

November 5, 2007

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

RE: Comment on Docket ID OTS-2007-0015

Dear Sir or Madam:

I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), in response to the Office of Thrift Supervision's (OTS) request for public comment on its advance notice of proposed rulemaking (ANPR) regarding unfair or deceptive acts or practices (UDAP). OTS is reviewing its regulations to determine whether, and if so, to what extent, additional regulation is necessary to ensure that customers of OTS-regulated entities are treated fairly.

NAFCU appreciates the OTS's efforts to ascertain public views on this subject and to afford interested parties ample opportunity to express their views by means of an ANPR. Federal credit unions are subject to regulatory oversight by the National Credit Union Administration (NCUA) and are not under supervision by OTS. However, while section 18(f)(1) of the Federal Trade Commission Act (FTC Act), 18 USC 57a(f)(1), grants OTS the regulatory authority to prescribe regulations to prevent unfair or deceptive acts or practices by savings associations, the same provision assigns parallel rulemaking authority to NCUA with respect to federal credit unions. Accordingly, NAFCU would like to take the opportunity to share its views on these important issues.

America's credit unions are dedicated to promoting fair and equitable practices in financial services activities. Always remaining true to their original mission of promoting thrift and serving the provident credit needs of their members, NAFCU and its member credit unions are strongly supportive of efforts to frustrate unfair or deceptive acts in the financial services industry. However, for the reasons described in more detail below, NAFCU does not believe that it is necessary for OTS or the other federal financial regulators to pursue additional regulation on unfair or deceptive acts or practices.

Existing Regulatory Burden is Substantial

Our current financial marketplace is more highly regulated than ever before. With the innumerable existing regulatory obligations, all federal depository institutions face an extraordinarily heavy regulatory burden. Small institutions in particular are struggling under the weight of this burden.



According to NAFCU's June 2007 *Flash Report* data, nearly all respondents (97percent) indicated they are spending more staff time on regulatory compliance issues than five years ago. In addition, almost all respondents (95 percent) said they do not expect to spend less time within the next 12 months. When asked how much time was spent on compliance issues, 25 percent of the survey respondents indicated they spent more than 50 percent of their staff time on regulatory compliance. 42 percent of the credit unions participating in the *Flash* survey said they were approached by small credit unions (less than \$100 million in assets) for compliance assistance, with 34 percent providing such assistance. The Bank Secrecy Act (BSA) in particular remains a significant compliance concern among NAFCU members. Indeed, among all regulations, an overwhelming majority of the *Flash* participants indicated that BSA was considered the most burdensome regulation (91 percent). However, consumer protection regulations (e.g., Regulation Z and E) and PATRIOT ACT requirements were also noted to be particularly burdensome.

NAFCU urges OTS to be mindful of how the total regulatory burden on federal depository institutions impacts the overall financial quality of life for our nation's consumers. Unnecessary regulatory burdens ultimately create indirect harms for consumers. This is particularly true for federal credit unions due to their member-owned not-for-profit cooperative structure. Indeed, increased compliance and operational costs may lead to higher fees and loan rates or lower savings rates. In some circumstances, compliance costs may be so cost-prohibitive as to prevent some financial institutions from offering certain products and services entirely. Regulatory burdens must therefore be minimized in order to ensure that consumers, particularly those underserved individuals who are most in need of financial services, continue to have access to reasonably-priced financial products and services. Accordingly, NAFCU does not support further regulation on unfair or deceptive acts or practices.

A Flexible Approach is Necessary

In its advance notice of proposed rulemaking, OTS recognizes that "no set of principles or standards . . . will lend themselves to an easy determination in every case as to whether a practice would violate a regulation on unfair or deceptive acts or practices," and further, that "no established list of acts or practices deemed unfair or deceptive *per se* will ever be complete or current."

For these reasons, among others, NAFCU believes that OTS and the other financial regulators should refrain from expanding its regulation in this area. The federal regulators have various other alternative tools that can be utilized to curb unfair practices, including using principles-based guidance with supervisory oversight, promoting best practices, and fostering consumer education. It is our view that such alternatives to regulation would provide a more flexible approach to addressing UDAP without unduly hindering responsible lenders and financial services providers from developing new market innovations to better serve consumers.

