (safety and soundness order) based solely on the bank's failure to comply with the informal action (approved safety and soundness plan). However, like other informal enforcement actions, the safety and soundness order process should generally only be used when the problems or weaknesses are narrow in scope and correctable, and we are confident in the board and management's commitment and ability to correct the problems or weaknesses.

In situations where a bank fails to achieve compliance with an informal enforcement action within a reasonable period of time as defined in the action, absent strong justification, the supervisory office should promptly proceed with a formal enforcement action to address the outstanding deficiencies or concerns.

Formal enforcement actions may also be the appropriate initial action based on the rating of the bank and the severity of its problems. When deciding whether a formal enforcement action should be used and which one is appropriate, it is important to consider: (i) the bank's composite CAMELS rating; (ii) the severity of the bank's problems and weaknesses; (iii) the commitment and ability of management to correct the identified deficiencies; and (iv) the existence of previously identified, but unaddressed problems or weaknesses.

In situations where a bank has failed to achieve compliance with a formal enforcement action, there is a strong presumption for the use of additional enforcement actions, such as the assessment of civil money penalties against the board of directors and bank management, enforcement of the action in federal court, or commencement of a new enforcement action, including, in certain cases, a requirement for the sale, merger, or voluntary liquidation of the bank.

B. *1-Rated and 2-Rated Banks*

For banks with a composite rating of 1 or 2, examiners should obtain affirmative commitments from the bank's senior management and board of directors to correct problems and weaknesses. This includes commitments to address problems identified in Reports of Examination or otherwise brought to the bank's attention. Such commitments generally need not take the form of an enforcement action if the examiner-in-charge (EIC) and assistant deputy comptroller (ADC) consider other measures (*e.g.*, oral or written assurances, responses to Matters Requiring Attention (MRAs), correspondence, or action already taken) adequate to address the OCC's criticisms. When confidence in the board or management is low, especially in situations where the risk profile is increasing, corrective measures generally should increase in scope and severity. The decision to recommend stronger action is the responsibility of the EIC and ADC and the type of action should be based on the seriousness of the deficiencies and the commitment and ability of the bank's management and board to correct them.

C. *3-Rated Banks*

When considering corrective measures for a 3-rated bank, the EIC and ADC need to assess the overall condition and outlook for the bank; risk profile trends; record of compliance with previous criticisms or supervisory actions; and the degree of confidence in the ability and willingness of management and the board to correct all identified deficiencies in a timely manner and return the bank to a safe and sound condition. A bank with strong management and a generally positive assessment can be considered for an informal enforcement action, if circumstances suggest that the remedial measures are immediately forthcoming. There is a presumption for use of a formal enforcement action for a bank with weak management or a less than satisfactory management rating, and where there is uncertainty as to whether management and the board have the ability or willingness to take appropriate corrective measures. In addition, if the 3 rating continues for two consecutive examinations following the bank entering into the informal enforcement action, a formal action normally should be taken unless

the bank is in compliance with the informal enforcement action and no new grounds exist for taking a formal action.

D. 4-Rated and 5-Rated Banks

While the capability, cooperation, integrity, and commitment of management, the board of directors, or ownership are factors in deciding the content of an enforcement action, because a 4- or 5-rated bank has serious problems and is more likely to fail, there is a strong presumption in favor of using a cease and desist order, or PCA directive if legally supportable. Use of an informal enforcement action for a 4-rated bank, or an action other than a PCA directive or cease and desist order for a 5-rated bank, must be specifically approved by the appropriate senior deputy comptroller for Bank Supervision Operations.

E. Significant or Substantial Problems or Weaknesses

Separate and apart from a bank's overall rating, financial condition, or past cooperativeness of management or their ability, there is a presumption in favor of formal enforcement action when:

- The bank is experiencing serious problems or weaknesses in its systems, controls, internal audit programs, operating policies, methods of operations, or management information systems (*i.e.*, operating in an unsafe or unsound manner), even if these problems have not yet resulted in a change of rating or have not been reflected in the bank's financial performance or condition;
- There is serious insider abuse involving members of senior management or the board, whether or not the bank is immediately harmed;
- There are serious compliance problems or substantial violations of law;
- The bank has disregarded, refused or been unable to appropriately respond to prior supervisory efforts to correct previously identified serious problems or weaknesses;
- The bank has failed, refused, or been unable to satisfactorily maintain its books and records, has attempted to place unreasonable limitations on how, when, or where the examination is conducted, or has imposed limits or restrictions on examiner access to bank personnel, books, and records, and as a result, OCC examiners are unable to determine the bank's true condition; or
- There is noncompliance with specific commitments received in response to serious problems or weaknesses identified in a Report of Examination, with an informal enforcement action, or with a less severe formal enforcement action.

