December 4, 2001

Fact Sheet

OCC Settles Case Against First National Bank of Marin
Involving Misleading and Deceptive Marketing of Secured Credit Cards

The Office of the Comptroller of the Currency has settled a case against First National Bank of Marin, Las Vegas, in which the bank agreed to cease practices that the OCC alleged are unlawful or unsafe and unsound, and to pay restitution to customers harmed by those practices. The bank was required to establish a reserve to handle restitution payments and to make an initial deposit of $4 million. The bank will add additional amounts, if required, to fully fund the reserve within 60 days. The OCC concluded that the bank's conduct in marketing its secured credit card constituted unfair and deceptive practices in violation of the Federal Trade Commission Act, and was unsafe or unsound within the meaning of the Federal Deposit Insurance Act.

Unfair and Deceptive Practices

First National Bank of Marin markets to consumers with poor or non-existent credit histories. Many credit card lenders, as a matter of prudent underwriting, will require such consumers to maintain a savings account large enough to secure the line of credit. Under the bank's program, the funds for the savings deposit are instead charged against the credit line, reducing the amount of available credit until the charge is paid off.

In the OCC's view, since January, 1998, the bank has used false and misleading statements, in violation of the Federal Trade Commission Act, to induce these consumers to apply for its credit card and to pay substantial fees. The bank's marketing led consumers to believe that they did not first have to submit funds for a savings deposit in order to receive a credit card with a usable amount of available credit. In reality, due to the deposit requirement and fees charged against the card, the vast majority of applicants received a credit card with little or no available credit. Among the practices cited by the OCC:

- Under one program sponsored by the bank, credit card applicants were required to pay up to $79 in cash to apply for a "guaranteed" card with credit lines between $250 and $600. The credit line was secured by a savings deposit of $200 charged against the card when it was first issued. In addition, other fees of up to $56 were charged to the card.

As a result, individuals approved for a $250 credit line had little or no available credit when the card was first issued. Instead, those consumers would then have to make additional payments to the bank to obtain usable credit. Roughly 80 percent of all applicants received the $250 credit line.

- Another program required the consumer to pay $79 for a "guaranteed" card with a fixed credit line of $400. The credit line was secured by a savings deposit of $350 charged against the card when it was first issued. The initial charge for the savings deposit, along with application and other fees of $37 that were charged against the card, meant that all applicants would receive a card with little or no available credit when first issued.

- In written solicitations, the bank represented that, "You do not have to send in money for a savings deposit." The bank also told prospective customers: "If you have credit problems or no credit history, and you want your own VISA card without having to send in hundreds of dollars for a savings deposit . . . this is it!" Despite making these claims, the bank never disclosed in its solicitations that if the consumer did not send in money for the savings deposit, the consumer would have little or no available credit, and would have to make additional payments to the bank before being able to use the card.

- The bank promised that the card would have benefits like "instant cash," and "worldwide acceptance." The banks also said it would assure customers "security and peace of mind," and said it would help them "be prepared for emergencies." All of these benefits require a usable amount of available credit, which the vast majority of applicants did not receive.

- In one written solicitation, a message on the outside of the envelope stated, "you do <u>NOT</u> need to send a savings deposit to get your new VISA credit card . . . not one penny." In another, the envelope message promised: "Guaranteed approval, no matter what your credit situation, plus . . . you do not have to send in money for a savings deposit!"

- When the bank disclosed in the solicitations that the savings deposit would be charged against the credit card, it did not disclose that the customer might receive little or no usable credit as a result. The OCC received complaints from consumers who had not understood that the card they received would have little or no available credit. The OCC believes that consumers may easily have been confused by the bank's solicitations.

- On average, a consumer was required to pay $100 or more in application fees to obtain the bank's credit card. The bank did not disclose, until after the customer paid the non-refundable portion of these application fees, (usually $49-$79) that he or she might -- and probably would -- receive a card with little or no available credit.

Consent Order Provisions

The consent order requires the bank to refund application and other fees to consumers who received a credit card with less than $50 in available credit, and cancelled the card within 60 days after the card was issued to them by the bank.

In addition, the consent order requires that the bank refund application fees to consumers who learned that they were to receive a card with $50 or less in available credit, and before receiving a card cancelled their application or failed to complete the application process.

The consent order also requires that the bank change its marketing practices and disclosures. Among the provisions:

- The bank may not make any misleading or deceptive representation regarding the cost or operation of a credit card, or what available credit the consumer will receive at account opening.

- If the credit may be secured in whole or in part by a savings deposit that is charged against the credit card, the bank may not use a phrase such as “Send no money for a savings deposit,” unless the bank clearly and conspicuously discloses that the consumer's available credit will be reduced by the charge for the savings deposit."

- If the bank could approve an applicant for a card with less than $50 in available credit at account opening, the bank may not represent that any applicant who applies may be able to employ the card for uses that require available credit, unless the bank clearly and conspicuously discloses that the consumer could be approved for a card with less than $50 in available credit at account opening, will not be able to employ the card for those uses if the consumer is approved for such a card.

- If a solicitation discloses a range of credit lines for which a consumer may be approved, and if the consumer may be approved for a credit line in that range that would result in less than $50 in available credit at account opening, the bank must clearly and conspicuously disclose in the solicitation that if the consumer is approved for that credit line the consumer will have little or no available credit at account opening.

- In addition, if the consumer is approved for a card with $50 or less in immediately available credit, the bank must subsequently disclose to the consumer, before the card is activated for purchases by the consumer, the specific dollar amount of credit that will be available for the consumer's immediate use on the credit line that the consumer has received.

The order also requires that the bank implement a written program to identify and evaluate, on an ongoing basis, communications from consumers who say that they did not understand the bank's solicitations. As part of this program the bank must evaluate, on an ongoing basis, the risk that the bank's solicitations are misleading or deceptive or in violation of other law, and determine whether the solicitations should be modified or revised.

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