



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D.C. 20551

DIVISION OF CONSUMER
AND COMMUNITY AFFAIRS

CA 04-2

March 11, 2004

TO THE OFFICERS AND MANAGERS IN CHARGE OF CONSUMER AFFAIRS SECTIONS:

SUBJECT: Unfair or Deceptive Acts or Practices by State-Chartered Banks

This CA Letter transmits interagency guidance outlining the standards that will be considered in determining whether specific acts or practices by state-chartered banks are unfair or deceptive. Such acts or practices are unlawful under section 5 of the Federal Trade Commission Act ("FTC Act"). These standards will be applied when weighing the need to take supervisory and enforcement actions and when seeking to ensure that unfair or deceptive acts or practices do not occur. In addition, this guidance outlines measures state-chartered banks are encouraged to use to avoid engaging in certain unfair or deceptive acts or practices.

The guidance is divided into four primary sections. The first sets forth the actual standards for analyzing whether an act or practice is unfair or deceptive. The approach outlined in the guidance is based on long-established standards used by the Federal Trade Commission to enforce section 5 of the FTC Act against non-bank entities. It should be noted that the "unfair" and "deceptive" standards are independent of each other.

The second section briefly describes the agency processes to assess whether or not an act or practice is potentially unfair or deceptive, as well as the general manner in which the violations may be resolved.

The third section addresses the relationship of acts or practices that are unfair or deceptive to other laws, such as the Truth in Lending, Truth in Savings, Equal Credit Opportunity and Fair Housing Acts, and the Fair Debt Collection Practices Act. Acts or practices that are unfair or deceptive under the FTC Act may also violate other federal or state statutes. In some circumstances an act or practice may violate the FTC Act even though the institution is in technical compliance with other applicable consumer protection and fair lending laws.

Lastly, the fourth section addresses the ways in which banks can manage risks by taking appropriate measures to avoid engaging in certain unfair or deceptive acts or practices. The guidance encourages banks to adopt policies, procedures, and corporate practices to promote fairness in advertising and promotional materials, in customer agreements and disclosures, servicing and collections, and the management and monitoring of employees and third-party service providers - all of which are areas having the greatest potential for possible unfair and deceptive practices.

Please distribute guidance to the state member banks in your district. Questions regarding the guidance should be referred to the review examiner assigned to your district.

Sincerely,
(signed)

Shawn McNulty
Associate Director

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