

POLICIES & PROCEDURES MANUAL

Comptroller of the Currency
Administrator of National Banks

Section: Bank Supervision

Subject: Civil Money Penalty Assessment for
Delinquent or Inaccurate Call Reports

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

PURPOSE

This issuance sets forth the OCC's policy governing assessment of civil money penalties (CMP) against national banks for delinquent or inaccurate filing of commercial (Reports of Condition and Income) and fiduciary call reports (Annual Report of Trust Assets, Special Report, and Annual Report of International Fiduciary Activities). It revises and supersedes PPM 5000-27, dated January 15, 1991.

EFFECTIVE DATE

This policy statement is effective immediately.

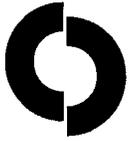
REFERENCE

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) amended 12 U.S.C. 161 and 12 U.S.C. 164 affecting: 1) the filing requirements for call reports; and 2) the CMPs that may be assessed for delinquent and inaccurate call reports filed after August 9, 1989.

The amendment to 12 U.S.C. 161 requires each national bank to prepare and transmit its call report within a period of time specified by the Comptroller. By interagency agreement, Reports of Condition and Income are to be received by the processor (currently the FDIC) within 30 days following the call date. The Annual Report of Trust Assets and the Special Report are to be submitted by February 15 of each year. The Annual Report of International Fiduciary Activities must be submitted annually by March 1.

As provided under 12 U.S.C. 164, a national bank that fails to prepare and submit its call report on time, or that submits false or misleading information in the report may be subject to a CMP. A national bank is subject to more severe penalties for willful or serious violations or when the filing of a delinquent or inaccurate call report is due to the absence of adequate procedures.

Any national bank assessed a CMP has the right to an administrative hearing if it is requested within 20 days after issuance of the assessment notice. Assessments are considered final when the national bank



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signs the Stipulation and Consent Order and the OCC receives payment of the assessed CMP. Final orders are required to be made available to the public. A list of final orders will be published monthly and the stipulations will be made available through the Communications Division.

POLICY

Whenever a national bank's call report is delinquent and/or inaccurate, the Comptroller will consider assessing a CMP against the national bank, as provided under 12 U.S.C. 164. The Comptroller will consider the statutory factors, as provided under 12 U.S.C. 1818(I) (2) (G), for the appropriateness of the penalty. Specifically, these factors are size of financial resources, good faith, gravity of the violation, history of previous violations, and other matters as justice may require. The following guidelines should be followed.

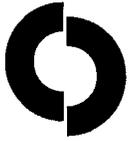
For delinquent call reports, a CMP will be considered based on seriousness of the delinquency, willfulness, and history of previous delinquent call report filings.

For inaccurate call reports, a CMP will be considered when the error or errors are significant. A CMP referral for filing an inaccurate call report must be supported by a memorandum from the examiner explaining the basis for the referral and the extent of the inaccuracy.

The attached "Regulatory Reporting CMP Matrix" provides assessment guidance for penalties.¹ The matrix provides suggested ranges for penalties; however, the facts may justify a CMP outside the range.

The CMP for a delinquent call report is calculated from the date the report was due to the date it was received by the designated processor. The CMP for an inaccurate call report is calculated from the date the processor receives the inaccurate report to the date a corrected report is received. No grace periods will be allowed. Factors such as willfulness, seriousness, good faith, and financial capacity are to be considered in determining the amount of the CMP to be assessed.

Definitions of delinquent and inaccurate call report filings are contained in the attachment to this PPM.



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In addition to a CMP, other actions may be considered when a national bank fails to file, is seriously delinquent in filing, files with significant inaccuracies, or files reports that are misleading. For example, in egregious cases, the OCC may issue a press release explaining the circumstances of a specific national bank's delinquency record or the significance of detected errors.

PROCEDURES FOR REFERRALS AGAINST BANKS

Penalties of \$20,000 or less

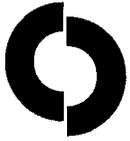
Delinquent Reports -- The Chief National Bank Examiner shall notify the national bank and the appropriate supervisory office when a CMP is being considered. Actions taken shall be recorded in the Supervisory Monitoring System (SMS). The Chief National Bank Examiner is authorized to pursue CMPs of \$20,000 or less for delinquent reports.

1/ The matrix is designed to apply to the assessment of CMPs against banks for regulatory reporting violations in general, including call report and Home Mortgage Disclosure Act violations.

Inaccurate Reports -- Responsibility for referring, processing, and assessing CMPs for inaccurate reports shall be consistent with the delegations described in PPM 5000-7 (REV), dated April 8, 1991, "Civil Money Penalties." All actions shall be documented in SMS. The appropriate supervisory office is authorized to pursue CMPs of \$20,000 or less for inaccurate reports.