EARLY RESOLUTION

The OCC has the authority to place a bank into receivership when the bank is insolvent or has tangible equity capital of less than 2 percent. Once a bank's capital has dropped below 2

percent, the provisions of 12 USC 1831o(h) operate to subject the bank to all restrictions and limitations applicable to critically undercapitalized banks, including the provisions of 12 USC 1831o(h)(3) requiring that the bank be placed into receivership or conservatorship.

The OCC also has the authority to initiate an early resolution by placing a bank into receivership, conservatorship, or requiring its sale, merger, or liquidation while the bank still has tangible equity capital of more than 2 percent in certain circumstances. Such action may help resolve a problem bank at the least long-term cost to the deposit insurance funds. Early resolution can reduce or limit losses that might otherwise result if the bank is allowed to remain open until its tangible equity capital has dropped below 2 percent or has been exhausted. Early resolution can be considered, for example, when a bank: (i) is losing capital; (ii) has no realistic prospects for recapitalization; (iii) is engaging in practices likely to increase losses in the future; (iv) is engaging in unsafe and unsound practices that have a substantial negative effect on the bank; or (v) suffers from other critical management failures identified in the receivership statutes.

When a bank first becomes undercapitalized or when a bank begins to show substantial safety and soundness weaknesses or other critical management failings, even if the bank is not yet undercapitalized, supervisory offices should develop an early resolution contingency plan involving a merger, sale, voluntary liquidation, conservatorship, or receivership. Planning for these potential future developments is a factor in selecting which enforcement actions to use in the near-term. Although enforcement action is primarily aimed at rehabilitation of the bank, using particular enforcement tools at the rehabilitation stage can enhance the OCC's position for early resolution later, if the need arises. For example, for an undercapitalized bank, the failure to submit and implement an acceptable capital restoration plan when required under a PCA directive is a ground for receivership. It may also be a basis to require the bank to be sold or merged into another institution. Similarly, when addressing substantial safety and soundness weaknesses or other critical management failings, a section 1818 order might be preferred because a willful violation of a final section 1818 order is itself a ground for receivership. In addition, PCA, section 1818, and the safety and soundness order process all have provisions authorizing the OCC to require a bank to take any action the OCC determines will better resolve the bank's problems. In appropriate cases, this authority could be used to include a requirement that the bank have a contingency plan to sell itself or liquidate if it does not remedy its problems within a specified time period. Thus, supervisory offices must take into account the long-range strategy for the bank in deciding which enforcement action to use.

If the problems at the bank persist, then supervisory offices should consider whether early resolution action would be appropriate. This would be the case, for example, when a bank has reached the point beyond which additional enforcement action is not likely to prevent continued deterioration and failure or reduce costs associated with such failure. Once a decision is made to adopt an early resolution approach, OCC resources should be focused on the best available option at the least cost to the deposit insurance funds. All OCC offices with early resolution responsibilities, including bank supervision, licensing, and legal offices should be apprised of the possible need for an early resolution. Examiners should consult with these units regarding options available and what record is needed to support them.

The facts and reasons on which the receivership or other early resolution is based must be well supported and documented. In most instances, prior enforcement actions will have addressed

these matters at an earlier stage (*e.g.*, when the bank first became undercapitalized or when the bank was required to remedy unsafe and unsound practices in an enforcement action). The record prepared for those actions will later be a part of documenting the receivership grounds. Additional documentation of the continuation and worsening of problems, and of a substantial negative impact on the bank's assets, earnings, and/or ability to conduct business, will be needed.

PROCEDURES FOR ALL ENFORCEMENT ACTIONS

A. *Responsibilities and Decision Authority*

The senior deputy comptrollers for Bank Supervision Operations for Community/Mid-Size Banks and for Large Banks have the primary responsibility to use the OCC's enforcement authority under 12 USC 1818, PCA authority under 12 USC 1831o and safety and soundness authority under 12 USC 1831p-1 as necessary to accomplish the OCC's supervisory objectives. In many cases the authority to initiate, negotiate, execute, modify, and terminate enforcement actions covered by this PPM has been delegated. Current delegations of authority are maintained by the Special Supervision/Fraud Division (SPSF) and are posted on the SPSF page in the OCCnet in a matrix titled "Bank Supervision Operations – Delegation of Authority." Any authority delegated by the appropriate senior deputy comptroller for Bank Supervision Operations may not be sub-delegated without that official's express written approval.

Generally, the EIC is responsible for initially recommending the use of an enforcement action to address problems and concerns identified in assigned banks. While ADCs may approve the use of certain informal enforcement actions on 1- and 2-rated banks, district and Large Bank deputy comptrollers are responsible for deciding most enforcement action recommendations against banks under their supervision.

