

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Statement of Policy on Applications for Early Termination of Consent Orders

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Policy statement.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides that the Bureau of Consumer Financial Protection (Bureau) may enter into administrative consent orders (Consent Orders) where the Bureau has identified violations of Federal consumer financial law. The Bureau recognizes that there may be exceptional circumstances where it is appropriate to terminate a Consent Order before its original expiration date. To facilitate such early terminations where appropriate, this policy statement sets forth a process by which an entity subject to a Consent Order may apply for early termination and articulates the standards that the Bureau intends to use when evaluating early termination applications.

DATES: This policy statement is applicable on October 8, 2020.

FOR FURTHER INFORMATION CONTACT: Mehul Madia, Division of Supervision, Enforcement, and Fair Lending, at (202) 435-7104. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Where the Bureau has found that an entity has violated Federal consumer financial law, the Dodd-Frank Act provides that the Bureau may settle its claims against that entity by entering

into an administrative Consent Order.¹ Consent Orders describe the Bureau’s findings and conclusions concerning the identified violations and generally impose injunctive relief, monetary relief such as redress and civil money penalties, and reporting, recordkeeping, and cooperation requirements.² Consent Orders are negotiated by the Bureau and the entity (or entities) subject to them and generally have a five-year term, although in some instances the Bureau may impose a longer term when, in its view, the circumstances warrant it. Bureau staff monitor whether entities subject to Consent Orders are complying with the terms of those orders, and when appropriate the Bureau takes action against those who fail to comply with a Consent Order.³

Consent Orders play an essential role in the Bureau’s enforcement work by providing a public, enforceable mechanism to provide relief for consumers and to deter future violations, and the Bureau believes that in most instances Consent Orders should run for their full negotiated terms. At the same time, the Bureau recognizes that Consent Orders can impose burdens on the entities subject to them. For example, the reporting and record-keeping requirements imposed by Consent Orders can be costly and resource-intensive. In addition, in some circumstances, the existence of an open Bureau Consent Order can impact whether a depository institution supervised by a prudential regulator is permitted to open new branches or to merge with or acquire other financial institutions—which can burden the institution and potentially limit the

¹ See 12 U.S.C. 5563; *see also* 12 CFR 1081.120(d). The Bureau may also enter into settlements that are filed in Federal court and must be approved by the court. See 12 U.S.C. 5564(c). The Bureau may enter into settlements with any “person,” which includes both individuals (i.e., natural persons) and various kinds of entities. See 12 U.S.C. 5481(19). As discussed further below, this policy applies to entities subject to Consent Orders, and not to individuals. This policy therefore generally refers to “entities” when discussing Bureau Consent Orders.

² See 12 U.S.C. 5565; *see also* Consumer Financial Protection Bureau, Enforcement Actions, <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/>.

³ The Bureau may seek to enforce compliance with Consent Orders administratively or in court. *See, e.g.*, 12 U.S.C. 5563(a), (b), (c), (d), 5564(a). In addition to being a violation of the Consent Order itself, a failure to comply with the terms of a Consent Order is a violation of the Dodd-Frank Act. See 12 U.S.C. 5536(a)(1)(A) (making it unlawful for a covered person or service provider to “commit any act or omission in violation of a Federal consumer financial law”); 12 U.S.C. 5481(14) (defining “Federal consumer financial law” to include an “order prescribed by the Bureau”).

choices available to consumers. Monitoring Consent Orders can also pose a burden for the Bureau itself.

The Bureau believes there may be exceptional circumstances when early termination of a Consent Order against an entity is appropriate and can be accomplished in a manner that minimizes the risk of new violations of law or harm to consumers. To facilitate such early terminations, this policy statement sets forth a process by which an entity subject to a Consent Order may apply for early termination and articulates the standards that the Bureau intends to use when evaluating early termination applications. Under this policy, which is not binding on the Bureau, the Bureau's Director intends to retain complete discretion and sole authority to terminate Consent Orders.

In addition to reducing the burdens associated with Consent Orders when they are no longer necessary, this policy provides entities with an incentive to fully and promptly comply with Bureau Consent Orders and to improve their compliance management systems to avoid additional violations. This policy also provides guidance to those subject to Bureau Consent Orders regarding the circumstances in which the Bureau may grant applications for early termination of a Consent Order.

