

PPM 5310-3

Section: Bank Supervision**Subject: Bank Enforcement Actions
and Related Matters**

To: Deputy Comptrollers, Department and Division Heads, District Counsel, and All Examining Personnel

Purpose and Scope

This *Policies and Procedures Manual* (PPM) issuance revises PPM 5310-3, “Bank Enforcement Actions and Related Matters,” dated October 31, 2017, which establishes general policies and procedures for Office of the Comptroller of the Currency (OCC) staff when the OCC takes enforcement actions against banks in response to violations of laws, regulations, final agency orders, conditions imposed in writing, or written agreements (collectively, violations), or deficient practices, including those that are unsafe or unsound. This PPM provides guidance in selecting the actions best suited to resolve a bank’s deficiencies and promotes consistency while preserving flexibility for individual circumstances.

This PPM applies to the supervision of all banks examined by the OCC. National banks, federal savings associations, and federal branches and agencies are collectively referred to as “banks” in this PPM. When necessary, types of banks are specifically distinguished or excepted.¹

This PPM does not address enforcement actions against institution-affiliated parties or other individuals, civil money penalty (CMP) actions, or actions to enforce securities laws and regulations.² This PPM also does not address conditions imposed in writing or operating agreements issued in the context of a bank’s licensing filing.³

This PPM provides internal OCC guidance and does not create substantive or procedural rights enforceable at law or in any administrative proceeding. This PPM also does not supersede or limit the applicability of any other OCC policy that may provide more explicit guidance or

¹ The principles in this PPM may be considered in taking an enforcement action against a third-party service provider. Examiners should consult with the appropriate OCC legal staff in the appropriate District Counsel’s office or the Enforcement and Compliance Division on these matters.

² Refer to PPM 5310-13, “Institution-Affiliated Party Enforcement Actions and Related Matters”; PPM 5310-8, “Fast Track Enforcement Program”; PPM 5000-7, “Civil Money Penalties”; and PPM 5310-5, “Securities Activities Enforcement Policy.”

³ For the purposes of this PPM, a “licensing filing” means an application, notice, or other request submitted to the OCC under 12 CFR 5.

establish supplemental procedures applicable to bank enforcement actions or treatment of supervisory or licensing issues arising from the various specialty areas (for example, consumer protection, Bank Secrecy Act (BSA)/anti-money laundering (AML), asset management, or information technology).

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I. Introduction

The OCC uses enforcement actions against banks to require a bank's board of directors (board)⁴ and management to take timely actions to correct a bank's deficient practices⁵ or violations (collectively, deficiencies). Enforcement actions against banks are more severe than matters requiring attention (MRA). Violations, concerns in MRAs, or unsafe or unsound practices *may* serve as the basis for an enforcement action against a bank.

Deficient practices are practices or lack of practices that⁶

- deviate from sound governance, internal control, or risk management principles and have the potential to adversely affect the bank's condition, including financial performance or risk profile, if not addressed, or
- result in substantive noncompliance with laws or regulations, enforcement actions, or conditions imposed in writing in connection with the approval of any applications or other requests by banks.

Clear communication between the OCC and a bank's board and management is critical. The OCC uses formal written communications, including reports of examination (ROE) and supervisory letters, to document and communicate the OCC's findings and conclusions from its supervisory review of a bank. Formal written communications may contain concerns in MRAs or citations of violations requiring corrective action. The actions that the board and management take or agree to take in response to violations and concerns in MRAs are factors in the OCC's decision to pursue a bank enforcement action and the severity of that action. In some cases, it may be appropriate for the OCC to pursue an enforcement action against a bank before the issuance of an examination's formal written communication to require correction of significant deficiencies as quickly as possible.

A bank's board and management must correct deficiencies in a timely manner. The OCC expects a bank's board to ensure compliance with bank enforcement actions within required time frames by

- holding management accountable for the bank's deficiencies.
- directing management to develop and implement corrective actions.
- approving necessary changes to the bank's policies, processes, procedures, and controls.
- establishing processes to monitor progress and verify and validate the effectiveness of management's corrective actions.

The OCC's policy is to identify deficient practices and violations in a timely manner and initiate bank enforcement actions to require corrective action well before deficiencies affect a bank's

⁴ In the case of federal branches and agencies, the use of "board of directors and management" refers to federal branch or agency management.

⁵ Practices include a bank's policies, procedures, processes, and controls.

⁶ Refer to the "Bank Supervision Process" booklet of the *Comptroller's Handbook*.

financial condition or viability. The OCC's short- and long-term strategy for a bank with deficiencies is an important factor in determining the type of bank enforcement action(s) to use. The strategy considers the immediate actions needed to address the bank's deficiencies and what actions might be needed in the future if the deficiencies develop into more serious concerns (for example, deficiencies threatening the bank's viability). Although the primary objective of bank enforcement actions is remediation of a bank's deficiencies, bank enforcement actions also can enhance the OCC's position for timely and orderly resolution or receivership to protect the Deposit Insurance Fund. The documentation of bank enforcement actions, a bank's failure to comply with those actions, and the consequences of that failure are important components of the supervisory record to support more severe subsequent bank enforcement actions when necessary.

II. Types of Bank Enforcement Actions

Enforcement actions against banks can be either formal or informal. Enforcement actions against banks do not include restrictions imposed by the OCC in response to a bank's licensing filing or by operation of law (for example, mandatory restrictions pursuant to prompt corrective action (PCA) or consequences of being in "troubled condition" under 12 CFR 5).

Informal Bank Enforcement Actions

The OCC typically first cites a violation or documents a concern in an MRA in a formal written communication to address a bank's deficiencies.⁷ Examiners should consider an informal bank enforcement action when a bank's condition is sound but deficiencies have not been corrected in a timely manner or escalation beyond the OCC's citation of a violation or documentation of a concern in an MRA is otherwise warranted. The board's agreement or acceptance of an informal bank enforcement action can be indicative of its commitment to correct identified deficiencies before they adversely affect the bank's condition. Informal bank enforcement actions are typically not published or made available to the public.

Informal bank enforcement actions include

- all nonpublic bank enforcement actions:
 - Commitment letters.
 - Memorandums of understanding (MOU).
 - Individual minimum capital ratios (IMCR).
 - Notices of deficiency issued under 12 CFR 30.
- operating agreements.⁸

⁷ Refer to the "Bank Supervision Process" booklet of the *Comptroller's Handbook* for more information.

⁸ An operating agreement is a "written agreement" within the meaning of 12 USC 1818, which means that it is enforceable under 12 USC 1818. Only those operating agreements that do not relate to a bank's licensing filing are bank enforcement actions. Operating agreements that are associated with or result from a bank's licensing filing, while enforceable under 12 USC 1818, are not, however, bank enforcement actions for the purposes of this PPM.

- conditions imposed in writing within the meaning of 12 USC 1818.⁹

Formal Bank Enforcement Actions

When a bank's deficiencies are severe, uncorrected, repeat, unsafe or unsound, or negatively affect the bank's condition, the OCC may use formal bank enforcement actions to support the agency's supervisory objectives. Formal bank enforcement actions are typically published or made available to the public and, with the exception of Gramm–Leach–Bliley Act (GLBA) agreements pursuant to 12 CFR 5.39 and formal agreements, formal bank enforcement actions also are enforceable through the federal court system. In addition, violations of a formal bank enforcement action can provide the legal basis for CMP assessments.

Formal bank enforcement actions include

- all bank enforcement actions enforceable by the OCC in federal court:
 - Consent orders and cease-and-desist (C&D) orders.
 - Restitution orders (a type of consent or C&D order).
 - Capital directives.
 - PCA directives.
 - Safety and soundness orders issued under 12 CFR 30.
- formal agreements.
- GLBA agreements pursuant to 12 CFR 5.39 (regarding financial subsidiaries of national banks).
- CMPs (refer to PPM 5000-7).

Refer to appendixes A and B of this PPM for more information regarding informal and formal bank enforcement actions and appendix D for a detailed discussion of the mandatory and discretionary provisions of PCA.

Banks subject to certain formal bank enforcement actions (that is, C&D orders, consent orders, or formal agreements) are in “troubled condition,” as defined in 12 CFR 5.51, unless the OCC otherwise informs the bank in writing.¹⁰ Banks in troubled condition must provide written notice to the OCC before adding or replacing directors or senior executive officers and are subject to restrictions on golden parachute payments.¹¹ Consult with the appropriate OCC legal staff in the appropriate District Counsel's office (District Counsel) or the Bank Activities and

⁹ Only those conditions imposed in writing outside of an approval of a bank's licensing filing are bank enforcement actions. Conditions imposed in an approval of a bank's licensing filing are not bank enforcement actions and are not within the scope of this PPM.

¹⁰ A bank is also in “troubled condition” if it has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System or is informed in writing by the OCC that, based on information pertaining to the bank, the bank has been designated in “troubled condition.” Refer to 12 CFR 5.51.

¹¹ For more information, refer to 12 CFR 5.51, “Changes in Directors and Senior Executive Officers of a National Bank or Federal Savings Association”; the “Changes in Directors and Senior Executive Officers” booklet of the *Comptroller's Licensing Manual*; and 12 CFR 359, “Golden Parachute and Indemnification Payments.”

