



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ALAN GREENSPAN
CHAIRMAN

May 30, 2002

The Honorable John J. LaFalce
Ranking Member
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Congressman:

I am writing as a follow-up to our recent meeting and your letter of March 25 requesting that the Board consider issuing a rule addressing the application to the banking industry of the prohibition in the Federal Trade Commission Act (FTC Act) against unfair or deceptive practices.

The Board believes that the FTC Act's general prohibition against unfair or deceptive acts or practices applies to banks as a matter of law. By its terms, the prohibition does not exclude banks, and thus the banking agencies may use their authority under section 8 of the Federal Deposit Insurance Act (FDI Act) to enforce compliance with the prohibition. The fact that banks are excluded from the FTC's authority to enforce this prohibition merely reflects Congress' preference that the banking agencies--not the FTC--are the appropriate enforcing authorities for banks. Moreover, the fact that the Board may issue rules prohibiting specific practices and the banking agencies may enforce these Board rules does not negate the fact that the general prohibition in the FTC Act applies to banks and that the banking agencies have authority under the FDI Act to enforce any law, including that statutory prohibition. This is fully consistent with 1975 amendments to the FTC Act establishing consumer complaint processes at the banking agencies and requiring the agencies to take appropriate action on complaints about unfair or deceptive practices by banks. Given that the FTC Act's prohibition against unfair or deceptive practices applies to banks as a matter of law, the Board believes that a rulemaking affirming the prohibition's applicability to banks is not required.

As you point out, the Board also has authority under the FTC Act to adopt rules prohibiting specific acts or practices as unfair or deceptive. The Board used this authority in 1985 to prohibit several credit practices, consistent with specific rules promulgated by the FTC. In addition, over the last 30 years, Congress has enacted a number of measures to address comprehensively practices in the financial services industry that Congress has determined to be abusive, unfair, or deceptive, and the Board has issued numerous rules implementing these statutes. These include provisions of the Truth in Lending Act, the Fair Credit and Charge Card Disclosure Act, the Home Equity Loan Consumer Protection Act, the Expedited Funds Availability Act, the Truth in Savings Act, the Home Ownership and Equity Protection Act (HOEPA), and the privacy provisions of the Gramm-Leach-Bliley Act. The Board has recently issued rules under HOEPA to address certain abusive or unfair practices in mortgage lending, including the sale and financing of single-premium credit insurance and loan flipping. Importantly, these rules apply to all types of creditors engaged in mortgage lending, not just to banks as would have been the case under the Board's FTC Act authority.

Your letter also suggests that the Board consider adopting a comprehensive rule that sets forth principles for defining unfair or deceptive behavior and that provides specific examples of unlawful practices. I understand the FTC has issued statements setting out the principles for determining what acts and practices violate the FTC Act.¹ As to specific examples, because a determination of unfairness or deception depends heavily on the facts of each individual case, the Board believes it is effective for the banking agencies to approach compliance issues on a case-by-case basis. The agencies have a number of supervisory tools to address these situations. One method is the consumer complaint process, which can resolve individual consumer complaints and can help target a bank examination. As noted, the banking agencies also may take formal enforcement actions under the FDI Act to prevent unfair or deceptive practices that violate the FTC Act. Enforcement orders and agreements must be made public, and as a result would curtail similar unfair or deceptive practices by other banks. In the absence of specifics generated through the case-by-case complaint and enforcement approach, however, it is difficult to craft a generalized rule sufficiently narrow to target specific acts or practices determined to be unfair or deceptive, but not to allow for easy circumvention or have the unintended consequence of stopping acceptable behavior.

¹ Policy Statement on Deception (Oct. 14, 1983); Policy Statement on Unfairness (Dec. 17, 1980).

The Honorable John J. LaFalce
Page 3

The Board would consider employing its rulemaking authority under the FTC Act if evidence indicates that a particular industry practice is unfair or deceptive and cannot be adequately addressed by the banking agencies' examination, complaint, or enforcement processes, or under the other broad consumer protection statutes administered by the Board.

I hope this is helpful.

Sincerely,
