

CFPB Factors of Responsible Business Conduct

By ADR Staff

Listed below are some of the factors the Bureau will consider in determining whether and how much to take into account self-policing, self-reporting, remediation, and cooperation activities. This list is not exhaustive, and the importance of each factor in a given case, and the way in which the Bureau evaluates each factor, will depend on the circumstances.

Self-policing

This concept, which can also be described as self-monitoring or self-auditing, reflects a proactive commitment by a party to use resources for the prevention and early detection of potential violations of consumer financial laws. The Bureau recognizes that a robust compliance management system appropriate for the size and complexity of a party's business will not always prevent violations, but it will often facilitate early detection of potential violations, which can limit the size and scope of consumer harm. Questions the Bureau will consider in determining whether to provide favorable consideration for self-policing activity that detects violations or potential violations of federal consumer financial laws include:

1. What is the nature of the violation or potential violation and how did it arise? Was the conduct pervasive or an isolated act? How long did it last? Was the conduct significant to the party's profitability or business model?
2. How was the violation or potential violation detected and who uncovered it? What compliance procedures or self-policing mechanisms were in place to prevent, identify, or limit the conduct that occurred and to preserve relevant information? In what ways, if any, were the party's self-policing mechanisms particularly noteworthy and effective?
3. If the party's self-policing functions have previously been the subject of supervisory examination by the Bureau or other regulators, what have been the results of such examination? How, if at all, has the party changed its self-policing following such examination? If the party's self-policing functions have not previously been the subject of supervisory examination, how do those functions measure up to customary supervisory expectations?
4. If the party is a business entity, what was the "tone at the top" of the business about compliance? Was there a culture of compliance? How high up in the chain of command did people know of or participate in the conduct at issue? Did senior personnel participate in, or turn a blind eye toward, obvious indicia of misconduct or deficiencies in compliance procedures?

Self-reporting

Each category of responsible conduct is important to the Bureau and can significantly affect the Bureau's decision about whether a party should receive favorable consideration. Of the four categories, however, prompt and complete self-reporting to the Bureau of significant violations and potential violations is worth special mention. While no substitute for effective self-policing, self-reporting substantially advances the Bureau's protection of consumers and

enhances its enforcement mission by reducing the resources it must expend to identify potential or actual violations that are significant enough to warrant an enforcement investigation and making those resources available for other significant matters. Prompt self-reporting of serious violations also represents concrete evidence of a party's commitment to responsibly address the conduct at issue. For these reasons, the Bureau puts special emphasis on this category in its evaluation of a party's overall conduct. Questions the Bureau will examine in determining whether to provide favorable consideration for self-reporting of violations or potential violations of federal consumer financial laws include:

1. Did the party completely and effectively disclose the existence of the conduct to the Bureau, to other regulators, and if applicable, to self-regulators? Did affected consumers receive appropriate information related to the violations or potential violations within a reasonable period of time?
2. Did the party report the conduct promptly to the Bureau? If it delayed, what justification, if any existed for the delay? How did the delay affect the preservation of relevant information, the ability of the Bureau to conduct its investigation, or the interests of affected consumers?
3. Did the party proactively self-report, or wait until discovery or disclosure was likely to happen anyway, for example due to impending supervisory activity, public company reporting requirements, the emergence of a whistleblower, consumer complaints or actions, or the conduct of a Bureau investigation?

Remediation

When violations of federal consumer financial laws have occurred, the Bureau's remedial priorities include obtaining full redress for those injured by the violations, ensuring that the party who violated the law implements measures designed to prevent the violations from recurring, and, when appropriate, effectuating changes in the party's future conduct for the protection and/or benefit of consumers. Remediation may be viewed positively even when the party believes that it may have identified a potential rather than an actual violation. Questions the Bureau will examine in determining whether to provide favorable consideration for remediation activity regarding violations of federal consumer financial laws include:

1. What steps did the party take upon learning of the misconduct? Did it immediately stop the misconduct? How long after the misconduct was uncovered did it take to implement an effective response?
2. If the party is a business, were there any consequences imposed on the individuals responsible for the misconduct?
3. Did the party take prompt and effective steps to preserve information, identify the extent of the harm to consumers, and appropriately recompense those adversely affected? In situations where the harm caused by the violation goes beyond the amounts the victims may have paid to the party, did the party identify and implement additional ways to completely redress the harm?
4. What assurances are there that the misconduct is unlikely to recur? By the time of the resolution of the Bureau matter, did the party improve internal controls and procedures designed to prevent and detect a recurrence of such violations? Similarly,

have the party's business practices, policies and procedures changed to remove harmful incentives and encourage proper compliance?

Cooperation

Unlike self-policing and remediation, which may occur with or without Bureau involvement, cooperation relates to the quality of a party's interactions with the Bureau after the Bureau becomes aware of a potential violation of federal consumer financial laws, either through a party's self-reporting or the Bureau's own discovery efforts. In order to receive credit for cooperation in this context, a party must take substantial and material steps above and beyond what the law requires in its interactions with the Bureau. Simply meeting those obligations will not be rewarded by any special consideration. Questions the Bureau will examine in determining whether to provide favorable consideration for cooperation in a Bureau investigation include:

1. Did the party cooperate promptly and completely with the Bureau and other appropriate regulatory and law enforcement bodies? Was that cooperation present throughout the course of the investigation? Did the actor identify any additional related misconduct likely to have occurred?
2. Did the party take proper steps to develop the truth quickly and completely and to fully share its findings with the Bureau? Did it undertake a thorough review of the nature, extent, origins, and consequences of the misconduct and relate behavior? Who conducted the review and did they have a vested interest or bias in the outcome? Were scope limitations placed on the review? If so, why and what were they?
3. Did the party promptly make available to the Bureau the results of its review and provide sufficient documentation reflecting its response to the situation? Did it provide evidence with sufficient precision and completeness to facilitate, among other things, enforcement actions against others who violated the law? Did the party produce a complete and thorough written report detailing the findings of its review? Did it voluntarily disclose material information not directly requested by the Bureau or that otherwise might not have been uncovered? If the party is a business, did it direct its employees to cooperate with the Bureau and make reasonable efforts to secure such cooperation?