Penalties of more than \$20,000

Recommendations by the Chief National Bank Examiner or appropriate supervisory office for penalties greater than \$20,000 shall be made to the Washington Supervisory Review Committee (WSRC). The Chief National Bank Examiner or the appropriate supervisory office shall make a referral to the WSRC when the condition of a national bank may be adversely affected by a CMP or where unusual or extenuating circumstances exist. Civil money penalties in excess of \$20,000 (including any related smaller CMPs) must be approved by the Senior Deputy Comptroller for Bank Supervision Operations.



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The Law Department is responsible for negotiation, settlement, and/or collection of CMPs for delinquent and inaccurate call reports. Their efforts will be coordinated with the appropriate supervisory office.

PROCEDURES FOR PENALTY ASSESSMENTS AGAINST INDIVIDUALS

Whenever a national bank's call report is delinquent, inaccurate, or both, the Comptroller or designee may consider assessing a CMP against any officer, director, employee, agent, or institution-affiliated parties, as provided under 12 U.S.C. 1818(I).

RESPONSIBLE OFFICE

Questions relating to this issuance should be directed to Supervisory Information, Office of the Chief National Bank Examiner, at (202) 874-5190.

Susan F. Krause
Senior Deputy Comptroller
for Bank Supervision Policy

Attachments

DEFINITIONS

Official copy -- The official copy is the original report transmitted to a designated processing agent. All tests of timeliness and accuracy should be applied to this report.

Due date -- Under interagency agreement, commercial bank call reports are to be received no later than 30 days following the call date. If a national bank has, or during the reporting periods had, more than one foreign office, other than a “shell” branch or an International Banking Facility (IBF), it is permitted an additional 15 days to submit its report. Amended reports are due 20 days after the request date.

Delinquent filing -- A call report is considered delinquent if it is received after the due date unless the bank retains a receipt showing that the call report was mailed by first class mail and postmarked not later than the third day before the due date. The bank also may use overnight mail service the day before the submission deadline, or file the call report electronically by the submission deadline. The national bank must maintain evidence of filing.

Inaccurate filing -- A call report is considered inaccurate when: 1) it contains a significant error requiring an amended report or 2) when material errors are found during the call report editing process that require correction and verification by the national bank. A call report can also be considered inaccurate if numerous small errors impact the integrity of the submitted data and correction is required. Guidelines for identifying a significant error in commercial bank call reports can be found in the Comptroller’s Handbook for National Bank Examiners, Section 408.1, Review of Regulatory Reports.

Pattern of inaccurate filing -- A bank displays a pattern of inaccuracy when it files two or more inaccurate call reports within five quarters.

Willfulness -- A violation is willful when there is evidence that a delinquent or inaccurate filing was intentional, or when the bank has made little or no effort to ensure timely and accurate reporting.

Seriousness -- A violation is serious based on the degree of lateness in filing or inaccuracy and/or untimely response in correcting inaccurate filings.

REGULATORY REPORTING CMP MATRIX*

Level 1	Level 2a	Level 2b
<p>The report is <u>minimally late</u>.¹</p> <p>or</p> <p>Inaccurate²</p> <p>and</p> <p>Adequate procedures are maintained to avoid late or inaccurate reports.</p> <p>and</p> <p>The violation is the result of an inadvertent error.</p>	<p>The report is more than <u>minimally late</u>.¹</p> <p>and</p> <p>Adequate procedures are maintained to avoid late reports.</p> <p>and</p> <p>The violation is the result of an inadvertent error.</p>	<p>The report is <u>late</u> or inaccurate.²</p> <p>and</p> <p>Adequate procedures are not maintained to avoid late or inaccurate reports.</p> <p>or</p> <p>The violation is not inadvertent.</p>
RANGE	RANGE	
\$300 to \$2,000 for each day the violation is outstanding	\$600 to \$5,000 for each day the violation is outstanding.	
CONSIDER STATUTORY FACTORS	CONSIDER STATUTORY FACTORS	
<p>History of previous violations.</p> <p>Size of financial resources.</p> <p>Good faith.</p> <p>Gravity of the violation.</p> <p>Other matters as justice may require.</p>	<p>History of previous violations.</p> <p>Size of financial resources.</p> <p>Good faith.</p> <p>Gravity of the violation.</p> <p>Other matters as justice may require.</p>	<p>History of previous violations.</p> <p>Size of financial resources.</p> <p>Good faith.</p> <p>Gravity of the violation.</p> <p>Other matters as justice may require.</p>
SUGGESTED PENALTY AMOUNT	SUGGESTED PENALTY AMOUNT	SUGGESTED PENALTY AMOUNT
\$_____per day	\$_____per day	\$_____per day

*The matrix is designed to apply to the assessment of CMPs against banks for regulatory reporting violations in general, including call report and Home Mortgage Disclosure Act violations.

- 1 Minimally late is defined as no more than 15 days late.
- 2 Pursuant to 12 C.F.R. 203.6(b), inaccurate HMDA reports are not considered violations if the bank maintains adequate procedures and the inaccuracy is a result of an inadvertent error.