Structure Division for more information regarding the consequences of “troubled condition,” changes in directors or senior executive officers, or golden parachute payments.

III. Determining the Appropriate Supervisory or Enforcement Response

Examiners should consider the following factors when determining the appropriate response to a bank’s deficiencies. These factors do not represent an exhaustive list, and examiners may consider additional factors when warranted:

- The bank’s condition as reflected by its composite and component CAMELS/ITCC¹² or ROCA¹³ ratings.
- The bank’s risk profile, including trends.
- The nature, extent, and severity of the bank’s deficiencies.
- The extent of any unsafe or unsound practices.
- The board and management’s ability and willingness to correct deficiencies within an appropriate time frame.
- Potential adverse impact to bank customers, the Deposit Insurance Fund, or the public.
- The nature, extent, and severity of previously identified but uncorrected deficiencies.
- The bank’s progress in achieving compliance with any existing enforcement actions.

The severity and direction of the bank’s deficiencies, ratings, and level of risk are crucial factors to consider when deciding between an informal and formal bank enforcement action.

Notwithstanding a bank’s composite CAMELS or ROCA rating, the bank’s financial condition, or the board and management’s ability or willingness, the OCC has a presumption in favor of a formal bank enforcement action when

- the bank exhibits significant deficiencies in its risk management systems, including policies, processes, and control systems.
- there is significant insider abuse.
- there are systemic or significant violations of laws or regulations.
- the board and management have disregarded, refused, or otherwise failed to correct previously identified deficiencies, including
 - noncompliance with an existing enforcement action.
 - failure to correct concerns communicated in MRAs.
 - failure to correct violations of laws or regulations.
- the board and management have refused or failed to satisfactorily maintain the bank’s books and records; have attempted to place unreasonable limitations on how, when, or where an

¹² CAMELS integrates ratings from six component areas: capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk. ITCC ratings stand for information technology, trust, consumer compliance, and Community Reinvestment Act.

¹³ ROCA is the supervisory rating system for U.S. branches and agencies of foreign banking organizations and stands for risk management, operational controls, compliance, and asset quality.

examination is conducted; or have imposed limits or restrictions on examiner access to the bank's personnel, books, or records.

While the presumption favors a formal bank enforcement action as described above, the OCC exercises judgment based on the totality of the conduct and circumstances.

Pursuant to 12 USC 1818(s), the OCC is required to issue a C&D order in certain BSA cases. Refer to OCC Bulletin 2007-36, "Bank Secrecy Act/Anti-Money Laundering: BSA Enforcement Policy," and OCC Bulletin 2016-6, "Bank Secrecy Act/Anti-Money Laundering: Process for Administrative Enforcement Actions Based on Noncompliance With BSA Compliance Program Requirements or Repeat or Uncorrected BSA Compliance Problems."

When the bank fails to achieve compliance with an informal bank enforcement action, the OCC should consider a formal bank enforcement action to address the outstanding deficiencies. When the bank fails to achieve compliance with a formal bank enforcement action, examiners should consider whether additional actions (for example, CMP assessments or other enforcement actions against the board or management or taking a more severe formal enforcement action against the bank) are appropriate. Under certain rare circumstances, the supervisory office may consider replacing an existing bank enforcement action with a more focused or less severe bank enforcement action when the bank's condition, risk profile, and nature of deficiencies warrant. Refer to the "Terminating a Bank Enforcement Action" section of this PPM for more information.

1- and 2-Rated Banks

Deficiencies in a bank with a composite CAMELS or ROCA rating of 1 or 2 generally can be addressed through the use of MRAs or citations of violations in a formal written communication. A bank enforcement action may be warranted based on the severity of deficiencies or the board and management's failure to address previously identified deficiencies. Enforcement actions against banks generally increase in scope and severity when the OCC has low confidence in the board or management's willingness or ability to correct deficiencies. The decision to recommend stronger bank enforcement action is the supervisory office's¹⁴ responsibility, and the type of enforcement action should be based on the bank's ratings, the deficiencies' severity, the level of risk, and the board and management's ability and willingness to correct the deficiencies within an appropriate time frame.

3-Rated Banks

There is a presumption for use of a formal bank enforcement action for a 3-rated bank. The presumption is particularly strong when

- the bank is deteriorating because of declining trends in financial performance or an increasing risk profile.

¹⁴ For purposes of this PPM, "supervisory office" refers to the examiner-in-charge, problem bank specialist, assistant deputy comptroller, director, associate deputy comptroller, or deputy comptroller, as appropriate, depending on the OCC business unit.

- the bank has a less than satisfactory management component rating (3 or worse).
- there is uncertainty as to whether the board and management have the ability and willingness to correct identified deficiencies within an appropriate time frame.

4- and 5-Rated Banks

While the board and management's ability and willingness to correct deficiencies within an appropriate time frame is a factor in deciding the type of a bank enforcement action, the OCC has a presumption in favor of using a C&D order, a consent order, or a PCA directive, given the condition and high-risk profile of composite 4- and 5-rated banks.

Resolution

The OCC has the authority to place a Federal Deposit Insurance Corporation (FDIC)-insured bank into conservatorship or receivership when the bank is insolvent or has tangible equity capital of 2 percent or less. Under certain circumstances, the OCC may initiate resolution by placing a bank into receivership or conservatorship, or requiring its sale, merger, or liquidation before the bank becomes insolvent or has tangible equity capital of 2 percent or less.¹⁵ Refer to appendix E of this PPM for more information on resolution options.

IV. Decision Authority and OCC Legal Staff Responsibilities

The Comptroller has delegated to the Major Matters Supervision Review Committee or to the senior deputy comptrollers for bank supervision the primary responsibility to use the OCC's enforcement authority to accomplish the OCC's supervisory and enforcement objectives. In certain cases, senior deputy comptrollers re-delegate authority to initiate, negotiate, execute, modify, or terminate enforcement actions, including bank enforcement actions.

Supervision Review Committees

The OCC has supervision review committees (SRC) that, among other things, review or make enforcement decisions and promote consistent application of OCC policies. The supervisory office and assigned OCC legal staff are typically responsible for presenting recommendations regarding enforcement actions to the appropriate committee.

- **Major Matters Supervision Review Committee (MMSRC):** The MMSRC makes enforcement decisions on cases of heightened importance because of their visibility, policy sensitivity, involvement of multiple agencies, nature of the issues, or potential systemic impact.
- **Washington Supervision Review Committee (WSRC):** The WSRC reviews enforcement action recommendations within its authority and serves as an advisory committee for the appropriate senior deputy comptroller who makes the final decision for his or her cases or decides to refer the case to the MMSRC.

¹⁵ Refer to 12 USC 1821(c)(5).

- **District or Midsize Supervision Review Committees (DSRC or MSRC):** Each OCC district office and the Midsize Bank Supervision division has an SRC that reviews supervisory and enforcement action recommendations within its authority and serves as an advisory committee for the appropriate deputy comptroller, who makes the final decision for his or her cases or decides to refer the case to the WSRC or the MMSRC.

OCC Legal Staff Responsibilities

The OCC legal staff responsible for a case typically varies by the SRC review required or whether the case involves litigation. Generally, District Counsel are primarily responsible for cases that require DSRC or MSRC review, while the Enforcement and Compliance Division (E&C) has responsibility for cases that require MMSRC or WSRC review or litigation. In most cases, responsibility transfers as indicated in table 1.

Table 1: Responsible OCC Legal Staff by Type of SRC

Type of bank matter	Responsible OCC legal counsel (generally)
MMSRC	E&C
WSRC	E&C
DSRC or MSRC	District Counsel
Case that begins with DSRC or MSRC, then goes to the MMSRC or WSRC or otherwise involves litigation	Begins with District Counsel, then transfers to E&C <ul style="list-style-type: none"> • after referral to the MMSRC or WSRC, or • before filing a notice of charges to commence litigation.

If District Counsel is primarily responsible for a case that may need to be presented to the MMSRC or WSRC by E&C or in which there is a likelihood of litigation, then District Counsel should promptly notify and consult E&C early in the process, well before any SRC consideration.

District Counsel and E&C also consult with specialized counsel in certain types of cases (e.g., cases involving certain consumer laws, securities laws, or the Bank Secrecy Act) or when otherwise appropriate.

V. Formal Investigations

In most cases, documents and information may be obtained from the bank by the OCC pursuant to its examination authority. An order of investigation (OOI), however, may be appropriate when the OCC's examination authority is not sufficient to obtain documents or other information needed to accomplish OCC objectives, including determining whether (or to what extent) there has been misconduct by or at a bank.¹⁶ For example, an OOI is generally appropriate when sworn testimony is needed, or when subpoenas are needed to obtain

¹⁶ OOIs are conducted pursuant to 12 USC 481 (national banks), 12 USC 1464(d) (federal savings associations), 12 USC 1817(j), 12 USC 1818(n), 12 USC 1820(c), 12 USC 3102(b) (federal branches and agencies), 12 USC 3108(a) and (b) (federal branches and agencies), 12 USC 3110 (federal branches and agencies), 12 CFR 19.180–184 (national banks), and 12 CFR 112 (federal savings associations).

documents from sources outside the bank. The OOI is a supplement to, and not a replacement for, the OCC's examination process.