To assist with these decisions, the senior deputy comptrollers for Bank Supervision Operations will, on an annual basis, appoint a Washington Supervision Review Committee (WSRC) chaired by the deputy comptroller for Special Supervision/Fraud, and approve its written charter and operating procedures. In addition, each district deputy comptroller will, on an annual basis, appoint a District Supervision Review Committee (DSRC) and establish its written charter and operating procedures, subject to the review and approval of the senior deputy comptroller for Community/Mid-Size Bank Supervision Operations. The Washington or district supervision review committee's (SRC) role is to help ensure that OCC bank supervision and enforcement policies are applied effectively and consistently, and is to advise the senior deputy comptrollers for Bank Supervision Operations or the deputy comptrollers on bank supervision and enforcement cases by providing recommendations on supervisory strategies and enforcement actions. With a few exceptions as outlined in the delegations of authority matrix, SRC reviews and advises the decision maker on the initiation of all enforcement actions. WSRC reviews all nondelegated enforcement actions, all enforcement actions against bank service companies (12 USC 1861 et seq.) and all proposed referrals to DOJ, HUD, and SEC. WSRC may also be asked to advise on cases that are unique or highly visible.

B. *Support for Decisions*

A person presenting a case to SRC will prepare a presentation package, which includes a memorandum summarizing the supervisory history, history of previous enforcement actions, the facts in the current case, an objective analysis of the facts, the recommended enforcement action, legal support for the recommended action, the supervisory strategy, and any other relevant issues. Following the SRC meeting, the presenter shall prepare minutes of SRC's deliberations, recommendations, and the decision maker's final decision, and include them in the OCC's electronic supervisory databases.

C. *Timeliness of Enforcement Actions*

The OCC will take enforcement actions as soon as practical once the need for such action has been identified, including during an examination when circumstances warrant. Enforcement actions should be taken within the following maximum time periods whenever possible.

The appropriate SRC should recommend and the decision maker should decide whether to initiate an enforcement action, or to change or modify an existing enforcement action, including the form and content of the action, within 15 calendar days following:

- A final Report of Examination or other written supervisory analysis that determines whether the bank is experiencing one or more of the significant or substantial problems or weaknesses listed earlier in subsection 3, Determining Severity of Enforcement Actions;
- A final decision to assign or retain a composite CAMELS rating of 3, 4, or 5;
- A final Report of Examination or other written supervisory analysis that determines whether a bank is undercapitalized, significantly undercapitalized, or critically undercapitalized;
- A final Report of Examination or other written supervisory analysis that determines whether an undercapitalized bank has failed to submit an acceptable capital restoration plan or has failed in some material respect to implement it; or
- A final Report of Examination or other written supervisory analysis that determines whether a bank has violated a safety and soundness standard (12 CFR 30).

For nondelegated enforcement actions (see delegations matrix) involving delegated banks, the appropriate Washington legal division should present the case to WSRC no later than the third weekly WSRC meeting following the receipt of the recommendation from the DSRC.

Within 15 calendar days following the final decision to take an enforcement action that requires the signature of the bank's board of directors (commitment letter, memorandum of understanding, formal agreement, cease and desist order), a copy of the proposed action should be provided to the board, or its duly authorized representative, and a date established within the next three weeks for a meeting with the board of directors to present the document and obtain its execution. If the enforcement action is not executed by the board and a Notice of Charges

for Issuance of a Cease and Desist Order is not served, the decision maker or authorized representatives shall have 30 days to negotiate the execution of the document or serve a Notice of Charges. Recommendations to use a less severe action require the same approval process as the initial action.

For enforcement actions that involve the service of a notice of intent (PCA Directive) or notice of deficiency (Safety and Soundness Order), such notice should be served within 15 calendar days following the final decision to take such action.

Any time frame exceptions should be documented in the OCC's electronic supervisory databases.

D. *Content of Enforcement Action Documents*

Enforcement action documents should address all substantive supervisory problems. Each action should clearly list any prohibited or restricted activities, prioritize remedial measures to be taken, and assign the time frames in which the board of directors or management must act. Enforcement action documents should also explicitly state what action is expected of those parties subject to the document.

To ensure consistency, uniformity, and legal sufficiency, the enforcement action article glossary language should generally be used in drafting enforcement action documents. The glossary is maintained by the Enforcement and Compliance Division and is available through District Counsel. The current glossary will also be included in the 2002 update to Examiner View. Articles may be modified and new articles created, as necessary, to sufficiently address specific concerns in each individual bank. These articles should be drafted in consultation with, and input from, the District Counsel in the case of delegated banks and the Enforcement and Compliance Division in the case of nondelegated banks.