II. Policy on Applications for Early Termination of Consent Orders

A. Conditions for Granting Early Termination

The Bureau intends to grant applications for early termination of Consent Orders if it determines, in its sole discretion, that:

- The entity meets all of the eligibility criteria set forth below;
- The entity has complied with the terms and conditions of the Consent Order; and

- The entity’s compliance position is “satisfactory” in the institutional product line (IPL) or compliance area (e.g., fair lending) for which the Order was issued.

When an entity applies for termination, its application should demonstrate that these conditions are satisfied.

1. Eligibility to Apply for Early Termination

In order to protect consumers from unwarranted early terminations and preserve the resources of potential applicants and the Bureau, the Bureau only intends to consider applications for early termination under this policy from entities that meet certain threshold eligibility criteria.

First, the entity must be subject to a Consent Order the Bureau issued using its authority to conduct administrative adjudication proceedings.⁴ This policy does not apply to settlements approved and ordered by a court, which can only be terminated early by court order. In general, the Bureau does not believe it is an appropriate use of its resources to seek to alter the status of settlements entered by courts. This policy also does not apply to court orders entered as a result of litigation (e.g., after trial or summary judgment), which similarly can only be lifted by a court.

Second, only entities are eligible to apply for early termination under this policy.⁵ Individuals (i.e., natural persons) are not eligible. As described further below, the Bureau only intends to grant early termination where, among other things, an entity demonstrates that its compliance management system is “satisfactory” in the institutional product line in which the Consent Order was issued. The Bureau believes it would be impractical to undertake a comparable review of whether individuals are likely to comply with the law in the future.

Third, entities may not apply for early termination under this policy within the first year after the entry of the Consent Order, or until at least six months after all compliance and redress

⁴ See 12 U.S.C. 5563; 12 CFR 1081.120(d).

⁵ For purposes of this policy, an entity is any “person” under 12 U.S.C. 5481(19) other than an individual.

plans required under the Consent Order have been fully implemented, whichever is later. This eligibility requirement is intended to discourage premature applications for termination of Consent Orders and to preserve Bureau resources.

Fourth, entities are not eligible for early termination under this policy when the Consent Order imposes a ban on participating in a certain industry (e.g., the mortgage industry or debt-relief industry), when the Consent Order at issue involves violations of an earlier Bureau Order, or when there has been any criminal action related to the violations found in the Consent Order.⁶ In each of these situations, the Bureau believes that the risk of future violations and harm to consumers is heightened and that considering applications for early termination of a Consent Order would not be a productive use of Bureau resources.

Finally, absent extraordinary circumstances, the Bureau does not intend to consider more than one request from an entity for termination of the same Consent Order. This eligibility requirement is intended to incentivize entities to submit complete applications at an appropriate time following the issuance of a Consent Order, and to discourage serial requests that could pose a resource challenge for the Bureau.

2. Compliance with the Consent Order

When an entity applies for early termination, its application should demonstrate its full compliance with the Consent Order, including whether the entity has, when required, corrected violations of Federal consumer financial law; paid redress, civil money penalties, or other monetary relief; adopted appropriate policies and procedures to ensure future compliance; submitted adequate reports; and maintained required records. The entity's application may

⁶ For purposes of this policy, a related criminal action is any Federal, State, or local criminal action involving the conduct described in the Consent Order in which the entity or any of its affiliates, officers, employees, or agents have been named as a defendant or as an unindicted co-conspirator, regardless of whether there has been a conviction in the action.

reference or attach prior submissions to the Bureau relevant to demonstrating its compliance with the Consent Order as appropriate. Additionally, if applicable, the entity's application should reference the results of any supervisory work conducted by the Bureau to assess the entity's Consent Order compliance and provide any additional information relevant to assessing its compliance with the Consent Order.

Where appropriate, the Bureau will work with the entity to ensure that the entity has provided adequate documentation to demonstrate compliance. If it has not already done so, the Bureau intends to expeditiously review the entity's compliance with the Consent Order and conduct follow-up work as needed to determine the entity's compliance. The Bureau generally intends to complete this compliance review within six months of receiving an application that the Bureau determines is complete, although the Bureau retains discretion over when to conduct the review to determine compliance with Consent Order provisions given the Bureau's other supervisory and enforcement priorities.