Pursuant to an OOI, the OCC may issue subpoenas to obtain documents and sworn testimony. The OCC may issue document subpoenas to institution-affiliated parties and to third parties (i.e., individuals and entities not directly affiliated with the bank). The OCC may also issue subpoenas to obtain sworn testimony (under oath, transcribed by a court reporter) from institution-affiliated parties or other individuals, who may be subject to criminal penalties if they do not testify accurately and honestly. Pursuant to 12 CFR 19.181 (national banks) and 12 CFR 112.3 (federal savings associations), information and documents obtained or used in the OOI are confidential (i.e., nonpublic OCC information).

If the supervisory office determines that an OOI may be appropriate, it should consult with OCC legal staff. The supervisory office and OCC legal staff should consider the need for, scope of, and resource requirements for any investigation. If the supervisory office and OCC legal staff determine that there is a basis for initiating an OOI, the supervisory office (together with OCC legal staff) must obtain the necessary approval from the appropriate decision maker. Before opening an OOI that does not require presentation to the MMSRC or WSRC, the District Counsel should consult with the Director of E&C to ensure proper coordination of investigations.

Upon the initiation of an OOI, OCC legal staff and the supervisory office should prepare an investigative plan. Investigations should be conducted with a clear supervisory objective and a realistic strategy for achieving that objective. Accordingly, OOI investigative plans must focus on specific issues, describe investigatory steps, include time frames for completion, and be updated periodically as necessary. Investigations are often resource-intensive and require ongoing supervisory and legal attention. While the goal of investigations is to gain a complete understanding of the relevant conduct or transactions, investigations should nonetheless be conducted efficiently. Upon completion of an investigation, the supervisory office together with OCC legal staff must determine whether to recommend any enforcement action based on the findings to the appropriate decision maker and proceed accordingly. Finally, upon completion of an investigation, the supervisory office together with legal staff must seek approval from the appropriate decision maker to terminate the OOI.

VI. Content of Bank Enforcement Actions

Bank enforcement actions must address deficiencies documented in a related formal written communication or otherwise uncovered during an examination or investigation, as appropriate. Concerns in MRAs may be escalated into a bank enforcement action. Once the OCC determines which deficiencies must be addressed in the bank enforcement action, the enforcement action must

- identify the underlying basis for the enforcement action.
- specifically state any requirements placed on the bank and list any restrictions or limitations on the bank's activities.

- be explicit to guide the board's or management's corrective actions and facilitate OCC follow-up activities.
- assign time frames by which the board or management must act, complete any corrective actions, or be subject to restrictions or limitations on activities.

Bank enforcement actions should generally be drafted using standard introduction, closing, and other language provided by the OCC's Director for E&C, but they must be appropriately tailored to address the specific deficiencies of the bank. Bank enforcement actions must be drafted by or in consultation with OCC legal staff.

VII. Timeliness of Bank Enforcement Actions

The OCC's policy is to take bank enforcement actions as soon as practical, including during an examination if circumstances warrant. Whenever possible, the proposed enforcement action should be presented to the bank within 180 days of the start of a supervisory activity that results in any formal written communication that

- states that the bank is experiencing one or more of the significant deficiencies listed in the "Determining the Appropriate Supervisory or Enforcement Response" section of this PPM.
- assigns a composite CAMELS or ROCA rating of 3, 4, or 5.
- states that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized.
- states that an undercapitalized bank has failed to submit an acceptable capital restoration plan or has failed in some material respect to implement it.
- states that the bank is in noncompliance with the safety and soundness guidelines (12 CFR 30, appendix A).

Cases extending beyond these guidelines must be approved by the appropriate deputy comptroller and documented in the OCC's supervisory information systems with supporting information.

Bank enforcement action recommendations based on facts gathered pursuant to an OOI should be presented to the appropriate SRC expeditiously upon completion of the investigative work. The investigative work is typically considered to be complete when the assigned legal and supervisory team has determined that it has accomplished the tasks set out in the investigation plan (e.g., completion of the last sworn statement, interview, or document review).

Cases involving unique circumstances, including those that entail coordination with other agencies, may add to the time needed to process a case or present a bank enforcement action recommendation to the appropriate SRC. The legal and supervisory team should account for and describe these unique circumstances in the OOI investigative plan.

VIII. Follow-Up Activities

The OCC's timely assessment and written feedback on the bank's progress toward compliance with a bank enforcement action are critical to helping the board and management understand the

requirements of the enforcement action and achieve timely compliance. The bank's success or failure in complying with an enforcement action and the impact on the bank from continuation of the deficiencies should be thoroughly documented in the OCC's supervisory information systems. The findings of the OCC's assessment and any recommendation to take further action or modify the bank enforcement action must be presented to the appropriate SRC when required. Noncompliance with a bank enforcement action can support a more severe enforcement action and, in appropriate cases, resolution actions.

The OCC's supervisory strategies for banks with enforcement actions must include plans for examiner follow-up. The plans must include activities to monitor progress and verify and validate the effectiveness of the board and management's corrective actions. Plans must include the timing, expertise, and resource requirements.

Examiners must perform the first assessment of a bank's compliance with an enforcement action within 180 days of the date the enforcement action was executed. While the enforcement action remains outstanding, examiners must assess compliance with the enforcement action at least once within the bank's supervisory cycle. The timing of follow-up activities should be aligned to corrective action due dates and the bank's action plans.

The OCC's bank enforcement action follow-up activities include verification and validation.

- **Verification** is the process by which examiners review the bank's documentation and confirm that the board and management completed the required corrective actions.
- **Validation** is the process by which examiners confirm the effectiveness and sustainability of corrective actions.

IX. Assessing Compliance With Bank Enforcement Actions

Upon completing follow-up activities, examiners must determine whether the bank has met the requirements of each article and designate the article as "in compliance" or "not in compliance."

When an article is designated **in compliance**, 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 deficiencies; and the OCC has verified and validated the corrective actions. An article must not be deemed in compliance simply because the board and management have made progress or a good faith effort toward complying with the article. Articles that are in compliance can fall out of compliance at any time the bank enforcement action remains outstanding.

All other articles are designated as **not in compliance**, including

- articles that are **past due**, including when the board and management have failed to
 - adopt policies, procedures, and systems required by the article within required time frames.
 - comply with immediately effective requirements.
 - cease activities prohibited by the article.

- implement or adhere to corrective actions required by the article, including when examiners determine during validation that corrective actions are not effective or sustainable.
- articles that are **pending validation** (that is, examiners verified that management implemented the corrective actions, but insufficient time has passed for the bank to demonstrate sustained performance under the corrective actions, examiners have not validated the sustainability of the corrective actions, or examiners determine additional testing is warranted).

X. Communicating Bank Enforcement Action Compliance

Examiners must provide written communication to the bank after completing verification or validation activities, or in response to a bank’s submission or request, as described in this section. Formal written communications that discuss compliance with a bank enforcement action must include a “Compliance With Enforcement Actions” section. Refer to appendixes F and G of this PPM for full requirements, a template, and a sample write-up. This section should be tailored to the scope of the follow-up activity and must include the following:

- A table that states the status (that is, in compliance or not in compliance) of each actionable article, as appropriate.
- A write-up for each actionable article that includes
 - a summary of the article’s requirements.
 - status of the actions required.
 - additional actions required, if applicable.
 - commitment, if applicable.

Write-ups for articles that are in compliance are optional when the article was also communicated as “in compliance” in a previous written communication, unless material information regarding the article or management’s or the board’s actions have changed since the prior communication.

The annual ROE for banks under continuous supervision¹⁷ may summarize the status of bank enforcement action articles and reference relevant formal written communications that occurred throughout the supervisory cycle. Write-ups for articles should be included if the article’s status has changed since the prior formal written communication.

Bank Submissions and Requests

Bank enforcement actions generally require the bank to periodically submit a progress report, action plan, or other documentation (collectively, submissions) to the OCC. Examiners must review and respond to the bank’s submission within 30 days of receipt or inform the bank in writing of the date that examiners will review the submission.

¹⁷ Banks under continuous supervision include midsize and large banks, and some large community banks. Banks under continuous supervision receive supervisory letters communicating the results of targeted examinations throughout the supervisory cycle and an annual ROE that aggregates the results of all supervisory activities and conveys the bank’s CAMELS or ROCA ratings.

Bank enforcement actions may include a provision whereby the board may request an extension of a time frame or waiver or suspension of provision(s) in the enforcement action. Requests must be submitted in writing with facts to support the request. Extensions must be requested in advance of the corrective action due date. The OCC's response must be in writing, and support for decisions must be documented in the OCC's supervisory information systems. The length of time a bank takes to achieve compliance with all provisions of an existing bank enforcement action may be a factor in the OCC's consideration of any future actions.

XI. Terminating a Bank Enforcement Action

A bank enforcement action should not be terminated unless

- the bank is in compliance with all articles of the enforcement action,
- the OCC determines that articles deemed “not in compliance” have become outdated or irrelevant to the bank's current circumstances, or
- the OCC incorporates the articles deemed “not in compliance” into a new action.