E. *OCC Responsibilities Following Completion of All Enforcement Actions*

Early assessment and written feedback on a bank's efforts to comply with a new enforcement action are critical to helping management and the board understand the requirements of the document, and achieve timely compliance. Therefore, the EIC and ADC are encouraged to perform an on-site assessment of the bank's compliance with the enforcement action shortly after the document has been entered into. In all cases they must perform an on-site assessment within 60 days of the latest due date in the action. Most articles in an enforcement action require corrective action within a specified time period after the effective date of the document. For example, if the latest due date is 90 days, then the on-site assessment of compliance with the document would commence within 60 days after the expiration of the 90-day period. Articles requiring cessation of specific activities usually require immediate action and should be assessed on-site shortly after the enforcement action becomes effective. If all articles in a document require immediate action, on-site assessment of compliance would commence shortly after the enforcement action becomes effective and no later than 60 days from the completed date of the enforcement action.

The success or failure of the bank in complying with the enforcement action, and the impact on the bank of the continuation of the problems should be thoroughly documented.

Noncompliance with the enforcement action will be part of the support for a more severe enforcement action and, in appropriate cases, early resolution actions. The findings of this assessment and any recommendation to take further action, modify the document, or amend the supervisory strategy must be presented to WSRC or DSRC, which will advise the decision maker (see delegations matrix). Minutes of the deliberations, recommendations, and the decision maker's final decision should be documented in the OCC's electronic supervisory databases.

At least every six months thereafter, while the enforcement action remains outstanding, the EIC and ADC will assess the bank's compliance with the document and present the findings and any recommendation to take further action, modify the document, or amend the supervisory strategy, to WSRC or DSRC, which will advise the decision maker (see delegations matrix). At least one assessment must be on-site as part of a full scope examination, the other assessment may involve on-site activities as deemed necessary by the EIC and ADC, consistent with the supervisory strategy for the bank. Minutes of the WSRC or DSRC deliberations, recommendations, and the decision maker's final decision should be documented in the OCC's electronic supervisory databases.

F. *Assessing Compliance with Enforcement Actions*

A rating of *compliance* can be achieved on a particular article in an enforcement action only after the bank has adopted, implemented, and adhered to all of the corrective actions set forth in the article, the corrective actions are effective in addressing the bank's problems, and OCC examiners have verified through the examination process that this has been accomplished. A bank should not be considered in compliance with an article in an enforcement document simply because it has made progress or a good faith effort toward complying with the article.

Articles for which the bank has not achieved compliance fall into two categories:

- Those articles where the bank has adopted and begun the implementation of all of the corrective actions required by the article but sufficient time has not passed to verify that the actions have been fully implemented, are being adhered to, and are effective in addressing the bank's problems. In these situations management and the board must continue to monitor and test the bank's progress to ensure that corrective actions are fully implemented, adhered to, and are effective.
- Those articles where additional action on the part of the bank, its board, and management is required. This includes, but is not limited to: where the bank has failed to adopt policies, procedures, and systems within required time frames; where adopted policies, procedures, and systems fail to address all required items in the article; where the bank has failed to comply with immediately effective requirements; where the bank has failed to cease activities prohibited by the article; where the bank has failed to fully implement or adhere to corrective actions. *In these situations there is a strong presumption to take more severe action (i.e., formal action if the current action is informal; civil money penalties against the board or management if the current action is formal; or if the action is a formal agreement, the use of a stronger formal action).* The decision maker (see delegations matrix) may grant in writing reasonable extensions of time to comply

with articles that require the development and implementation of policies, procedures, systems, and controls. Support for such extensions should be fully documented in writing.

For those articles with which the bank has not achieved compliance (both categories), the Report of Examination or other written communication to the bank must identify why the article is not in compliance, and what must be done to achieve compliance.

G. *Termination of Enforcement Actions*

The decision to terminate an enforcement action is the responsibility of the decision maker (see delegations matrix) and generally follows the same review process through SRC as is applicable to new enforcement actions. Usually the EIC or ADC recommends, through SRC, termination based on the assessment of compliance contained in a Report of Examination. An enforcement action should not be terminated until the bank has complied with all of the articles in the document. However, there may be some limited exceptions where termination of an enforcement action before the bank achieves compliance with all articles in the document may be appropriate. This may occur in cases where a bank has complied with all of the material requirements, and the articles in noncompliance have become outdated or irrelevant to the bank's current situation. Minutes of the committee's deliberations, recommendations, and the final decision should be documented in the OCC's electronic supervisory databases.

H. *Enforcement Action Tracking System and Decision Documentation*

The appropriate supervisory office is responsible for ensuring that the enforcement actions application in the OCC's electronic supervisory databases is current and accurately documents the enforcement action process from the date an enforcement action is recommended, presented to SRC, initiated, completed, and finally terminated.

PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

A. *Disclosures Required by Law*

The OCC is required by 12 USC 1818(u) to publicly disclose certain types of agency actions. The OCC must publicly disclose all final orders entered into pursuant to 12 USC 1818(b), civil money penalties (including those for late or inaccurate call reports), removal orders, capital directives, and any modification and/or termination of such actions. The OCC must also publicly disclose all formal agreements under 12 USC 1818(b) and any conditions imposed in writing in connection with an application, which are enforceable under section 1818(b). The OCC must also disclose any final PCA directives under 12 USC 1831o or safety and soundness orders issued pursuant to 12 USC 1831p-1(e). Under certain very limited circumstances, the OCC may delay mandatory public disclosure for a reasonable period of time.