3. Satisfactory Compliance System for the IPL or Compliance Area

In the application for early termination of the Consent Order, the entity shall also demonstrate that its compliance management system for the IPL or compliance area at issue under the Order is "satisfactory," or the equivalent of a "2" rating under the Uniform Interagency Consumer Compliance Rating System. Under that rating system, a 2 rating signifies that the entity "maintains a [compliance management system] that is satisfactory at managing consumer compliance risk in the institution's products and services and at substantially limiting violations of law and consumer harm." As part of its application to the Bureau for early termination, an entity should submit evidence that it has satisfied these elements. If applicable, the entity should reference prior supervisory conclusions from a Bureau examination regarding the entity's

compliance management system for the IPL or compliance area at issue.⁷ In addition, if applicable, the entity should identify any supervisory rating or conclusion regarding its compliance management system in the relevant IPL or compliance area that it has received from other State or Federal regulators during the pendency of the Consent Order. The entity should also provide the Bureau with any additional documentation or information that the Bureau considers necessary to determine whether the entity maintains a satisfactory compliance management system in the subject IPL.⁸

The Bureau believes that requiring an entity to satisfy this condition should help ensure that the entity's compliance position is sustainable after the Consent Order is terminated.

B. Process for Submission and Review of Early Termination Applications

Unless otherwise directed in writing by the Bureau, an entity's termination application should be submitted to the Bureau point of contact identified in the "Notices" section of the Consent Order. Prior to submitting an application for order termination, an entity should contact the Bureau point of contact established in the Consent Order for additional guidance on the form of such a request.⁹ In general, the entity's application should demonstrate that the entity has satisfied all of the conditions set forth above. The application may include exhibits and may reference prior written submissions to the Bureau as appropriate. Any factual assertions an

⁷ If, during the pendency of the Consent Order, Bureau supervisory staff have already concluded through supervisory work that the entity's compliance management system for the IPL or compliance area at issue is satisfactory or better, the entity may reference that exam and that supervisory conclusion in this portion of its application and need not provide additional documentation regarding its compliance management system.

⁸ When evaluating applications, the Bureau does not intend to assign a numerical compliance rating under the Consumer Compliance Rating System to the entity that has applied for early termination. The Bureau assigns such ratings in the normal course of its supervisory process, and it intends to continue to do so in the context of scheduled examinations of consent order compliance.

⁹ Any other questions regarding submission of an application for early termination should also be directed to the designated point of contact for the Consent Order.

entity makes in its application should be made under oath (such as in a sworn affidavit) by someone with personal knowledge of such facts.

Bureau staff intend to review the application and any supporting documentation when considering whether to recommend that the Director grant an application to terminate a Consent Order. As noted above, the Bureau may request additional information from the entity when evaluating the application. The Bureau may also consider any other information available to it regarding the entity, including information obtained from other government agencies or through other supervisory and enforcement activities involving the entity.

Under this policy, Bureau staff intend to make recommendations to the Bureau's Director regarding whether to grant applications for early termination. The Bureau's Director intends to retain complete discretion and sole authority to terminate Consent Orders. The Director's orders granting or denying termination applications will be posted on the Bureau's online administrative docket¹⁰ and distributed to the entity. Prior to the Director's decision, an entity may withdraw its application at any time.¹¹

III. Regulatory Requirements

This Policy Statement constitutes a general statement of policy that is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act.¹² It is intended to provide information regarding the Bureau's general plans to exercise its discretion and does not impose any legal requirements on external parties, nor does it create or confer any

¹⁰ See <https://www.consumerfinance.gov/administrative-adjudication-proceedings/administrative-adjudication-docket/>.

¹¹ Prior to the Director's decision, Bureau staff may inform the entity if staff intend to recommend denying an application for early termination. If an entity withdraws its application, the Bureau would still consider the application to constitute the entity's one application for early termination for purposes of the eligibility criteria set forth in section II.A.1.

¹² 5 U.S.C. 553(b). However, this is not a "statement of policy" as that term is specifically used in Regulation X, 12 CFR 1024.4(a)(1)(ii).

substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. The Bureau has also determined that this Policy Statement 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 approval by the Office of Management and Budget under the Paperwork Reduction Act.

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).

IV.SIGNING AUTHORITY

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

Dated: October 5, 2020.

/s/ Laura Galban

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.