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Subject: Responsible Business Conduct: Self-Assessing, Self-Reporting, Remediating, and Cooperating

In executing its statutory responsibilities, the Bureau of Consumer Financial Protection (Bureau) places primary emphasis on preventing harm to consumers. Preventing harm to consumers is among the most effective and efficient ways of ensuring consumer access to a fair, transparent, and competitive financial market. In 2013, the Bureau issued a Bulletin that identified several activities that individuals or businesses, collectively “entities,” could engage in that could prevent and minimize harm to consumers, referring to these activities as “responsible conduct.” The Bureau is issuing this updated Bulletin to clarify its approach to responsible conduct and to reiterate the importance of such conduct.

In the first instance, the Bureau’s focus is on building a culture of compliance among entities, including covered persons and service providers, in order to minimize the likelihood of a violation of Federal consumer financial law, and thereby prevent harm to consumers. When a violation of law does occur, swift and effective actions taken by an entity to address the violation can minimize resulting harm to consumers. Specifically, an entity may self-assess its compliance with Federal consumer financial law, self-report to the Bureau when it identifies likely violations, remediate the harm resulting from these likely violations, and cooperate above and beyond what is required by law with any Bureau review or investigation.

Such activities are in the public interest. Depending on its form and substance, responsible conduct can improve the Bureau’s ability to promptly detect violations of Federal consumer financial law, increase the effectiveness and efficiency of its supervisory and enforcement work, enable the Bureau to focus its finite resources on their best use for the mission, and help more consumers in more matters promptly receive financial redress and additional meaningful remedies for any harm they experienced.

Because responsible conduct is in the public interest, the Bureau seeks to encourage it. Accordingly, if an entity meaningfully engages in responsible conduct, the Bureau intends to

favorably consider such conduct, along with other relevant factors, in addressing violations of Federal consumer financial law in supervisory and enforcement matters.¹ Depending on the nature and extent of an entity’s actions, the Bureau has a wide range of options available to properly account for responsible conduct. For example, in light of an entity’s responsible conduct, the Bureau could exercise its discretion to close an enforcement investigation with no action or decide not to include Matters Requiring Attention in an exam report or supervisory letter. Even if the Bureau does take action, those who engage in responsible conduct may receive other types of credit for engaging in such behavior. For entities within the Bureau’s supervisory authority, the Bureau’s Division of Supervision, Enforcement, and Fair Lending makes determinations of whether violations should be resolved through non-public supervisory action or a possible public enforcement action through its Action Review Committee (ARC) process. The ARC process includes factors that are closely aligned with the elements of responsible conduct. Thus, for entities under the Bureau’s supervisory authority, responsible conduct could result in resolving violations non-publicly through the supervisory process. Responsible conduct also could result in the Bureau’s reducing the number of violations pursued or reducing the sanctions or penalties sought by the Bureau in any public enforcement action. The Bureau intends to consider the extent and significance of an entity’s responsible conduct, with more extensive and important responsible conduct leading to more substantial consideration.

This guidance, and its description of factors that may warrant favorable consideration, is not adopting any rule or formula to be applied in all matters. The importance of each factor in a given matter, and the way in which the Bureau evaluates each factor, will depend on the circumstances. The Bureau is not in any way limiting its discretion and responsibility to evaluate each matter individually on its own facts and circumstances. In short, the fact that an entity may argue it has satisfied some or even all of the factors set forth in this guidance will not necessarily foreclose the Bureau from bringing any enforcement action or seeking any remedy if it believes such a course is necessary and appropriate.

¹ Other factors the Bureau considers in determining how to resolve violations of Federal consumer financial law include, without limitation, (1) the nature, extent, and severity of the violations identified and any associated consumer harm; (2) an entity’s demonstrated effectiveness and willingness to address the violations; and (3) the importance of deterrence, considering the significance and pervasiveness of the potential consumer harm.

Factors Used to Evaluate and Acknowledge Responsible Conduct

As noted previously, the Bureau principally considers four categories of conduct when evaluating whether some form of credit is warranted in an enforcement investigation or supervisory matter: self-assessing, self-reporting, remediating, and cooperating. However, if an entity engages in another type of activity particular to its situation that is both substantial and meaningful, the Bureau may take that activity into consideration.

Listed below are some of the factors the Bureau intends to consider in determining whether and how much to take into account responsible conduct. This list is not exhaustive, and some of the factors identified may relate to more than one category of responsible conduct.

Self-assessing:

This factor, which can also be described as self-monitoring or self-auditing, reflects a proactive commitment by an entity to use resources for the prevention and early detection of violations of Federal consumer financial law. The Bureau recognizes that a robust compliance management system appropriate for the size and complexity of an entity's business will not prevent all violations, but it will reduce the risk of violations, and it will often facilitate early detection of likely violations, which can limit the size and scope of consumer harm. Questions the Bureau intends to consider in determining whether to provide favorable consideration for self-assessing activity include:

1. What resources does the entity devote to compliance? How robust and effective is its compliance management system? Is it appropriate for the size and complexity of the entity's business?
2. Has the entity taken steps to improve its compliance management system when deficiencies have been identified either by itself or external regulators? Did the entity ignore obvious deficiencies in compliance procedures? Does the entity have a culture of compliance?
3. Considering the nature of the violation, did the entity identify the issue? What is the nature of the violation or likely violation and how did it arise? Was the conduct pervasive or an isolated act? How long did it last? Did senior personnel participate in, or turn a blind eye toward, obvious indicia of misconduct?
4. How was the violation detected and who uncovered it? If identified by the entity, how did the entity identify the issue (e.g., from customer complaints, audits or monitoring

based on routine risk assessments, or whistleblower activity)? Was the identification the result of a robust and effective compliance management system including adequate internal audit, monitoring, and complaint review processes? Was identification prompted by an impending exam or an investigation by a regulator?