There is no legal requirement for the OCC to publicly disclose temporary orders to cease and desist or any informal enforcement actions.

Once a month, the OCC's Communications Division publishes a list of formal enforcement actions that includes the name of the person or bank involved, the type of action, and the date of the action. The enforcement actions are posted and available through the OCC's public Internet Web site and may also be obtained in hard copy through the Communications Division upon request.

B. *Discretionary OCC Disclosure*

The OCC will consider public disclosures beyond those required by law on a case-by-case basis, where the OCC believes disclosure would be in the public interest.

The OCC will publicly disclose enforcement actions taken to remedy violations of the federal securities laws and/or related OCC regulations in accordance with provisions of PPM 5310-5, which sets out the Securities Activities Enforcement Policy.

C. *Requirements for Disclosure by National Banks*

Disclosures described in paragraphs A and B above refer only to the OCC's required or discretionary disclosures. Nothing in either paragraph is intended to relieve any national bank, or, where applicable, its holding company, of independent obligations to make required disclosures under the various securities laws and related regulations, or any other relevant statutes or obligations.

OVERSIGHT

On a monthly basis, the Special Supervision/Fraud Division, under the supervision of the deputy comptroller for Special Supervision/Fraud, prepares a Problem Bank Report (PBR) with input from the various district and field offices. The PBR includes all banks supervised by the Special Supervision/Fraud Division and all other banks with a composite CAMELS rating of 3, 4, and 5. Quarterly, the final "Watch List" produced as part of the Canary early warning process will be attached as part of the PBR (*see* PPM 5000-34). For each bank, current performance, rating and enforcement action information is identified. Narrative sections discuss problems, supervisory strategy, current status, and any necessary additional background information. The PBR also provides problem-bank trend information, lists all outstanding enforcement actions, and includes information on enforcement action trends and distribution by ratings and supervisory office.

The PBR is distributed to the Comptroller, all Executive Committee members, district and Large Bank deputy comptrollers, and other senior officials within the OCC. The senior deputy comptrollers for Bank Supervision Operations utilize the PBR as well as the quarterly National MIS Report prepared by the Supervisory Data Division to oversee and monitor compliance with the OCC's enforcement policy and this PPM.

The Problem Bank Subcommittee of the Executive Committee (PBSC) provides centralized monitoring and oversight of the OCC's problem bank program, including this policy. The deputy comptroller for Special Supervision/Fraud meets with the PBSC monthly, or as requested, to discuss problem bank trends and issues.

Leann G. Britton
Senior Deputy Comptroller for Bank Supervision Operations

Attachments
Appendix A
Appendix B

Informal and Formal Enforcement Actions Against Banks

INFORMAL ACTIONS

Commitment Letter

A Commitment Letter is a document signed by the bank's board of directors on behalf of the bank and is acknowledged by an authorized OCC official, reflecting specific written commitments to take corrective actions in response to problems or concerns identified by the OCC in its supervision of the bank. The document may be drafted by either the OCC or the bank. A Commitment Letter is not a binding legal document. However, failure to honor the commitments provides strong evidence of the need for formal action.

Memorandum of Understanding

A Memorandum of Understanding (MOU) is also a bilateral document signed by the bank's board of directors on behalf of the bank and an authorized OCC representative. An MOU is drafted by the OCC and in form and content looks very much like a formal OCC enforcement action. It legally has the same force and effect as a Commitment Letter.

Safety and Soundness Plan

Under 12 USC 1831p-1 and 12 CFR 30, the OCC issues to the bank a determination and notification of failure to meet safety and soundness standards and requires the submission of a safety and soundness compliance plan (collectively called a Notice of Deficiency). At a minimum, the plan ("Safety and Soundness Plan") must include a description of the steps the bank will take to correct the deficiencies and the time within which these steps are to be taken. If the Safety and Soundness Plan is approved, it functions as an informal enforcement action. However, if the bank fails to submit an acceptable Safety and Soundness Plan or fails to in any material respect to implement an approved Plan, the OCC must, by order (see Safety and Soundness Order under Formal Actions), require the bank to correct the deficiencies. The OCC may, by order, require the bank to take any other action that the OCC determines will better carry out the purposes of 12 USC 1831p-1.