Escalation is the process of terminating an existing bank enforcement action and replacing it with a more comprehensive or severe action (for example, from an MOU to a formal agreement or from a formal agreement to a consent order). Considerations for determining whether to escalate a bank enforcement action include the

- bank's level of compliance with an existing action.
- overall condition of the bank.
- direction of risk profile.
- board and management's ability and willingness to correct deficiencies within an appropriate time frame.
- extent and severity of the deficiencies.
- nature, extent, and severity of new deficiencies identified after issuing the existing action.
- impact or potential impact to bank customers, the Deposit Insurance Fund, or the public.

Refer to the “Determining the Appropriate Supervisory or Enforcement Response” section of this PPM for more information regarding which type of bank enforcement action may be appropriate.

Additionally, if the bank has failed to achieve compliance with a formal bank enforcement action, examiners should consider additional actions, such as CMP assessments or other enforcement actions against the board or management, enforcement of the action in federal court, or the commencement of a new bank enforcement action that, in certain cases, includes a requirement for the sale, merger, or voluntary liquidation of the bank.

There may be some limited exceptions in which replacing a bank enforcement action with a less severe or less comprehensive action may be appropriate. This may be appropriate when the bank's condition and risk profile have significantly improved and the severity of the existing enforcement action is inconsistent with the nature and extent of the bank's condition, risk profile, and deficiencies.

The decision to terminate or replace a bank enforcement action follows the same review process through an SRC as for new enforcement actions. Refer to the “Decision Authority and OCC Legal Staff Responsibilities” section of this PPM for more information on SRCs.

XII. Documentation in OCC Supervisory Information Systems

The consistent administration of the OCC’s enforcement action documentation is important. The supervisory office must maintain accurate records of OCC enforcement actions against banks. This includes recording and maintaining actions, status, financial payment information (if applicable), relevant tracking dates, and supporting documents in the appropriate supervisory information systems. Supervisory offices must follow established procedures for entering, tracking, and closing bank enforcement actions and documenting supervisory activities related to bank enforcement action follow-up in the OCC’s supervisory information systems.

The OCC’s supervisory records must accurately reflect the efforts of the board and management to resolve deficiencies and the OCC’s supervisory activities or actions to ensure resolution. The OCC’s supervisory information systems must include the following relevant supporting documentation:

- The executed enforcement action document(s).
- The decision to initiate, modify, or terminate the enforcement action, including any SRC memorandums and other supporting decision documents.
- Relevant internal correspondence, correspondence with the bank (and, if applicable, documentation of the bank’s receipt of correspondence), and correspondence with other agencies (if applicable).
- The nature and extent of corrective actions, including who completed them and when they were completed.
- A conclusion about the effectiveness of the board and management’s corrective actions.
- A description of the actions examiners have taken to follow up on management’s or the board’s corrective actions.
- Details (for example, description, completion time frames, and names of responsible parties) of any additional corrective actions the board or management must complete.
- Supervisory actions resulting from the OCC’s follow-up activities (e.g., proposed changes to or termination of enforcement actions; strategy changes; CAMELS, ROCA, or specialty area rating changes; risk assessment system changes; and written communications to the bank).

XIII. Public Disclosure of Bank Enforcement Actions

The OCC is required to publish and make available to the public certain final enforcement actions against banks, including consent orders, C&D orders, restitution orders, formal agreements, capital directives, PCA directives, safety and soundness orders, CMPs, and any termination or modification of such actions. The OCC also makes available to the public GLBA agreements, conditions imposed in writing, and operating agreements. In addition, notices of charges are typically posted on the OCC's website. The OCC may, at its discretion, choose not to publish a particular action or to delay publication under exceptional circumstances.¹⁸

The OCC's Public Affairs office issues a monthly news release listing recent public enforcement actions and terminations, including public bank enforcement actions. The listing includes the name of the bank, the type of action (including notices of charges), and the date of the action. The monthly news release is available in the "News Releases" section of the OCC's website. Published bank enforcement actions, including published notices of charges, are also posted and available via a searchable "Enforcement Actions" page on the OCC website. Disclosures related to enforceable operating agreements and conditions imposed in writing are not included in the monthly enforcement actions news release but can be found in the "Interpretations and Actions" section of the OCC's website.

In certain cases, the OCC may issue a news release for an enforcement action when appropriate. Examiners should consult with Public Affairs and OCC legal staff in these instances.

Disclosures by Banks

Disclosures described in the preceding paragraphs refer only to the OCC's required or discretionary disclosures. Banks are not permitted to disclose the existence of any nonpublic informal action, any potential (non-final) enforcement action (including any 15-day letter or proposed, unexecuted consent order), or any information obtained in the course of a formal investigation (including subpoenas) to a party other than its attorney without OCC authorization following a request submitted in accordance with 12 CFR 4, subpart C. Nothing in this paragraph, however, is intended to relieve any bank, or, when applicable, its holding company, of independent obligations to make required disclosures pursuant to laws, regulations, or other obligations. A bank seeking to make a required disclosure pursuant to an independent obligation must submit a request to the OCC in accordance with 12 CFR 4, subpart C.

All public bank enforcement actions, operating agreements, and conditions imposed in writing are considered to be public at the time they are executed (i.e., signed by all parties, including the appropriate OCC official), unless the OCC otherwise notifies the banks. Banks may, therefore, disclose executed documents described in this paragraph without further action by the OCC (i.e., prior to publication by the OCC).

For further information regarding OCC enforcement actions against banks, please contact E&C at (202) 649-6200 or Special Supervision at (202) 649-6450.

¹⁸ Refer to 12 USC 1818(u).

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Appendix A: Informal Enforcement Actions Against Banks

Commitment letter (not public): A document signed by the board on behalf of the bank and acknowledged by an authorized OCC official, making specific written commitments to take corrective actions in response to the bank's deficiencies. The document may be drafted by either the OCC or the bank. A commitment letter is not a binding legal document (that is, the OCC cannot enforce compliance in federal court or assess CMPs for noncompliance); a board's failure to honor the commitments, however, may provide strong evidence of the need for a formal bank enforcement action.

Conditions imposed in writing (public if explicitly made enforceable under 12 USC 1818): A "condition imposed in writing" within the meaning of 12 USC 1818 is imposed on a bank by the supervisory office in connection with an action on an application, notice, or other request. Examples of conditions imposed in writing include conditions imposed by the OCC when communicating a written determination of no supervisory objection or when granting a bank's request to terminate a bank enforcement action. Conditions imposed in writing may be imposed to protect the safety and soundness of the bank, prevent conflicts of interest, ensure that the bank provides consumer protections, ensure that the OCC's approval is consistent with laws or regulations, or provide for other supervisory or policy considerations. Conditions imposed in writing remain in effect until the OCC removes them. Any violations of conditions imposed in writing can provide the legal basis for additional enforcement actions, including a CMP assessment.

Conditions imposed by the OCC's Licensing Division in association with or resulting from a bank's licensing filing, although typically enforceable under 12 USC 1818, are not bank enforcement actions and are not within the scope of this PPM.

Individual minimum capital ratios (not public): The OCC is authorized under 12 USC 1464(s)(2), 12 USC 3907, and 12 CFR 3, subpart H, to establish higher IMCRs for a bank in light of its particular circumstances. When the OCC determines that higher capital ratios are necessary, it sends the bank a notice of intent to establish higher minimum capital ratios (IMCR notice). The IMCR notice includes the proposed capital ratios, the date they must be reached, and an explanation of why the OCC considers the proposed ratios necessary or appropriate for the bank. The bank may provide a written response within 30 days of the IMCR notice, unless the OCC specifies a shorter time frame. The bank's response should include any matters the board and management believe the OCC should consider in deciding whether to establish an IMCR, what management or the board believe the IMCR should be, and when the bank should achieve the ratios. The bank's failure to respond within the required time frame is considered a waiver to any objection to the proposed IMCR. The OCC makes its decision after the close of the response period and notifies the bank of its decision in writing using a notification of establishment of higher capital ratios (IMCR decision notification). The IMCR decision notification includes an explanation of the OCC's decision and may require the bank to develop and submit to the OCC an acceptable plan to reach the higher minimum capital ratios.

The establishment of an IMCR does not affect a bank's PCA capital category. If a bank fails to maintain its capital ratios above the higher minimums established in the IMCR, the OCC may issue a capital directive requiring the bank to submit and adhere to an acceptable plan to achieve or maintain its required capital levels. Additionally, the OCC may deem a bank's failure to maintain capital ratios above the IMCR an unsafe or unsound practice within the meaning of 12 USC 1818.¹⁹

Memorandum of understanding (not public): A bilateral document between a bank and the OCC that looks similar to a formal OCC enforcement action in form and content. An MOU is drafted by the OCC. Like a commitment letter, an MOU is not a binding legal document, but a board's failure to honor an MOU may provide strong evidence of the need for a formal bank enforcement action.