Interagency Guidance Provides Greater Flexibility

In recent years, OTS and the other financial regulators have jointly issued a number of interagency guidance documents to address consumer protection issues. For example, the Federal Financial Institutions Examination Council (FFIEC) recently issued *Interagency Guidance on*



Nontraditional Mortgage Product Risks, Interagency Statement on Subprime Mortgage Lending, and Statement on Working with Mortgage Borrowers to address emerging issues and concerns relating to certain mortgage lending practices. While NAFCU supports the basic tenants of these guidance pieces, we do not believe that these principles should be converted into formal rules.

NAFCU maintains that it may be appropriate to provide greater clarity to supervised institutions with regard to UDAP by establishing clear principles for fair and equitable practices that might be considered in the provision of financial services. However, we do not believe that these principles should be imposed on federal depository institutions via regulation. NAFCU urges OTS and the other federal financial regulators to continue to work together to establish uniform and consistent interagency standards regarding unfair or deceptive acts or practices through joint guidance and the promotion of best practices.

As OTS noted in its ANPR, questions concerning unfair acts or practices are often difficult to resolve. Indeed, the subjectivity involved in attempting to apply stringent regulatory standards to the varied facts of any given case would create a significant burden for both the regulator and the regulated. As such, NAFCU believes that unfair or deceptive practices are best addressed through broad, principles-based guidance. Rather than expanding the existing regulatory framework, establishing interagency guidelines to address topical consumer protection issues provides for a far more flexible approach that can evolve to encompass emerging products, services, and practices in an efficient manner. Further, joint guidance fosters greater uniformity and consistency between the federal agencies.

For example, OTS and the other functional regulators could utilize joint interagency guidance to adopt a “targeted practices approach,” in which, as suggested in the ANPR, the agencies would list a number of specific practices that would be deemed as unfair or deceptive, such as in the area of credit card lending, residential mortgage lending, gift cards, and checking or savings accounts. Such guidance would provide for greater flexibility to target new and evolving practices and allow for additional acts or practices to be addressed when deemed appropriate by the agencies.

OTS and the other agencies could also adopt materials from FTC advertising guides to promote best practices and to provide more comprehensive guidance on the advertisement of financial products and services, without unnecessarily expanding the existing regulatory framework.

Consumer Education is Imperative

NAFCU urges OTS to also consider consumer education as a means to curtail unfair or deceptive acts or practices. NAFCU and our member credit unions have long recognized the importance of financial literacy and education. Credit unions are among the first and finest financial educators in America and are proud to be proactively involved in promoting financial literacy across the nation. Today, many credit unions offer free educational seminars, or individual financial counseling, and provide their membership with helpful information about abusive practices via informational brochures, newsletters and statement inserts.

Given today’s complex realities, it is crucial that consumers are not only literate about financial management, but also informed and knowledgeable about ways to avoid unfair and



deceptive practices. NAFCU strongly supports federal efforts to provide comprehensive financial education for America's consumers, and encourages OTS and the other financial regulators to engage in activities that would increase awareness of abusive or deceptive practices in the provision of financial services.

Additional Comments

NAFCU firmly believes that while consumers should be protected from unfair or deceptive practices, it is imperative that access to affordable products and services be preserved for those underserved communities that are most in need of access to legitimate financial services. In considering whether to expand its regulatory authority to address UDAP, NAFCU urges OTS to be cognizant of the important need to provide underserved markets with reasonably-priced financial services and to avoid any action which might adversely affect the cost and availability of these services.

Additionally, NAFCU encourages OTS to consult with Congress and the other functional regulators in order to push for increased supervision of unregulated entities in the financial services industry. Federally-insured depository institutions, including credit unions, are already subject to strictly enforced regulatory requirements aimed at protecting consumers. Other unregulated entities, however, are not subject to the same level of supervisory oversight. NAFCU believes that these entities must be appropriately supervised to protect consumers from unfair or deceptive acts or practices.

NAFCU would like to thank OTS for the opportunity to comment on its advance notice of proposed rulemaking. Should you have any questions or require additional information please call me at (703) 522-4770 or (800) 336-4644 ext. 218.

Sincerely,



Pamela Yu
Associate Director of Regulatory Affairs

cc: NCUA Chairman JoAnn Johnson
NCUA Vice Chairman Rodney Hood
NCUA Board Member Gigi Hyland
NCUA General Counsel Robert Fenner

