

November 5, 2007

Department of the Treasury
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Via Federal eRulemaking Portal

Re: Docket ID: OTS-2007-0015

The National Fair Housing Alliance (NFHA) commends the Office of Thrift Supervision (OTS) for issuing the Advanced Notice of Proposed Rulemaking (ANPR) seeking comment on whether the agency should expand its current prohibitions against unfair or deceptive acts or practices. NFHA strongly believes that the OTS should invoke its rulemaking authority to specifically identify practices prevalent in the lending market that are unfair and deceptive, as well as issue regulations containing requirements prescribed for the purposes of preventing such acts or practices.

Founded in 1988 and headquartered in Washington, DC, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Through comprehensive education, advocacy and enforcement programs, NFHA protects and promotes equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation.

The OTS Should Convert Its Guidance Into Rules

The recently issued interagency Statement on Working with Mortgage Borrowers encourages institutions to consider prudent workout arrangements that increase the potential for financially stressed residential borrowers to keep their homes. However, despite the foreclosure crisis caused by unaffordable and/or predatory loans, few lenders are modifying a significant number of loans. Failing to consider and implement reasonable workout arrangements is an unfair practice and OTS should incorporate such a finding into a rule. Other recent OTS guidance concerning lending practices, such as its Interagency Guidance on Nontraditional Mortgage Product Risks and the Interagency Statement on Subprime Mortgage Lending, should similarly be incorporated into the rule.

OTS should also issue a rule prohibiting banks from becoming involved, directly or indirectly, in residential mortgage lending activities involving abusive, predatory, unfair or deceptive lending practices that comprise equity stripping, fee packing, loan flipping, refinancing special mortgages, and encouragement of default. Certain loan terms such as financing single premium credit insurance, negative amortization, balloon payments in short-term transactions, and prepayment penalties should be prohibited.

OTS should adopt a similar approach to the Department of Housing and Urban Development (HUD), which has set housing goals for secondary market mortgage purchases by Government Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac. OTS should restrict OTS-regulated entities from originating or purchasing HOEPA mortgages and those defined by HUD as “mortgages with unacceptable terms and conditions” as unfair or deceptive.

State Law Models

For mortgage lending, OTS should also prohibit specific unfair or deceptive acts or practices of the types listed in state predatory lending laws and expressly provide that making a loan in violation of the states’ laws constitutes an unfair or deceptive act or practice.

Targeted Practices Approach

NFHA urges the OTS to employ the “Targeted Practices Approach” and list, in addition to those specifically itemized in its ANPR, the following specific practices as unfair or deceptive in residential mortgage lending transactions. More importantly, **these specific acts or practices should be regarded as unfair or deceptive *per se* regardless of the specific facts or circumstances:**

- Assuring or making the statement that a borrower can refinance in the future to avoid rate increases or adverse consequences of any other loan term or condition.
- Making statements that a refinance will result in a lower monthly payment where the new “lower payment” does not include fully amortizing payments of principal, interest, or escrow for taxes and insurance if any or all of those items were included in the loan being refinanced or were the borrower was led to believe these items would be included in the monthly payment of the refinanced loan.
- Using the term “fixed payment” in connection with a mortgage.
- Advertising and offering unrealistically low “teaser” interest rates, such as 1%, for a short period of time.
- Providing stated income or no-documentation loans to borrowers on fixed incomes or where there is only one borrower on a loan and the borrower is a wage earner capable of producing copies of their W-2 and 1099 tax forms.
- Misrepresenting the income of a borrower on a loan application.
- Waiting until the loan closing to provide the borrower with a copy of the completed loan application.
- Providing an ARM disclosure that is so complicated to be meaningless.
- Using extremely low dollar figures to illustrate ARM rate increases.

Specifically, NFHA notes that certain ARM disclosure documents currently in use by mortgage lenders illustrate the effect of an interest rate increase by giving examples based on a \$10,000 principal balance. The use of an unrealistically low principal balance to illustrate the impact of a rate increase on a mortgage loan deceptively masks the true impact of a payment increase while purporting to be a disclosure for the benefit of the consumer.

Finally, NFHA supports identifying the following practices listed in the ANPR, as unfair and deceptive *per se regardless of the circumstances*:

- Repetitive refinancing of the same mortgage loan by the same lender whereby the consumer's equity is used to finance the refinancing and from which transaction fees are paid and whereby the consumer does not financially benefit from the terms of the new loan over the terms of the old loan.
- The employment of Yield Spread Premiums, particularly when the loan originator has not disclosed to the borrower that a) the borrower is ultimately paying for the cost of the yield spread premium via an increase in the interest rate; b) that the borrower would qualify for a loan with a lower rate if the yield spread premium was not applied; and c) the yield spread premium will inure to the benefit of the loan originator.
- Encouraging a consumer to default on a loan as a prerequisite to refinancing the loan.
- Imposing changes in loan terms upon default, such as imposing significant interest rate increases or a balloon payment.
- Layering discretionary pricing on top of pricing that has already taken risk into account, for example, where a branch or loan officer charges more points than called for by the rate sheet provided by the institution's central office.
- Force placing hazard insurance without first giving reasonable notice to borrowers to cure a deficiency.
- Failing to employ reasonable loss mitigation measures prior to initiating foreclosure.

NFHA agrees that the following practices with respect to credit cards, gift cards and deposit accounts, listed as examples in the ANPR, should be considered as unfair or deceptive in the Targeted Practices Approach:

Credit Card Lending

- Imposing an interest rate increase that is triggered by adverse information unrelated to the credit card account or card issuer.
- Imposing an over-the-limit-fee that is triggered by the imposition of a penalty fee, such as a late fee.
- Charging penalty fees in consecutive months based on previous late or over the limit transactions, not on a new or additional transaction offense.
- Requiring as a condition of a credit card account, a consumer's waiver of his or her right to a court trial and consent to binding mandatory arbitration.
- Applying payments first to balances subject to a lower rate of interest before applying to balances subject to higher rates of interest or applying payments first to fees, penalties, or other charges before applying them to principal and interest.

Gift Cards

- Imposing fees that exceed a certain amount or percentage of the original gift amount.
- Setting an expiration date less than one year from the date of issuance.

Deposit Accounts

- Freezing accounts containing federal benefit payments upon receipt of attachment or garnishment orders and setting off of debts owed to the financial institution from federal benefit payments deposited in accounts.

Finally, the OTS should consider a principles-based approach to a potential rulemaking that can evolve as products, practices and services change. Consumer advocates throughout the country learn of similar unfair and deceptive practices and the impact on the consumer. The use of the term “fixed payment” to mislead consumers to believe they are receiving a fixed interest rate is one example. As consumer complaints to the OTS or public testimony by consumers and advocates inform OTS of evolving deceptive practices that commonly mislead consumers, the OTS should issue rules prohibiting such practices before they become universally used.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Shanna L. Smith". The signature is fluid and cursive, with the first name being the most prominent.

Shanna L Smith
President and CEO