Operating agreement (public if made explicitly enforceable under 12 USC 1818): A bilateral document signed by the board on behalf of a bank and an authorized OCC official. Operating agreements typically specify that they are "written agreements" within the meaning of 12 USC 1818 (that is, enforceable operating agreements). In such cases, violations of an operating agreement can provide the legal basis for additional enforcement actions, including CMP assessments. Unlike a C&D or consent order, operating agreements are not enforceable through the federal court system.

Operating agreements executed by the OCC's Licensing Division in association with or resulting from a bank's licensing filing are not bank enforcement actions and are not within the scope of this PPM.

Notice of deficiency issued under 12 CFR 30 (not public): Pursuant to 12 USC 1831p-1 and 12 CFR 30, the OCC may issue a notice of deficiency when a bank fails to comply with any established safety and soundness standard in 12 CFR 30. The notice of deficiency requires the bank to submit to the OCC a safety and soundness plan describing the steps the bank will take to correct the deficiency, including the time frame within which the bank will take those steps. The bank generally has 30 days to provide its safety and soundness plan; under certain circumstances, the OCC may shorten the time frame for the bank's response. 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 provided in 12 USC 1831p-1(e)(2)(B). Refer to appendix B of this PPM for more information regarding safety and soundness orders.

¹⁹ Refer to 12 USC 3907(b)(1) and 1464(s)(3).

Appendix B: Formal Enforcement Actions Against Banks

Many formal bank enforcement actions below are designated as “public” because they are generally required to be published or made available to the public. 12 USC 1818(u), however, provides the OCC with the authority to delay or withhold publication under certain exceptional circumstances.

Capital directive (public): Pursuant to 12 USC 3907 and 12 CFR 3, the OCC may issue a Capital directive when a bank fails to achieve or maintain capital at or above the minimum ratios required by 12 CFR 3, subparts B or H; a written agreement; or a condition for approval of an application. A capital directive may require the bank to achieve its minimum capital requirement by a specified date, submit and adhere to an acceptable capital plan, and take other actions to achieve the required capital ratios. The OCC sends the bank a notice of intent to issue a directive, which includes reasons for the proposed directive and proposed contents. The bank generally has 30 days to provide a written response to the notice, though the OCC can shorten the time period for the bank’s response under certain circumstances. The bank’s response should state any reasons the bank believes a directive should not be issued, propose alternative contents for the directive, and include any other matters that the bank would like the OCC to consider in deciding whether to issue a directive or revise the directive’s contents. The bank’s failure to respond within the required time frame is considered a waiver of any objection to the proposed capital directive. The OCC makes its decision after receiving a response or after the close of the response period.

A capital directive has essentially the same force and effect as a C&D order. Violations of a capital directive can provide the legal basis for assessing CMPs against the bank and its institution-affiliated parties under 12 USC 1818(i) or 12 USC 3909(d). A capital directive may also be enforced through application to a U.S. District Court. Unlike C&D orders, a failure to meet or a willful violation of a capital directive is not itself grounds for receivership.

Capital directives are rarely used because most banks with deficient capital have other deficiencies that also need to be addressed, and they are addressed through other formal bank enforcement actions. When capital adequacy is the overriding consideration and other deficiencies do not need to be addressed through a formal bank enforcement action, capital directives can be useful.

Cease-and-desist order (public): A final order issued pursuant to 12 USC 1818(b) that may be issued when a bank engages in an unsafe or unsound practice or violates a law, rule, regulation, condition imposed in writing,²⁰ or written agreement (for example, an operating agreement made enforceable under 12 USC 1818, or a formal agreement). In addition to requiring a bank to cease and desist from the unsafe or unsound practice or violation and to take affirmative action to correct or remedy any conditions resulting from any violation or practice, a C&D order may

²⁰ A “condition imposed in writing” under 12 USC 1818 is defined as any condition imposed in writing by a federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party. This definition includes conditions imposed on a bank by the supervisory office as well as conditions imposed by the OCC’s Licensing Division.

require a bank to make restitution or provide reimbursement (i.e., restitution orders), restrict asset growth, dispose of a loan or other asset, rescind an agreement or contract, employ qualified officers or employees, or take other actions the OCC determines to be appropriate. A C&D order may also place limitations on a bank's activities or functions. A C&D order is imposed on an involuntary basis after the issuance of a notice of charges, a hearing, a recommended decision by an administrative law judge, and a final decision and order by the Comptroller. The Comptroller's decision to issue a C&D order in this manner is appealable to a U.S. Court of Appeals (either the D.C. Circuit or the circuit in which the home office of the bank is located). The OCC may enforce a C&D order through application to a U.S. District Court. Violations of a C&D order can provide the legal basis for additional enforcement actions, including CMPs. A willful violation of a final C&D order is itself grounds for receivership.²¹

Restitution order (public): A restitution order is a type of C&D order, authorized under 12 USC 1818(b)(6), that can be used to require a bank to take affirmative action to correct or remedy any conditions resulting from any violation or unsafe or unsound practice, including a requirement to make restitution (or provide reimbursement, indemnification, or guarantee against loss) if the bank was unjustly enriched in connection with the violation or practice, or the violation or practice involved a reckless disregard for the law, any applicable regulations, or prior order.

Civil money penalties (public): Refer to PPM 5000-7.

Consent order (public): Aside from its title, a consent order is identical in form and legal effect to a C&D order. A consent order, however, is issued with the consent of the bank's board.

Temporary cease-and-desist order (not public except for the related notice of charges): A temporary C&D order is issued by the OCC pursuant to 12 USC 1818(c) following the filing of a notice of charges seeking a C&D order. The OCC may issue a temporary C&D order to a bank when the violation or unsafe or unsound practice described in the notice of charges, or the continuation of the violation or practice, is likely to cause the bank's insolvency, cause significant dissipation of the bank's assets or earnings, weaken the bank's condition, or otherwise prejudice the interests of the bank's depositors before the completion of the proceedings resulting from the notice of charges. A temporary C&D order may also be imposed if the notice of charges specifies a bank's books and records are so incomplete or inaccurate that the OCC is unable, through the normal supervisory process, to determine the financial condition of the bank or the details or purpose of any transaction(s) that may have a material effect on the financial condition of the bank, or if the notice of charges specifies that any person has engaged in certain false advertising, misuse of FDIC names, or misrepresentations to indicate insured status as described in 12 USC 1828(a)(4). Although a temporary C&D order may be challenged in U.S. District Court within 10 days of issuance, it is effective upon issuance and remains effective and enforceable, unless set aside, limited, or suspended by the court, until a final C&D order is in place or the OCC dismisses the charges in the notice. Violations of a temporary C&D order can provide the legal basis for the assessment of CMPs.

²¹ Refer to 12 USC 1821(c)(5)(D), "Grounds for Appointing Conservator or Receiver."

Formal agreement (public): A formal agreement, a “written agreement” within the meaning of 12 USC 1818, is a bilateral document signed by an authorized OCC official and the board on behalf of a bank. Violations of a formal agreement can provide the legal basis for additional enforcement actions, including CMP assessments. Formal agreements are not enforceable through the federal court system.

Gramm–Leach–Bliley Act agreements (national banks only, public): An agreement between a national bank and the OCC pursuant to 12 USC 24a(e)(2) and (3) and 12 CFR 5.39(j)(1)(ii) and (iii). A national bank that controls or holds an interest in a financial subsidiary must execute a GLBA agreement with the OCC within 45 days after receiving notice that

- the national bank or any of its depository institution affiliates are not well capitalized or well managed,²²
- the aggregate consolidated financial subsidiary assets exceed the limits of 12 CFR 5.39(g)(2),
- the national bank’s accounting treatment for any financial subsidiary does not comply with the standards set forth in 12 CFR 5.39(h)(1) and (2),
- the national bank’s procedures for identifying and managing financial and operational risks within the bank and the financial subsidiary do not adequately protect the bank from such risks, or
- the national bank’s policies and procedures to preserve the separate corporate identity and limited liability of the bank and the financial subsidiaries are not reasonable.

A GLBA agreement requires the national bank to comply with certain prudential requirements and may include limitations on the conduct or activities of the national bank or any subsidiary of the national bank as the OCC determines to be appropriate. If the national bank fails to correct the conditions giving rise to the notice within 180 days after receipt, the OCC may require the national bank to divest control of any financial subsidiary.

Prompt corrective action directive (FDIC-insured banks only, public): FDIC-insured banks are subject to mandatory and discretionary restrictions and actions depending upon the bank’s PCA capital category.²³ Mandatory restrictions and actions are effective when the bank is notified or is deemed to have notice of its PCA capital category. The OCC imposes discretionary restrictions and actions on the bank through the issuance of a PCA directive. Discretionary restrictions include requiring recapitalization, restricting affiliate transactions, restricting interest rates, requiring sale of voting shares, further restricting asset growth, restricting activities, requiring election of new board members, requiring dismissal of directors or officers, requiring new senior executive officers, prohibiting deposits from correspondent banks, requiring divestiture of subsidiaries, or taking any other action that the OCC determines will resolve the bank’s problems at the least possible long-term cost to the Deposit Insurance Fund.

²² “Well capitalized” and “well managed” are defined in 12 CFR 5.39. For purposes of 12 CFR 5.39, “well managed” generally means that the bank has composite and management ratings of 1 or 2.

