

































### **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.<sup>18</sup>

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 Enforcement at (202) 649-6200 or Specialty Supervision at (202) 649-6450.

---

<sup>18</sup> Refer to 12 USC 1818(u).



---

Beverly Cole  
Senior Deputy Comptroller for Midsize and Community Bank Supervision

---

Grovetta N. Gardineer  
Senior Deputy Comptroller for Bank Supervision Policy

---

Greg J. Coleman  
Senior Deputy Comptroller for Large Bank Supervision

---

Benjamin W. McDonough  
Senior Deputy Comptroller and Chief Counsel

## 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 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.<sup>19</sup>

**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.

---

<sup>19</sup> 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,<sup>20</sup> 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

---

<sup>20</sup> 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.<sup>21</sup>

**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.

---

<sup>21</sup> 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,<sup>22</sup>
- 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.<sup>23</sup> 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.

---

<sup>22</sup> “Well capitalized” and “well managed” are defined in 12 CFR 5.3. For purposes of 12 CFR 5.3, “well managed” generally means that the bank has composite and management ratings of 1 or 2.

<sup>23</sup> Refer to 12 USC 1831o, “Prompt Corrective Action”; 12 CFR 6, “Prompt Corrective Action”; 12 CFR 165, “Prompt Corrective Action” (federal savings associations); and the “Problem Bank Supervision” booklet of the *Comptroller’s Handbook*.

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.<sup>24</sup> Similarly, PCA directives may be appropriate when the need for prompt action is present. Refer to appendix E 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

---

<sup>24</sup> 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: Actions Against Banks With Persistent Weaknesses

This appendix generally applies to a bank that is subject to heightened standards pursuant to 12 CFR 30, appendix D. In addition, it applies to other banks with operations that are highly complex or otherwise present a heightened risk throughout the bank. In determining whether a bank's operations are highly complex or otherwise present a heightened risk, the OCC considers the bank's size, risk profile, complexity of products and services, and the scope of operations.<sup>25</sup> In its discretion, the OCC may apply this framework, including the restrictions discussed below, to any bank.

The OCC may take additional supervisory or enforcement action(s) against banks that exhibit persistent weaknesses. For purposes of this appendix, persistent weaknesses may include:

- composite or management component ratings that are 3 or worse, or three or more weak or insufficient quality of risk management assessments, for more than three years;
- failure by the bank to adopt, implement, and adhere to all the corrective actions required by a formal enforcement action in a timely manner; or
- multiple enforcement actions against the bank executed or outstanding during a three-year period.

The OCC has a presumption in favor of additional and increasingly severe action(s) when a bank has continuing, recurring, or increasing deficiencies for a prolonged period, particularly when a bank has not made sufficient progress toward correcting the deficiencies. If a bank exhibits persistent weaknesses, the OCC will consider additional actions, such as assessing CMPs and issuing other enforcement actions against the bank, consistent with this presumption. A resulting enforcement action may include requirements or restrictions such as one or more of the following:

- a requirement for the board to oversee the development and implementation of an enterprise-wide action plan to promptly resolve the bank's persistent weaknesses, including to improve composite or component ratings or quality of risk management assessments.
- restrictions on the bank's growth (overall or in discrete areas), business activities, or payment of dividends.
- requirements for the bank to take affirmative actions, including making or increasing investments targeted to aspects of its operations or acquiring or holding additional capital or liquidity.

In addition, consistent with 12 USC 1818, the OCC may bring enforcement actions against institution-affiliated parties who have engaged in unsafe or unsound practices, violations, or

---

<sup>25</sup> Among other things, the OCC may consider (1) the affiliate structure and whether affiliates engage in nonbank activities, and (2) the extent of the bank's reliance on third-party service providers.

breaches of fiduciary duty, including parties who caused or contributed to the bank's persistent weaknesses.<sup>26</sup>

Should a bank fail to correct its persistent weaknesses in response to prior enforcement actions or other measures, including those outlined above, the OCC will consider further action to require the bank to remediate the weaknesses. Such action could require the bank to simplify or reduce its operations, including that the bank reduce its asset size, divest subsidiaries or business lines, or exit from one or more markets of operation.

---

<sup>26</sup> As with all banks, the OCC may bring enforcement actions against institution-affiliated parties as the facts and circumstances warrant. See 12 USC 1818 and PPM 5310-13, "Institution-Affiliated Party Enforcement Actions and Related Matters."

