
**Board of Governors of the Federal Reserve System
Consumer Financial Protection Bureau
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of the Comptroller of the Currency**

Interagency Guidance Regarding Unfair or Deceptive Credit Practices

August 22, 2014

The Board of Governors of the Federal Reserve System (Board), Consumer Financial Protection Bureau (CFPB), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Office of the Comptroller of the Currency (OCC) (collectively, the Agencies) issue this guidance regarding certain consumer credit practices. While the Federal Trade Commission's (FTC) Credit Practices Rule remains in effect, the credit practices rules for banks, savings associations, and Federal credit unions are being repealed as a consequence of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Notwithstanding the repeal of these regulations, the Agencies have supervisory and enforcement authority regarding unfair or deceptive acts or practices,¹ which could include the practices previously addressed in the former credit practices rules.

Background

The FTC Act permits the FTC to promulgate regulations that define with specificity acts or practices that are unfair or deceptive, including requirements prescribed for the purpose of preventing such acts or practices.² Pursuant to this rulemaking authority, the FTC issued its Credit Practices Rule.³ The FTC's Credit Practices Rule is applicable to creditors that are within the FTC's jurisdiction; it is not applicable, for example, to banks, savings associations, and Federal credit unions.⁴ The FTC's Credit Practices Rule generally prohibits (1) the use of certain provisions in consumer credit contracts, (2) the misrepresentation of the nature or extent of cosigner liability, and (3) the pyramiding of late fees.⁵ The Board, Federal Home Loan Bank Board (FHLBB)—predecessor to the Office of Thrift Supervision (OTS)—and NCUA

¹ For relevant statutory prohibitions, *see* 15 U.S.C. § 45 (unfair or deceptive acts or practices), 12 U.S.C. §§ 5531 and 5536 (unfair, deceptive, or abusive acts or practices). For the Agencies' relevant enforcement authorities, *see* 12 U.S.C. §§ 1786(e), 1786(k)(2), 1818(b), 1818(i)(2), 5531, 5536, and 5561-5566. The CFPB also has authority to issue regulations governing unfair, deceptive, or abusive acts or practices. 12 U.S.C. § 5531(b).

² 15 U.S.C. §§ 45 and 57a(a)(1).

³ 16 C.F.R. §§ 444.1-.5.

⁴ For the types of entities to which the FTC's Credit Practices Rule does not apply, *see* 15 U.S.C. §§ 45(a)(2).

⁵ Generally, the types of contract provisions prohibited by the FTC's Credit Practices Rule include confessions of judgment, waivers of exemptions, wage assignments, and security interests in household goods. 16 C.F.R. § 444.2. The FTC's Credit Practices Rule also requires the creditor to provide a "Notice to Cosigner" to a cosigner before he or she becomes obligated for the debt. 16 C.F.R. § 444.3.

subsequently issued regulations pursuant to the FTC Act that were substantially similar to the FTC's Credit Practices Rule.⁶ These regulations applied to banks, savings associations, and Federal credit unions, respectively.⁷ However, in 2010, the Dodd-Frank Act repealed the rulemaking authority of the Board, FHLBB/OTS, and NCUA under the FTC Act.⁸ Consequently, those regulations are being repealed.⁹

Guidance

The Agencies are issuing this statement to clarify that the repeal of credit practices rules applicable to banks, savings associations, and Federal credit unions should not be construed as a determination by the Agencies that the credit practices described in these former regulations are permissible. The regulations were issued on the basis of extensive findings that identified the unfair or deceptive practices prohibited in the rules.¹⁰ The Agencies believe that, depending on the facts and circumstances, if banks, savings associations, and Federal credit unions engage in the unfair or deceptive practices described in these former credit practices rules, such conduct may violate the prohibition against unfair or deceptive practices in Section 5 of the FTC Act and Sections 1031 and 1036 of the Dodd-Frank Act.¹¹ The Agencies may determine that statutory violations exist even in the absence of a specific regulation governing the conduct.

The Agencies note that the FTC's Credit Practices Rule remains in effect for creditors that are within the FTC's jurisdiction. In addition to FTC enforcement, the FTC's Credit Practices Rule is enforced by the CFPB, to the extent that the FTC's Credit Practices Rule applies to creditors that are within the CFPB's enforcement authority.¹²

⁶ The rulemaking authority of the Board, FHLBB, and NCUA was previously codified at 15 U.S.C. § 57a(f)(1).

⁷ These regulations were previously codified at: 12 C.F.R. §§ 227.11-.16 (part of Regulation AA) (banks); 12 C.F.R. §§ 535.1-.5 (savings associations); 12 C.F.R. §§ 706.1-.5 (Federal credit unions).

⁸ Section 1092(2) of the Dodd-Frank Act, amending 15 U.S.C. § 57a(f).

⁹ The Board published a proposed repeal of Regulation AA concurrently with this guidance. "[Federal Reserve seeks comment on repealing its Regulation AA](#)," August 22, 2014. Pursuant to title III of the Dodd-Frank Act, rulemaking authority of the OTS relating to all Federal savings associations (FSAs) was transferred to the OCC on July 21, 2011. The OCC did not have authority at any time to promulgate regulations under Section 5 of the FTC Act, either before or after enactment of the Dodd-Frank Act. For that reason, the OCC omitted the OTS version of the credit practices rule when it republished the regulations applicable to FSAs. 76 Fed. Reg. 48950 *et seq.* (Aug. 9, 2011). Thus, the OTS credit practices rule was effectively repealed as of July 21, 2011. The NCUA also plans to repeal its version of the credit practices rule.

¹⁰ These findings are primarily located in the preamble to the FTC's Credit Practices Rule. *See Trade Regulation Rule; Credit Practices*, 49 Fed. Reg. 7740 (Mar. 1, 1984). The FTC's findings were used by the Board, FHLBB, and NCUA in their determinations of whether to adopt regulations that were substantially similar to the FTC's Credit Practices Rule. *See Unfair or Deceptive Acts or Practices; Credit Practices*, 50 Fed. Reg. 16696 (Apr. 29, 1985) (Board); *Consumer Protections; Unfair or Deceptive Credit Practices*, 50 Fed. Reg. 19325 (May 8, 1985) (FHLBB); and *Federal Credit Union; Prohibited Lending Practices*, 52 Fed. Reg. 35060 (Sept. 17, 1987) (NCUA).

¹¹ The Agencies note that the FTC's Credit Practices Rule requires—and the former credit practices rules applicable to banks, savings associations, and Federal credit unions required—creditors to provide a "Notice to Cosigner" explaining the cosigner's obligations and his or her liability if the borrower fails to pay. The Agencies believe that creditors have properly disclosed a cosigner's liability if, prior to obligation, they continue to provide a "Notice to Cosigner."

¹² *See Identification of Enforceable Rules and Orders*, 76 Fed. Reg. 43569 (Jul. 21, 2011); 12 U.S.C. § 5581(b)(5)(B)(ii).