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Rule remains in effect, the credit practices rules for banks, savings associations, and Federal credit unions are being repealed as a consequence of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).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).
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. These regulations applied to banks, savings associations, and Federal credit unions, respectively. However, in 2010, the Dodd-Frank Act repealed the rulemaking authority of the Board, FHLBB/OTS, and NCUA under the FTC Act. Consequently, those regulations are being repealed.

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. 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. 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.