²³ Refer to 12 USC 1831o, “Prompt Corrective Action”; 12 CFR 6, “Prompt Corrective Action”; 12 CFR 165, “Prompt Corrective Action” (federal savings associations); and OCC Bulletin 2018-33, “Prompt Corrective Action: Guidelines and Rescissions.”

The OCC first issues a notice of intent to issue a PCA directive to the bank, unless the OCC finds it necessary to issue a PCA directive, which is immediately effective, without providing such notice. The bank is given an opportunity to respond to the notice and explain why the proposed PCA directive is not necessary, suggest any modifications to the proposed PCA directive, or provide any other relevant information to support its position. After considering the bank's response, the OCC may issue the PCA directive as proposed or in modified form, determine that no action is necessary, or seek more information from the bank. A PCA directive essentially has the same force and effect as a C&D order. A PCA directive may also be enforced through application to a U.S. District Court.

For banks that are in the undercapitalized, significantly undercapitalized, or critically undercapitalized categories, the supervisory office should consider using a PCA directive. A PCA directive can enhance the OCC's use of resolution options later because failure to become adequately capitalized when subject to a PCA directive is a ground for receivership.²⁴ Similarly, PCA directives may be appropriate when the need for prompt action is present. Refer to appendix D for more information on mandatory and discretionary actions under PCA.

Safety and soundness order (public): If a bank fails to submit or implement an acceptable safety and soundness plan pursuant to 12 CFR 30, the OCC must require the bank to correct the deficiencies and may require the bank to take other actions under 12 USC 1831p-1(e)(2)(B) until the deficiency has been corrected. The OCC requires the correction of deficiencies and any other actions using a safety and soundness order. The OCC must also take certain additional actions against a bank that has not corrected a deficiency if the bank has experienced extraordinary growth over the past 18 months, has commenced operations within the past 24 months, or has undergone a change in control.

If circumstances warrant, the OCC may issue a safety and soundness order that is immediately effective. Otherwise, the process for issuing a safety and soundness order under 12 CFR 30.5 begins with the issuance of a notice of intent to issue a safety and soundness order. The notice identifies the safety and soundness deficiencies and describes the proposed actions that 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 by 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 C&D order. A safety and soundness order may also be enforced through application to a U.S. District Court. Unlike C&D orders, a willful violation of a safety and soundness order is not itself grounds for receivership.

Unlike PCA directives and capital directives, a safety and soundness order allows the OCC to require a bank to address deficiencies in its operations regardless of the bank's capital levels. Use of a safety and soundness order may be considered when a bank has serious systemic weaknesses resulting in the failure to meet one or more of the safety and soundness standards set forth in

²⁴ Refer to 12 USC 1821(c)(5)(K)(ii).

12 CFR 30, but is not undercapitalized for PCA purposes and is not subject to an existing formal enforcement action that addresses the deficiency.

Appendix C: Bank Enforcement Action Processes and Time Frames

This appendix outlines the general process and timelines by type of enforcement action. Refer to the “Decision Authority and OCC Legal Staff Responsibilities” and “Timeliness of Bank Enforcement Actions” sections of this PPM for more information.

Time frames marked with an asterisk (*) in this appendix are set forth in statute or regulation.

Enforcement action types	Process and time frames
Capital directive	<ul style="list-style-type: none"> The supervisory office should provide a notice of intent to issue a capital directive to the bank within 30 days of the OCC's final decision to issue the notice. The bank has 30 days* after receiving the notice to respond to the OCC, unless the OCC specifies a shorter time frame. The OCC should consider any response from the bank, make a final decision whether to issue the directive, and provide any directive to the bank within 30 days of the expiration of the response period. If the OCC decides not to issue a directive, the OCC will notify the bank in writing.
C&D order Consent order	<ul style="list-style-type: none"> The supervisory office should provide the proposed enforcement action to the board within 30 days of the OCC's final decision to take the enforcement action. The OCC should obtain signatures from the board and execute the document within 30 days following delivery of the copy of the enforcement action to the board. If the board does not execute the proposed enforcement action within 30 days following delivery, the OCC should expeditiously prepare and serve on the bank a notice of charges for a C&D order.
Commitment letter	<ul style="list-style-type: none"> The bank or the OCC drafts the commitment letter within 30 days of the OCC's final decision to seek execution of a commitment letter. The board should sign the commitment letter and the supervisory office should acknowledge the board's commitment within 30 days of the OCC's final decision to require the board to sign the commitment letter.
Conditions imposed in writing	<ul style="list-style-type: none"> The bank provides an application, notice, or other request to the supervisory office that is not a licensing filing under 12 CFR 5. The supervisory office should provide the conditions imposed in writing to the bank within 30 days after the OCC makes a final decision to impose a condition in writing in connection with its action on the bank's application, notice, or other request.
Formal agreement	<ul style="list-style-type: none"> The supervisory office should provide the proposed enforcement action to the board within 30 days of the OCC's final decision to take the enforcement action. The OCC should obtain signatures from the board and execute the document within 30 days following delivery of the copy of the enforcement action to the board. If the board does not execute the proposed enforcement action within 30 days following delivery, the OCC should expeditiously prepare and serve on the bank a notice of charges for a C&D order.
GLBA agreement (national banks only)	<ul style="list-style-type: none"> The OCC must notify a national bank that it does not continue to meet the relevant qualifications in 12 CFR 5.39(g) and safeguards in 12 CFR 5.39(h). Pursuant to 12 CFR 5.39(j), the bank must execute the agreement within 45 days* of the OCC's notice that the bank does not meet the relevant qualifications and safeguards, unless the OCC extends the time frame. The following are guidelines for meeting this time frame:

Enforcement action types	Process and time frames
	<ul style="list-style-type: none"> - The supervisory office should provide the proposed agreement to the bank within 30 days after the OCC's decision to take the enforcement action. - The OCC should obtain signatures from the board and execute the document within 15 days following delivery of the copy of the agreement to the bank, unless the OCC permits additional time.
IMCR	<ul style="list-style-type: none"> • The supervisory office should provide a notice of intent to establish an IMCR to the bank within 30 days of the OCC's final decision to issue the notice of intent. • The bank has 30 days* after receiving the notice of intent to respond to the OCC, unless the OCC specifies a different time frame. • The OCC should make its decision whether to establish an IMCR and notify the bank in writing of its decision within 30 days after expiration of the response period.
MOU	<ul style="list-style-type: none"> • The supervisory office should provide the proposed enforcement action to the board within 30 days of the OCC's final decision to take the enforcement action. • The OCC should obtain signatures from the board and execute the document within 30 days following delivery of the copy of the enforcement action to the board.
Operating agreement	<ul style="list-style-type: none"> • The supervisory office should provide the proposed enforcement action to the board within 30 days of the OCC's final decision to take the enforcement action. • The OCC should obtain signatures from the board and execute the document within 30 days following delivery of the copy of the enforcement action to the board.
PCA directive	<ul style="list-style-type: none"> • The OCC may immediately issue a PCA directive or issue a notice of intent to issue a PCA directive. <ul style="list-style-type: none"> - If the supervisory office finds it necessary to immediately issue a directive, the supervisory office should provide the PCA directive to the bank within 14 days of the OCC's final decision to immediately issue the directive. - If the OCC issues a notice of intent, the supervisory office should provide the notice to the bank within 30 days of the OCC's final decision to issue a notice of intent. • The bank may file a written response to the notice within the time period set by the OCC. The date must be at least 14 calendar days* from the date of the notice unless the OCC determines that a shorter time frame is appropriate. • The OCC should consider any response from the bank, make a final decision whether to issue the directive, and provide any directive to the bank within 30 days of the expiration of the response period. If the OCC decides not to issue a directive, the OCC will notify the bank in writing.
Notice of deficiency issued under 12 CFR 30	<ul style="list-style-type: none"> • The supervisory office should provide a notice of deficiency to the bank within 30 days of the OCC's final decision to issue the notice. • The bank must submit a safety and soundness plan to the OCC within 30 days* after receiving the notice of deficiency, unless the OCC specifies a different time frame. • The supervisory office must notify the bank whether the plan has been approved or seek more information regarding the plan within 30 days* after receiving the plan, unless the OCC extends the approval time frame.
Safety and soundness order	<ul style="list-style-type: none"> • The OCC may immediately issue a safety and soundness order or issue a notice of intent to issue a safety and soundness order. <ul style="list-style-type: none"> - If the supervisory office finds it necessary to immediately issue a safety and soundness order, the supervisory office should provide the order to the bank within 30 days of the OCC's final decision to issue the order.

Enforcement action types	Process and time frames
	<ul style="list-style-type: none"> - If the OCC issues a notice of intent, the supervisory office should provide the notice to the bank within 30 days of the OCC's final decision to issue a notice of intent. • The bank may file a written response to the notice within the time period set by the OCC. Such a response must be received by the OCC within 14 calendar days* from the date of the notice, unless the OCC specifies a different time frame is appropriate. • The OCC should consider any response from the bank, make a final decision whether to issue the order, and provide any order to the bank within 30 days of the expiration of the response period. If the OCC decides not to issue an order, the OCC will notify the bank in writing.
Temporary C&D order	<ul style="list-style-type: none"> • The OCC should serve a notice of charges and temporary C&D order on a bank within 21 days of the OCC's final decision to issue a temporary C&D order to the bank. • Within 10 days* after the OCC serves the temporary C&D on the bank, the bank may apply for an injunction in U.S. District Court to set aside, limit, or suspend the temporary C&D.