5. What self-assessment mechanisms were in place to effectively prevent, identify, or limit the conduct that occurred, elevate it appropriately, and preserve relevant information? In what ways, if any, were the entity's self-assessing mechanisms particularly noteworthy and effective?

Self-reporting:

This factor substantially advances the Bureau's protection of consumers and enhances its mission by reducing the resources it must expend to identify violations and making those resources available for other significant matters. Prompt self-reporting of likely violations also represents concrete evidence of an entity's commitment to responsibly address the conduct at issue. Conversely, efforts to conceal a likely violation from the Bureau represent concrete evidence of the entity's lack of commitment to responsibly address the conduct at issue. For these reasons, the Bureau considers this factor in its evaluation of an entity's overall conduct. Of note, however, an entity's self-reporting of a potential issue does not require it to concede that it has violated the law. Questions the Bureau intends to examine in determining whether to provide favorable consideration for self-reporting of likely violations of Federal consumer financial law include:

1. Did the entity completely and effectively disclose the existence of the conduct to the Bureau, to other regulators, and, if applicable, to self-regulatory organizations? Did the entity report any additional related misconduct likely to have occurred?
2. Did the entity report the conduct to the Bureau without unreasonable delay? 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 review or investigation, or the interests of affected consumers?
3. Did the entity 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?

Remediating:

When violations of Federal consumer financial law have occurred, the Bureau's remedial priorities include obtaining full redress for those injured by the violations, ensuring that the entity who violated the law implements measures designed to prevent the violations from recurring, and, when appropriate, effectuating changes in the entity's future conduct for the protection and/or benefit of consumers. Questions the Bureau intends to examine in determining whether to provide favorable consideration for remediation activity regarding likely violations of Federal consumer financial law include:

1. What steps did the entity take upon learning of the violation? Did it immediately stop the violation? How long after the violation was uncovered did it take to implement an effective response?
2. What steps did the entity take to discipline the individuals responsible for the violation and to prevent the individuals from repeating the same or similar conduct?
3. Did the entity conduct an analysis to determine the number of affected consumers and the extent to which they were harmed? Were consumers made whole through compensation and other appropriate relief, as applicable? Did affected consumers receive appropriate information related to the violations within a reasonable period of time?
4. What assurances are there that the violation (or a similar violation) is unlikely to recur? Did the entity take measures, such as a root-cause analysis, to ensure that the issues were addressed and resolved in a manner likely to prevent and minimize future violations? Similarly, have the entity's business practices, policies, and procedures changed to remove harmful incentives and encourage proper compliance?

Cooperating:

Unlike self-assessing and remediating, which may occur with or without Bureau involvement, cooperating relates to the quality of an entity's interactions with the Bureau after the Bureau becomes aware of a likely violation of Federal consumer financial law, either through an entity's self-reporting or the Bureau's own efforts. Credit for cooperating in this context depends on the extent to which an entity takes steps above and beyond what the law requires in its interactions with the Bureau. Simply meeting those legal obligations is not a factor that the Bureau intends to give any special consideration in a supervisory review or enforcement investigation. Of note,

the Bureau does not consider an entity’s good faith assertion of privilege in an enforcement investigation to be a lack of cooperation; an entity asserting privileges in good faith remains eligible for potential favorable consideration for cooperating. Questions the Bureau intends to examine in determining whether to provide favorable consideration for cooperating in a Bureau matter include:

1. Did the entity cooperate promptly and completely with the Bureau and other appropriate regulatory and law enforcement bodies? Was that cooperation present throughout the course of the review and/or investigation?
2. Did the entity take proper steps to develop the facts 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 violation and related 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 entity 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, appropriate actions against others who violated the law? Did the entity 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? Did the entity provide all relevant, non-privileged information and make assertions of privilege in good faith?
4. Did the entity direct its employees to cooperate with the Bureau and make reasonable efforts to secure such cooperation? Did it make the most appropriate person(s) available for interviews, consultation, and/or sworn statements?

The Bureau intends for this guidance to encourage entities subject to the Bureau’s supervisory and enforcement authority to engage in more “responsible conduct,” as defined herein. Such an outcome, the Bureau believes, would benefit both consumers and providers of consumer financial products and services, is in the public interest, and supports the Bureau’s efforts to prevent consumer harm.

Regulatory Requirements

This Bulletin is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, the Bureau will submit a report containing this policy statement and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to its applicability date. The Office of Information and Regulatory Affairs has designated this policy statement as not a "major rule" as defined by 5 U.S.C. 804(2).