FORMAL ACTIONS

Orders under 12 USC 1818:

a. Consent Orders

Consent Order is the title given by the OCC to an Order to Cease and Desist, which is entered into and becomes final through the board of directors' execution on behalf of the bank of a Stipulation and Consent document. Consent Orders are also signed by an authorized OCC official. Like all Orders to Cease and Desist, the Consent Order is an order issued pursuant to 12 USC 1818(b). Its provisions are set out in article-by-article form and prescribe those restrictions, corrective and remedial measures necessary to correct deficiencies or violations in the bank and return it to a safe and sound condition. Violations of a Consent Order can provide

the legal basis for assessing civil money penalties (CMPs) against directors, officers and other institution-affiliated parties. A Consent Order may also be enforced through application to a U.S. district court. Moreover, a willful violation of a final Consent Order is itself grounds for receivership under 12 USC 1821(c)(5)(D). In addition, violation of substantial safety and soundness articles in a Consent Order can help establish the unsafe or unsound practices or condition that is an element of several other receivership grounds under 12 USC 1821(c)(5)(B), (C) and (H).

b. Cease and Desist Orders

Aside from its title, a Cease and Desist Order is identical in form and legal effect to a Consent Order. However, a Cease and Desist Order is imposed on an involuntary basis after issuance of a Notice of Charges, hearing before an administrative law judge, and final decision and order issued by the Comptroller. Any such Cease and Desist Order is reviewable by a U.S. court of appeals. Cease and Desist Orders can be used to order affirmative corrective action including the power to order restrictions on the growth of the bank, disposal of assets, or the imposition of requirements or prohibition of payments on contracts that the bank has with third parties. Moreover, a willful violation of a final Cease and Desist Order is itself grounds for receivership under 12 USC 1821(c)(5)(D). In addition, violation of substantial safety and soundness articles in a Cease and Desist Order can help establish the unsafe or unsound practices or condition that is an element of several other receivership grounds under 12 USC 1821(c)(5)(B), (C) and (H).

c. Temporary Cease and Desist Orders

A Temporary Cease and Desist Order is an interim order issued by the OCC pursuant to its authority under 12 USC 1818(c) and is used to impose measures that are needed immediately pending resolution of a final Cease and Desist Order. Such orders are typically used only when immediately necessary to protect the bank against ongoing or expected harm. A Temporary Cease and Desist Order may be challenged in U.S. district court within 10 days of issuance, but is effective upon issuance and remains effective unless overturned by the court or until a final order is in place.

Formal Written Agreements:

A formal written agreement (“Formal Agreement”) is a bilateral document signed by the board of directors on behalf of the bank and an authorized OCC official. Like a Consent Order, its provisions are set out in article-by-article form and prescribe those restrictions, corrective and remedial measures necessary to correct deficiencies or violations in the bank and return it to a safe and sound condition. It is a legally recognized document issued pursuant to the OCC’s enforcement authority under 12 USC 1818(b). Violations of a Formal Agreement can provide the legal basis for assessing civil money penalties (CMPs) against directors, officers and other institution-affiliated parties. However, unlike a Consent Order, Formal Agreements are not enforceable through the federal court system. Another important difference between a Formal Agreement and a Consent Order is that willful violation of a Consent Order may be used as grounds for appointment of a receiver while a Formal Agreement may not. The decision to utilize a Formal Agreement instead of a Consent Order is largely driven by negotiation strategy and the discretion of the delegated decision-making official. Often the semantic title difference

is significant to many boards of directors, who will agree to enter into a Formal Agreement where they would otherwise fight a Consent Order. However, in some cases, the OCC's long-term strategy for the bank may require use of a section 1818 order rather than a Formal Agreement.

PCA Directives:

Under 12 USC 1831o and 12 CFR 6, (Prompt Corrective Action or PCA) insured banks are subject to various mandatory and discretionary restrictions and actions depending upon the bank's PCA capital category. Mandatory restrictions and actions are effective upon the bank being noticed that it is in a particular PCA capital category. Discretionary restrictions and actions are imposed on the bank through the issuance of a PCA Directive. If circumstances warrant, the OCC may issue a PCA Directive that is immediately effective. Otherwise, the normal process for issuing such a PCA Directive begins with the issuance of a Notice of Intent to Issue a Directive. The Notice identifies the bank's PCA capital category and various capital measures, describes the proposed actions, which would be included in the directive and the time frame for complying with the proposed actions. The bank is given an opportunity to respond to the Notice of Intent, explaining why the proposed directive is not necessary or offering suggested modifications to the proposed directive. After considering the response, the OCC may issue a PCA Directive, or determine that no action is necessary. A PCA Directive essentially has the same force and effect as a Cease and Desist Order. If a bank is undercapitalized (or lower), a PCA Directive is preferred when the supervisory office anticipates the bank may become an early resolution candidate in the future. A PCA directive can enhance the OCC's use of resolution options later because, *e.g.*, failure to submit or implement a capital restoration plan required in a PCA directive is a grounds for receivership.