Appendix D: Mandatory and Discretionary Provisions Under PCA

This appendix summarizes the mandatory and discretionary actions under PCA, which are triggered by a bank’s PCA capital category. This appendix is not an exhaustive list of supervisory actions under PCA. For more information on PCA and its mandatory and discretionary supervisory actions, refer to 12 USC 1831*o*, 12 CFR 6, and OCC Bulletin 2018-33, “Prompt Corrective Action: Guidelines and Rescissions.” For purposes of this appendix, the term “bank” refers only to “insured depository institutions” as defined in 12 USC 1813(c)(2).

PCA category	Applicable PCA provisions
Well capitalized	If the bank would be undercapitalized after making the payment, then <ul style="list-style-type: none"> capital distributions (cash or certain other distributions) restricted. management fees restricted.
Adequately capitalized	Same as well capitalized banks, plus <ul style="list-style-type: none"> brokered deposits restricted.^a
Undercapitalized	Same as adequately capitalized banks, plus <ul style="list-style-type: none"> restrictions on asset growth, acquisitions, new branches, and new lines of business. bank must submit an acceptable Capital Restoration Plan (CRP) to the OCC within 45 days of the date the bank was notified of its undercapitalized status. discretionary application of certain restrictions otherwise applicable only to significantly undercapitalized banks.
Significantly undercapitalized banks and undercapitalized banks that have failed to submit an acceptable CRP	Same as undercapitalized banks, plus <ul style="list-style-type: none"> restrictions on senior executive officer compensation. <p>The OCC shall also take one or more of the following actions:</p> <ul style="list-style-type: none"> Require recapitalization.^b Restrict affiliate transactions.^b Restrict interest rates on deposits.^b Further restrict asset growth or require the bank to reduce assets. Require the bank to alter, reduce, or terminate activities. Require the bank to improve management by electing new directors, dismissing directors or senior executive officers, or requiring qualified senior executive officers. Prohibit the bank’s acceptance of deposits from correspondent banks. Require certain divestitures of subsidiaries. Require the bank to take any other action the OCC determines will resolve the bank’s problems at the least possible long-term cost to the Deposit Insurance Fund better than any of the actions described here.
Critically undercapitalized	Same as significantly undercapitalized banks and undercapitalized banks that have failed to submit and implement an acceptable CRP, plus ^c <ul style="list-style-type: none"> receivership or conservatorship within 90 days (extensions permitted under certain circumstances with OCC approval and FDIC concurrence), or such other action the OCC determines, with the concurrence of the FDIC, will resolve the bank’s problems at the least possible long-term cost to the Deposit Insurance Fund better than receivership or conservatorship. restrictions on payments of principal or interest on the bank’s subordinated debt.

^a Refer to 12 USC 1831f, 12 CFR 303.243 and 12 CFR 337.6. Deposit rate restrictions prevent a bank that is not well capitalized from circumventing the prohibition on brokered deposits by offering rates significantly above market in order to attract a large volume of deposits quickly. As a general rule, a bank that is not well capitalized may not offer deposit rates more than 75 basis points above average national rates for deposits of similar size and maturity. Refer to FDIC FIL-42-2016, “Frequently Asked Questions on Identifying, Accepting and Reporting Brokered Deposits,” for more information.

^b There is the presumption that the OCC will take these actions.

^c The FDIC shall also prescribe certain further restrictions on the activities of the bank.

Appendix E: Resolution

For purposes of this appendix, the term “bank” refers only to an “insured depository institution” as defined in 12 USC 1813(c)(2).

Pursuant to 12 USC 1831o(h)(3), the OCC is required to place a bank into receivership when the bank is insolvent or has a ratio of tangible equity to total assets that is equal to or less than 2 percent, unless the OCC, with FDIC concurrence, takes other actions the OCC determines would better achieve the purpose of 12 USC 1831o. Once a bank’s ratio of tangible equity to total assets has dropped to 2 percent or below, the bank is subject to all restrictions and limitations applicable to critically undercapitalized banks, including the provisions of 12 USC 1831o(h)(3) pertaining to receivership or conservatorship.

The OCC also has the authority to initiate resolution by placing a bank into receivership or conservatorship or requiring its sale, merger, or liquidation while the bank still has a ratio of tangible equity to total assets of more than 2 percent in certain circumstances. Such action may help resolve a bank at the least long-term cost to the Deposit Insurance Fund by reducing or limiting losses that might otherwise result if the bank were allowed to remain open until its ratio of tangible equity to total assets has dropped to 2 percent or less, or its capital has been exhausted. In certain cases, resolution may be considered if the bank

- is losing capital.
- has no realistic prospects for recapitalization.
- is engaging in practices likely to increase losses in the future.
- is engaging in unsafe or unsound practices that have a substantial negative effect on the bank.
- suffers from other critical management failures identified in the receivership statutes.

When a bank first becomes undercapitalized for PCA purposes, or when a bank that is not yet undercapitalized begins to show substantial safety and soundness weaknesses or other critical management failings, the supervisory office should develop a resolution contingency plan involving a merger, sale, voluntary liquidation, conservatorship, or receivership. Planning for these potential future developments is a factor in selecting which bank enforcement actions to use in the near term.

The supervisory office must take into account the long-range strategy for the bank in deciding which bank enforcement action to use. Using bank enforcement actions at the rehabilitation stage can enhance the OCC’s position for resolution, if the need arises. For example, for an undercapitalized bank, the failure to submit and implement an acceptable CRP is a ground for receivership. It may also be a basis to require the bank to be sold or merged into another bank. Similarly, when addressing substantial safety and soundness weaknesses or other critical management failings, a C&D order might be preferred because a willful violation of a C&D (or consent) order is itself a ground for receivership. In addition, PCA, C&D (or consent) order, and safety and soundness order processes all have provisions authorizing the OCC to require a bank to take any action the OCC determines will best resolve the bank’s deficiencies. In appropriate

cases, this authority could be used to require that the bank have a contingency plan to sell or liquidate itself if it does not remedy its deficiencies within a specified time period.

The supervisory office should consider whether resolution would be appropriate when a bank has reached the point when additional bank enforcement actions will likely not prevent insolvency or reduce the cost to the Deposit Insurance Fund. Once a decision is made to adopt a resolution approach, OCC resources should be focused on the best available option at the least cost to the Deposit Insurance Fund.

The facts and reasons on which the receivership or other resolution is based must be well supported and documented in the OCC's supervisory information systems. In most instances, prior bank enforcement actions will have addressed these matters at an earlier stage (for example, when the bank first became undercapitalized or when the bank was required to remedy unsafe or 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 deficiencies or a substantial negative impact on the bank's assets, earnings, or ability to conduct business is needed to support receivership grounds.

Appendix F: Compliance With Enforcement Actions Page Template

We performed an assessment of the bank's compliance with each actionable article of the [enforcement action type]. A rating of "in 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 and validated through the examination process that these measures have been accomplished and are sustainable.

An assessment of "not in compliance" means either of the following conditions:

- Additional action on the part of the bank, the board, and management is required, such as when the board or management have failed to adopt policies, procedures, or systems within required time frames; when adopted policies, procedures, and systems fail to address all required items in the article; when the bank has failed to comply with immediately effective requirements or has failed to cease activities prohibited by the article; or when the board or management has failed to fully implement or adhere to corrective actions.
- 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 validate that the actions have been fully implemented, are being adhered to, and are effective and sustainable in addressing the bank's problems. In these situations, the board and management must continue to monitor and test the bank's progress to ensure corrective actions are fully implemented, adhered to, and effective.

If the action is a capital directive, C&D order, consent order, GLBA agreement, formal agreement, PCA directive, safety and soundness order, operating agreement, or conditions imposed in writing, use this paragraph: The board is reminded that failure to comply with the [type of enforcement action] is an unsafe or unsound banking practice, except when noncompliance is due solely to the need for additional time to assess the effectiveness of corrective actions. Continued noncompliance with the [type of enforcement action] will delay restoring the bank to a satisfactory condition. Failure to fully address and adhere to the [type of enforcement action] may result in more severe enforcement actions, including potential civil money penalties (CMPs) against the bank, individual members of the board, or management.

If the action is a commitment letter, IMCR, MOU, or 12 CFR 30 notice of deficiency, use this paragraph: The board is reminded that failure to comply with the [type of enforcement action] may be an unsafe or unsound banking practice, except when noncompliance is due solely to the need for additional time to assess the effectiveness of corrective actions. Failure to fully address and adhere to the [type of enforcement action] may result in more severe enforcement actions against the bank, individual members of the board, or management.

The bank remains not in compliance with [number] of the [number] actionable articles in the [type of enforcement action]. The following descriptions of the articles are abbreviated. The board and management must not rely on these condensed descriptions and should refer to the [type of enforcement action] itself for specific requirements. The board is cautioned that

continued diligence in complying with all articles is required, as “in compliance” designations are subject to regular reevaluation until such time that the enforcement action is terminated.

