

(4)

Comment Info: =====

General Comment: While it is certainly a very positive step to better articulate what unfair and deceptive practices are, there is a risk of creating confusion rather than clarity if the various agencies issue discordant guidelines. To the extent that the agencies can coordinate their views and present a united front, it would be extremely helpful for both lenders and consumers in terms of setting expectations, preventing violations, and monitoring compliance. In addition, a lock-step move by the agencies (covering banks, thrifts and credit unions) would ensure that the regulation would not adversely affect the competitive position of one type of lender relative to another. To that end, adopting the FTC guidelines may present a distinct advantage since the FDIC and OCC are already on board.

If the OTS decides to create its own guidelines, a principles-based approach would be preferable over a products-based approach. The credit industry has demonstrated its creativity and responsiveness, and can foreseeably evade product-based regulations through product innovations more easily. Care must also be taken not to define unfair and deceptive practices in a way that disproportionately harms a segment of the consumers, especially subprime borrowers (and their access to credit). While broad principles such as those offered by the FTC provide flexibility and discretion to regulators and lenders alike, it would be helpful if the principles were followed by concrete examples, perhaps such as certain targeted practices (don'ts), but it should be made clear that they are simply illustrative and not exhaustive. Also helpful to make the principles more concrete would be inclusion of best practices (do's).