### Appendix D: 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"> <li>• 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.</li> <li>• The bank has 30 days* after receiving the notice to respond to the OCC, unless the OCC specifies a shorter time frame.</li> <li>• 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.</li> </ul>
C&D order Consent order	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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&amp;D order.</li> </ul>
Commitment letter	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
Conditions imposed in writing	<ul style="list-style-type: none"> <li>• The bank provides an application, notice, or other request to the supervisory office that is not a licensing filing under 12 CFR 5.</li> <li>• 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.</li> </ul>
Formal agreement	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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&amp;D order.</li> </ul>

Enforcement action types	Process and time frames
GLBA agreement (national banks only)	<ul style="list-style-type: none"> <li>• 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).</li> <li>• 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:               <ul style="list-style-type: none"> <li>– The supervisory office should provide the proposed agreement to the bank within 30 days after the OCC's decision to take the enforcement action.</li> <li>– 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.</li> </ul> </li> </ul>
IMCR	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The bank has 30 days* after receiving the notice of intent to respond to the OCC, unless the OCC specifies a different time frame.</li> <li>• 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.</li> </ul>
MOU	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
Operating agreement	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
PCA directive	<ul style="list-style-type: none"> <li>• 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"> <li>– 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.</li> <li>– 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.</li> </ul> </li> <li>• 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.</li> <li>• 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.</li> </ul>
Notice of deficiency issued under 12 CFR 30	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>

Enforcement action types	Process and time frames
Safety and soundness order	<ul style="list-style-type: none"> <li>• 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"> <li>– 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.</li> <li>– 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.</li> </ul> </li> <li>• 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.</li> <li>• 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.</li> </ul>
Temporary C&D order	<ul style="list-style-type: none"> <li>• The OCC should serve a notice of charges and temporary C&amp;D order on a bank within 21 days of the OCC's final decision to issue a temporary C&amp;D order to the bank.</li> <li>• Within 10 days* after the OCC serves the temporary C&amp;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&amp;D.</li> </ul>

## Appendix E: 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 1831o, 12 CFR 6, and the “Problem Bank Supervision” booklet of the *Comptroller’s Handbook*. 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"> <li>capital distributions (cash or certain other distributions) restricted.</li> <li>management fees restricted.</li> </ul>
Adequately capitalized	Same as well capitalized banks, plus <ul style="list-style-type: none"> <li>brokered deposits restricted.<sup>a</sup></li> </ul>
Undercapitalized	Same as adequately capitalized banks, plus <ul style="list-style-type: none"> <li>restrictions on asset growth, acquisitions, new branches, and new lines of business.</li> <li>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.</li> <li>discretionary application of certain restrictions otherwise applicable only to significantly undercapitalized banks.</li> </ul>
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"> <li>restrictions on senior executive officer compensation.</li> </ul> <p>The OCC shall also take one or more of the following actions:</p> <ul style="list-style-type: none"> <li>Require recapitalization.<sup>b</sup></li> <li>Restrict affiliate transactions.<sup>b</sup></li> <li>Restrict interest rates on deposits.<sup>b</sup></li> <li>Further restrict asset growth or require the bank to reduce assets.</li> <li>Require the bank to alter, reduce, or terminate activities.</li> <li>Require the bank to improve management by electing new directors, dismissing directors or senior executive officers, or requiring qualified senior executive officers.</li> <li>Prohibit the bank’s acceptance of deposits from correspondent banks.</li> <li>Require certain divestitures of subsidiaries.</li> <li>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.</li> </ul>
Critically undercapitalized	Same as significantly undercapitalized banks and undercapitalized banks that have failed to submit and implement an acceptable CRP, plus <sup>c</sup> <ul style="list-style-type: none"> <li>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.</li> <li>restrictions on payments of principal or interest on the bank’s subordinated debt.</li> </ul>

<sup>a</sup> Refer to 12 USC 1831f, 12 CFR 303.243, 12 CFR 337.6, and 12 CFR 337.7. 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,” and FDIC-FIL-30-2022, “FDIC Updates on Brokered Deposits,” for more information.

<sup>b</sup> There is the presumption that the OCC will take these actions.

<sup>c</sup> The FDIC shall also prescribe certain further restrictions on the activities of the bank.



