We have included management’s revised commitments to address the remaining corrective action requirements. Nothing in this [report or letter] should be interpreted to suggest that we are granting any extensions or find the bank’s commitments as satisfactory or sufficient to meet the requirements of the respective articles. The following is a summary of the bank’s progress in addressing the requirements of each actionable article.

Article	Status
[Article number]—[Title of article]	[compliance/not in compliance]

Article [#]—[Title of Article]—[Status]

[Insert a brief summary of the article’s requirements.]

Status: Discuss the status of the article.

- Include specific facts to support “compliance” or “not in compliance” determination.
- If the article is not in compliance but is also “past due” or “pending validation,” state that here.
- If the article is in compliance, this section should state that compliance with the article will continue to be assessed until the enforcement document is terminated.

Additional Action Required

- State what the bank must do to achieve compliance with the article.
- Requirements must be specific, actionable, and consistent with the article.

Commitment

Discuss the management’s or the board’s commitments to the additional actions required.

- Be as specific as possible.
- Include dates and the names of persons responsible.

Omit this section if the article is in compliance.

Appendix G: Sample Write-Ups for Compliance With Enforcement Actions Section of a Formal Written Communication

This appendix includes sample write-ups for the “Compliance With Enforcement Actions” section of a formal written communication. This section of a formal written communication should include the standard text in appendix F followed by a table summarizing the status of each article. In the formal communication, the write-ups should be listed after the table.

Example 1: Article Not in Compliance, Past Due

Article II—Strategic Plan—Not in Compliance (Past Due)

This article requires the board to submit a strategic plan covering at least a three-year period. The article requires the board to prepare and submit a quarterly written evaluation of the bank’s performance against the plan once it receives a written determination of no supervisory objection for the plan. Until the strategic plan receives a determination of no supervisory objection, the bank shall not significantly deviate from the operations that existed prior to the order without first receiving the OCC’s prior written determination of no supervisory objection.

Status: Corrective actions required by this article are past due. The board submitted a strategic plan to the OCC on September 15, 20XX, but the strategic plan fails to address all items required by the order. Specifically, the strategic plan does not include personnel responsible for achieving various goals and initiatives, a clear description of control systems to mitigate risks associated with new products, growth, or changes in bank markets, and a description of systems designed to monitor the bank’s progress. The strategic plan also includes significant loan growth in new loan products without appropriate policies and risk management systems.

Additional action required: The board has a continuing obligation to submit an acceptable strategic plan covering at least a three-year period that addresses all requirements of this article. Upon approval by the board, the three-year strategic plan must be submitted to the OCC for review, and a determination of no supervisory objection must be made prior to implementation.

Commitment: CEO Johnson committed to revising the strategic plan to address all requirements of the order by January 31, 20XX.

Example 2: Article Not in Compliance, Pending Validation

Article III—Internal Audit Program—Not in Compliance (Pending Validation)

This article requires the board or audit committee to develop and adhere to a satisfactory, independent internal audit program. The board or audit committee shall ensure timely follow-up and correction of deficiencies identified by internal audit.

Status: The audit committee has developed a satisfactory audit program. Jane Doe was hired as the bank’s chief audit executive on October 1, 20XX. The audit department is appropriately

staffed. Additionally, the risk assessment and schedule have been improved to include all relevant areas. Additional time needs to pass, however, for auditor Doe and the audit committee to demonstrate the adequacy and sustainability of the program.

Additional action required: The audit committee must ensure implementation of the audit program and ensure timely follow-up and correction of deficiencies by internal audit.

Commitment: Audit committee chairman Smith committed to ensuring implementation of the audit program and correction of deficiencies identified by internal audit.

Example 3: Article in Compliance

Article IV—Allowance for Loan and Lease Losses—Compliance

This article requires the board to revise the bank’s program for the maintenance of an adequate allowance for loan and lease losses (ALLL). The bank’s ALLL policy and methodology must be consistent with GAAP; OCC Bulletin 2006-47, “Interagency Policy Statement on the Allowance for Loan and Lease Losses”; the “Allowance for Loan and Lease Losses” booklet of the Comptroller’s Handbook; and the call report instructions.

Status: The board approved a revised ALLL policy on September 15, 20XX, that addresses requirements of the article. Examiners validated the effectiveness of the revised ALLL policy and determined that the revised methodology is appropriate and is consistent with GAAP; OCC Bulletin 2006-47; the “Allowance for Loan and Lease Losses” booklet of the *Comptroller’s Handbook*; and the call report instructions. The methodology has been in place for four consecutive quarters and was also validated by the bank’s internal audit.

Appendix H: Abbreviations

AML	anti-money laundering
BSA	Bank Secrecy Act
CAMELS	rating system with six component areas: capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk
C&D	cease-and-desist
CFR	U.S. Code of Federal Regulations
CMP	civil money penalty
DSRC	District Supervision Review Committee
FDIC	Federal Deposit Insurance Corporation
GLBA	Gramm–Leach–Bliley Act
IMCR	individual minimum capital ratios
ITCC	information technology, trust, consumer compliance, and Community Reinvestment Act
MMSRC	Major Matters Supervision Review Committee
MOU	memorandum of understanding
MRA	matter requiring attention
MSRC	Midsize Supervision Review Committee
OCC	Office of the Comptroller of the Currency
OOI	order of investigation
PCA	prompt corrective action
PPM	<i>Policies and Procedures Manual</i>
ROCA	risk management, operational controls, compliance, asset quality
ROE	report of examination
SRC	supervision review committee
USC	U.S. Code
WSRC	Washington Supervision Review Committee

Appendix I: References

References are generally applicable to national banks and federal savings associations unless otherwise noted.

Laws

- 12 USC 24a(e)(2) and (3), “Provisions Applicable to National Banks That Fail to Continue to Meet Certain Requirements”
- 12 USC 1464, “Federal Savings Associations” (federal savings associations)
- 12 USC 1813(c)(2), “Definitions Relating to Depository Institutions”
- 12 USC 1818, “Termination of Status as Insured Depository Institution”
- 12 USC 1818(b), “Cease-and-Desist Proceedings”
- 12 USC 1818(c), “Temporary Cease-and-Desist Orders”
- 12 USC 1818(i), “Jurisdiction and Enforcement; Penalty”
- 12 USC 1818(s), “Compliance With Monetary Transaction Recordkeeping and Reporting Requirements”
- 12 USC 1818(u), “Public Disclosures of Final Orders and Agreements”
- 12 USC 1821(c)(5), “Insurance Funds, Appointment of Corporation as Conservator or Receiver”
- 12 USC 1831f, “Brokered Deposits”
- 12 USC 1831o, “Prompt Corrective Action”
- 12 USC 1831p-1, “Standards for Safety and Soundness”
- 12 USC 3102, “Establishment of Federal Branches and Agencies by Foreign Bank” (federal branches and agencies)
- 12 USC 3108, “Regulation and Enforcement” (federal branches and agencies)
- 12 USC 3110, “Penalties” (federal branches and agencies)
- 12 USC 3907, “Capital Adequacy”
- 12 USC 3909(d), “Civil Penalties; Assessment and Collection”

Regulations

- 12 CFR 3, “Capital Adequacy Standards”
- 12 CFR 4, subpart C, “Release of Non-Public OCC Information”
- 12 CFR 5, “Rules, Policies, and Procedures for Corporate Activities”
- 12 CFR 5.39, “Financial Subsidiaries of a National Bank”
- 12 CFR 5.51, “Changes in Directors and Senior Executive Officers of a National Bank or Federal Savings Association”
- 12 CFR 6, “Prompt Corrective Action” (national banks and federal savings associations)
- 12 CFR 28.19, “Enforcement” (federal branches and agencies)
- 12 CFR 30, “Safety and Soundness Standards”
- 12 CFR 165, “Prompt Corrective Action” (federal savings associations)
- 12 CFR 303.243, “Brokered Deposit Waivers”
- 12 CFR 337.6, “Brokered Deposits”
- 12 CFR 359, “Golden Parachute and Indemnification Payments”

Policies and Procedures Manual

PPM 5000-7, “Civil Money Penalties”

PPM 5310-5, “Securities Activities Enforcement Policy”

PPM 5310-8, “Fast Track Enforcement Program”

PPM 5310-13, “Institution-Affiliated Party Enforcement Actions and Related Matters”

Other Publications

“Bank Supervision Process,” *Comptroller’s Handbook*

“Changes in Directors and Senior Executive Officers,” *Comptroller’s Licensing Manual*

FDIC FIL-42-2016, “Frequently Asked Questions on Identifying, Accepting and Reporting Brokered Deposits”

OCC Bulletin 2007-36, “Bank Secrecy Act/Anti-Money Laundering: BSA Enforcement Policy”

OCC Bulletin 2016-6, “Bank Secrecy Act/Anti-Money Laundering: Process for Administrative Enforcement Actions Based on Noncompliance With BSA Compliance Program Requirements or Repeat or Uncorrected BSA Compliance Problems”

OCC Bulletin 2018-33, “Prompt Corrective Action: Guidelines and Rescissions”