Safety and Soundness Orders:

Under 12 USC 1831p-1 and 12 CFR 30, the OCC issues to the bank a determination and notification of failure to meet safety and soundness standards and requires the submission of a safety and soundness compliance plan (collectively called a Notice of Deficiency). If the bank fails to submit an acceptable plan or fails in any material respect to implement an approved plan, the OCC must, by order, require the bank to correct the deficiencies, and the OCC may, by order, require the bank to take any other action that the OCC determines will better carry out the purposes of 12 USC 1831p-1. The OCC must also take certain additional action against a bank that has not corrected a deficiency if the bank has experienced either extraordinary growth over the past 18 months, or within the past 24 months commenced operations or underwent a change in control. If circumstances warrant, the OCC may issue an order that is immediately effective. Otherwise, the normal process for issuing such an order begins with the issuance of a Notice of Intent to issue an order. The notice identifies the safety and soundness deficiencies, describes the proposed actions which would be included in the order and the time frame for complying with the proposed actions. The bank is given an opportunity to respond to the Notice of Intent, explaining why the proposed order is not necessary or offering suggested modifications to the proposed order. After considering the response, the OCC may issue a Safety and Soundness Order, or determine that no action is necessary. A Safety and Soundness Order has essentially the same force and effect as a Cease and Desist Order. However, unlike Cease and Desist Orders, a willful violation of a Safety and Soundness Order is not itself grounds for receivership.

But violation of substantial safety and soundness articles in a Safety and Soundness Order can help establish the unsafe or unsound practices or condition that is an element of several receivership grounds under 12 USC 1821(c)(5)(B), (C) and (H).

Capital Directives:

A Capital Directive is an order issued under the OCC's capital regulations, 12 CFR 3. Under the procedures provided in part 3, Capital Directives may be issued without a hearing before an administrative law judge. However, such directives are exclusively designed for establishing and enforcing capital levels for a given bank and for taking certain actions relating to capital. Since most banks with deficient capital have other problems that are normally dealt with through other formal enforcement actions, Capital Directives are rarely used. However, where capital adequacy is the overriding consideration and other problems do not rise to the level where a formal enforcement action is needed, imposing a Capital Directive can be a useful alternative. A Capital Directive, once issued, has essentially the same effect and legal status as a final Cease and Desist Order. However, unlike Cease and Desist Orders or failure to submit and implement an acceptable capital restoration plan under PCA, a willful violation of, or other failure to meet, a Capital Directive is not itself grounds for receivership.

Mandatory And Discretionary Provisions Under PCA

ALL INSURED INSTITUTIONS

No Capital Distribution

All banks are prohibited from making any “capital distribution” (cash or dividends), if after making the distribution the bank would be undercapitalized. However, the OCC may permit a bank to repurchase shares if the repurchase is made in connection with an offering of equal value, and if it will reduce the bank’s obligations or otherwise improve its financial condition.

Management Fees Restricted

All banks are prohibited from paying management fees to any person having control of the bank for provision of management services or advice to the bank or related overhead expenses, including payments related to supervisory, executive, managerial, or policy making functions, other than compensation to an officer or employee of the bank, if after making the payment the bank would be undercapitalized. This restriction does not apply to payments for data processing, trust activities, mortgage servicing, audit, or property management.

ADEQUATELY CAPITALIZED BANKS

Brokered Deposits Restriction

Under 12 CFR 337.6 (Brokered Deposits), adequately capitalized banks are prohibited from accepting or renewing brokered deposits unless the bank obtains a waiver from the Federal Deposit Insurance Corporation (FDIC). The prohibition also includes the payment of excessive interest rates on deposits.

UNDERCAPITALIZED BANKS

Close Monitoring/Capital Restoration Plan (CRP) Required

Any bank determined to be undercapitalized will be subject to close monitoring and will be required to submit a capital restoration plan within 45 days specifying:

- How it will restore capital to adequate levels within certain statutorily prescribed time limits.
- The levels of capital to be attained during each year of the plan.
- How the bank will comply with the statutory restrictions against asset growth and acquisitions.
- The types and levels of activities in which the institution will engage.
- Any other information the OCC may require.

Holding Company Guarantee

In addition, the OCC may not approve a capital restoration plan submitted by a bank unless each company that controls the bank provides a guarantee that the bank will comply with the plan. (This guarantee is limited by statute to the lesser of 5 percent of the bank's total assets at the time it became undercapitalized or the amount which is necessary to bring the bank into capital compliance.) The guarantee must be in writing and provide adequate assurance of performance.

Asset Growth Restrictions

Undercapitalized institutions are also subject to asset growth restrictions unless the OCC has accepted the bank's capital plan and has determined that the growth will not impair the bank's ability to become adequately capitalized.

No Acquisitions, No New Branches, No New Lines of Business

Moreover, undercapitalized institutions may not make any acquisition of any bank or company, establish or acquire a branch or engage in any new line of business unless the bank is implementing an approved capital plan and the OCC determines the proposed action will further the achievement of the plan, or the FDIC board determines that the proposed action will further the purposes of PCA.

