
**FEDERAL FINANCIAL INSTITUTIONS
EXAMINATION COUNCIL****Assessment of Civil Money Penalties**

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Notice of revised policy statement.

SUMMARY: The FFIEC Task Force on Supervision, acting under delegated authority, has revised the 1980 Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies (1980 CMP Policy). The revised policy statement specifies factors that the Federal financial institutions regulatory agencies should take into consideration in deciding whether, and in what amounts, civil money penalty assessment proceedings should be initiated. The revised policy statement supersedes the 1980 CMP Policy.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: The FFIEC is comprised of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the agencies). Questions regarding this notice and the revised policy statement may be addressed to the FFIEC contact. Agency specific questions should be addressed to the appropriate agency contact.

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NCUA: John Ianno, Senior Trial Attorney, Office of General Counsel, (703) 518-6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

SUPPLEMENTARY INFORMATION: The FFIEC Task Force on Supervision, acting under delegated authority, is giving notice that it has revised its 1980 CMP Policy (45 FR 59423; Sept. 9, 1980). The revised policy statement, published in full text later in this **Federal Register** notice, updates the 1980 CMP Policy. The revised policy statement:

(1) Specifies the factors the agencies should take into consideration in deciding whether, and in what amounts, to initiate civil money penalty proceedings;

(2) Eliminates references to interagency coordination of civil money penalty proceedings, because such coordination is addressed in a separate interagency policy (FFIEC, Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies);

(3) Eliminates references to the statutes authorizing the agencies to initiate civil money penalty proceedings or the authority pursuant to the statutes;

(4) Eliminates references to the agencies' rules of practice and procedure for civil money penalty proceedings; and

(5) Specifies that the amount of a civil money penalty may be greater than the economic gain in order to deter future misconduct.

The FFIEC Task Force on Supervision, acting under delegated authority, has recommended that the agencies adopt, through separate actions, the revised policy statement.

The revised policy statement reads as follows:

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

This supervisory policy provides general guidance concerning the criteria used by the Federal financial institutions regulatory agencies

(agencies) in the assessment of civil money penalties under statutes that require consideration of the five following factors in setting the amount of fines:¹

- (1) Size of financial resources;
- (2) Good faith;
- (3) Gravity of the violation;
- (4) History of previous violations; and
- (5) Other factors that justice may require.

The principles set forth in this policy apply to penalties assessed both by consent and through formal enforcement proceedings.

The agencies generally are authorized, under these statutes, to assess civil money penalties for violations of:

- (1) Any law or regulation;
- (2) Any final or temporary order, including a cease and desist, suspension, removal, or prohibition order;
- (3) Any condition imposed in writing in connection with the grant of any application or other request;
- (4) Any written agreement; and
- (5) Regulatory reporting requirements.

Under certain circumstances, the agencies may also assess fines for unsafe or unsound practices and breaches of fiduciary duty.

In determining the amount and the appropriateness of initiating a civil money penalty assessment proceeding under statutes requiring consideration of the above-mentioned five statutory factors,² the agencies have identified the following factors as relevant:

(1) Evidence that the violation or practice or breach of fiduciary duty was intentional or was committed with a disregard of the law or with a disregard of the consequences to the institution;

(2) The duration and frequency of the violations, practices, or breaches of fiduciary duty;

(3) The continuation of the violations, practices, or breach of fiduciary duty after the respondent was notified or, alternatively, its immediate cessation and correction;

(4) The failure to cooperate with the agency in effecting early resolution of the problem;

(5) Evidence of concealment of the violation, practice, or breach of fiduciary duty or, alternatively, voluntary disclosure of the violation, practice or breach of fiduciary duty;

¹ See generally 12 U.S.C. 1786(k)(2)(G) and 1818(i)(2)(G).

² Some federal laws authorizing the Federal financial institutions regulatory agencies to assess fines, such as the civil money penalty provisions of section 102(f) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(f), and section 21B of the Securities Exchange Act of 1934, 15 U.S.C. 78u-2, do not require the consideration of the five statutory factors.

(6) Any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of such harm;

(7) Evidence that a participant or his or her associates received financial gain or other benefit as a result of the violation, practice, or breach of fiduciary duty;

(8) Evidence of any restitution paid by a participant of losses resulting from the violation, practice, or breach of fiduciary duty;

(9) History of prior violation, practice, or breach of fiduciary duty, particularly where they are similar to the actions under consideration;

(10) Previous criticism of the institution or individual for similar actions;

(11) Presence or absence of a compliance program and its effectiveness;

(12) Tendency to engage in violations of law, unsafe or unsound banking practices, or breaches of fiduciary duty; and

(13) The existence of agreements, commitments, orders, or conditions imposed in writing intended to prevent the violation, practice, or breach of fiduciary duty.

The agencies will give additional consideration in cases where the violation, practice, or breach causes quantifiable, economic benefit or loss. In those cases, removal of the benefit or recompense of the loss usually will be insufficient, by itself, to promote compliance with statutory and regulatory requirements. The penalty amount should reflect a remedial purpose and should provide a deterrent to future misconduct.

The agencies intend these factors to provide guidance on the appropriateness of a civil money penalty, in a manner consistent with the statutes authorizing such an action. This policy does not preclude any agency from considering any other matter relevant to the civil money penalty assessment.

Dated: May 28, 1998.

Keith Todd,

Acting Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 98-14611 Filed 6-2-98; 8:45 am]

BILLING CODE 6210-01-P, 6720-01-P, 6714-01-P, 4810-33-P, 7535-01-P