Discretionary Application of Certain Restrictions Otherwise Only Available for Significantly Undercapitalized Banks

Pursuant to the provisions of 12 USC 1831o(e)(5), the OCC may also apply any of the restrictions available under 12 USC 1831o(f)(2) applicable to significantly undercapitalized banks, if necessary to carry out the purposes of PCA.

Brokered Deposits Prohibited

Under 12 CFR 337.6 (Brokered Deposits) undercapitalized or worse banks are prohibited from accepting or renewing brokered deposits. The prohibition also includes the payment of excessive interest rates on deposits.

SIGNIFICANTLY UNDERCAPITALIZED BANKS

(And Undercapitalized Banks that have failed to submit or implement an Acceptable CRP)

Requiring recapitalization by one or more of the following:

- Requiring the bank to sell shares sufficient to make the institution adequately capitalized.
- Requiring that the shares be voting shares.
- Requiring the bank to be acquired by a holding company or to combine with another insured bank if one or more grounds exist for appointment of a conservator or receiver of the undercapitalized or significantly undercapitalized bank.

Restricting affiliate transactions between banks that are 80 percent or more controlled by the same company, notwithstanding 12 USC 371c(d)(1).

Restricting interest rates a bank pays on deposits to the prevailing rate paid in the region where the bank is located.

NOTE: The statute sets up a presumption that the OCC will take the above actions unless the OCC determines that the actions would not further the purposes of prompt corrective action.

Restricting asset growth or requiring the bank to reduce its total assets.

Restricting risky activities by the bank or its subsidiaries; requiring the bank to alter, reduce or terminate any activity that the OCC determines to pose excessive risk to the bank.

Improving management and the board by ordering a new election for the bank's board of directors; requiring the bank to dismiss directors of senior executive officers (**dismissal is not a section 1818 removal action**); or requiring the bank to hire qualified senior executive officers (who may be subject to approval by the OCC).

Prohibiting the acceptance of deposits from correspondent banks.

Restricting capital distributions by prohibiting any bank holding company from making any capital distribution without the prior approval of the FRB.

Requiring divestiture through one or more of the following actions:

- Requiring the bank to divest its interest in or to liquidate a subsidiary if it is determined that the subsidiary is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the bank's assets or earnings.
- Requiring the company that controls the bank to divest itself of or to liquidate any nonbank affiliate of the bank if it is determined that the affiliate is in danger of becoming insolvent and poses a risk to the bank or is likely to cause a significant dissipation of the institution's assets or earnings.
- Requiring the company that controls the bank to divest itself of the bank if it is determined that divestiture would improve the bank's financial condition and future prospects.

Restrictions on Senior Executive Officer Compensation

Significantly undercapitalized banks and undercapitalized banks that fail to submit or implement an acceptable capital restoration plan are required to obtain prior written approval by the OCC before paying any bonus or increasing the compensation of a senior executive officer. The OCC may not grant approval to any bank that has failed to submit an acceptable CRP.

Additional Restrictions

Under 12 USC 1831o(f)(2)(J) and (f)(5), the OCC has the discretion to impose any other action including the additional restrictions otherwise available only for critically undercapitalized under section 1831o(i) if the OCC determines that this would better carry out the purpose of PCA.

CRITICALLY UNDERCAPITALIZED BANKS

Receivership or Conservatorship in 90 Days

The OCC is required to place a critically undercapitalized bank in receivership or, with the concurrence of the FDIC, conservatorship within 90 days after the bank becomes critically undercapitalized.

Exceptions: The OCC may take some other action in lieu of conservatorship or receivership, but only if it determines, in writing, with the concurrence of the FDIC, the action would “better achieve” the purposes of this section. The decision to take some action other than appointment of a conservator or receiver ceases to be effective after 90 days and a new determination is required.

Limits on Other Actions

If other actions (including conservatorship) fail to restore capital within 270 days after the bank became critically undercapitalized, the OCC is required to appoint a receiver, unless it determines, with the concurrence of FDIC, that:

- The bank has positive net worth;
- The bank has been in substantial compliance with its capital plan;
- The bank is profitable or has an upward trend in earnings;
- The bank is reducing the ratio of nonperforming loans to total assets; and
- The Comptroller of the Currency and the Chairperson of the FDIC certify in writing that the bank is viable and is not expected to fail.

Critically Undercapitalized Banks must obtain FDIC’s Prior Written Approval before:

- Entering into any material transaction;
- Extending credit for highly leveraged transactions;
- Amending bank charter or bylaws;
- Materially changing accounting methods;
- Engaging in covered transactions;
- Paying excessive compensation or bonuses;
- Paying high interest rates on deposits; or
- Making payments on subordinated debt (generally prohibited).