by mail, or by electronic mail for those customers for whom it has a valid e-mail address and who have agreed to receive communications electronically.

[66 FR 8633, Feb. 1, 2001, as amended at 69 FR 77616, Dec. 28, 2004; 70 FR 15751, 15753, Mar. 29, 2005; 71 FR 5780, Feb. 3, 2006; 79 FR 54544, Sept. 11, 2014]

APPENDIX C TO PART 30—OCC GUIDELINES ESTABLISHING STANDARDS FOR RESIDENTIAL MORTGAGE LENDING PRACTICES

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I. INTRODUCTION

i. These OCC Guidelines for Residential Mortgage Lending Practices (Guidelines) set forth standards pursuant to Section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p–1 (Section 39). The Guidelines are designed to protect against involvement by national banks, Federal savings associations, Federal branches and Federal agencies of foreign banks, and their respective operating subsidiaries (together, ''national banks and Federal savings associations''), either directly or through loans that they purchase or make through intermediaries, in predatory or abusive residential mortgage lending practices that are injurious to their respective customers and that expose the national bank or Federal savings association to credit, legal, compliance, reputation, and other risks. The Guidelines focus on the substance of activities and practices, not the creation of policies. The Guidelines are enforceable under Section 39 in accordance with the procedures prescribed by the regulations in 12 CFR part 30.

ii. As the OCC has previously indicated in guidance to national banks and in rule-making proceedings (OCC Advisory Letters 2003–2 and 2003–3 (Feb. 21, 2003)), many of the abusive practices commonly associated with predatory mortgage lending, such as loan flipping and equity stripping, will involve conduct that likely violates the Federal Trade Commission Act's (FTC Act) prohibition against unfair or deceptive acts or practices. 15 U.S.C. 45. In addition, loans that involve violations of the FTC Act, or mortgage loans based predominantly on the foreclosure or liquidation value of the borrower's collateral without regard to the borrower's ability to repay the loan according to its terms, will involve violations of OCC regulations governing real estate lending activities, 12 CFR 34.3 (Lending Rules).

iii. In addition, national banks, Federal savings associations, and their respective operating subsidiaries must comply with the requirements and Guidelines affecting appraisals of residential mortgage loans and appraiser independence. 12 CFR part 34, subpart C, and the Interagency Appraisal and Evaluation Guidelines (OCC Bulletin 2010–42 (December 10, 2010). For example, engaging in a practice of influencing the independent judgment of an appraiser with respect to a valuation of real estate that is to be security for a residential mortgage loan would violate applicable standards.

iv. Targeting inappropriate credit products and unfair loan terms to certain borrowers also may entail conduct that violates the FTC Act, as well as the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA). 15 U.S.C. 1691 *et seq*. 42 U.S.C. 3601 *et seq*. For example, ''steering'' a consumer to a loan with higher costs rather than to a comparable loan offered by the national bank or Federal savings association with lower costs for which the consumer could qualify, on a prohibited basis such as the borrower's race, national origin, age, gender, or marital status, would be unlawful.

v. OCC regulations also prohibit national banks and their operating subsidiaries from providing lump sum, single premium fees for debt cancellation contracts and debt suspension agreements in connection with residential mortgage loans. 12 CFR 37.3(c)(2). Some lending practices and loan terms, including financing single premium credit insurance and the use of mandatory arbitration clauses, also may significantly impair the eligibility of a residential mortgage loan for purchase in the secondary market.

vi. Finally, OCC regulations and supervisory guidance on fiduciary activities and asset management address the need for national banks and Federal savings associations to perform due diligence and exercise appropriate control with regard to trustee activities. *See* 12 CFR 9.6 (a), in the case of national banks, and 12 CFR 150.200, in the case of Federal savings associations, and the

Comptroller's Handbook on Asset Management. For example, national banks and Federal savings associations should exercise appropriate diligence to minimize potential reputation risks when they undertake to act as trustees in mortgage securitizations.

A. *Scope*. These Guidelines apply to the residential mortgage lending activities of national banks, Federal savings associations, Federal branches and Federal agencies of foreign banks, and operating subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

B. *Preservation of Existing Authority*. Neither Section 39 nor these Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices or conditions, unfair or deceptive practices, or other violations of law. The OCC may take action under Section 39 and these Guidelines independently of, in conjunction with, or in addition to any other enforcement action available to the OCC.

C. *Relationship to Other Legal Requirements*. Actions by a national bank or Federal savings association in connection with residential mortgage lending that are inconsistent with these Guidelines or Appendix A to this part 30 may also constitute unsafe or unsound practices for purposes of section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818, unfair or deceptive practices for purposes of section 5 of the FTC Act, 15 U.S.C. 45, and the OCC's Lending Rules, 12 CFR 34.3 (Lending Rules) and Real Estate Lending Standards, 12 CFR part 34, subpart D, in the case of national banks, and 12 CFR 160.100 and 160.101, in the case of Federal savings associations, or violations of the ECOA and FHA.

D. *Definitions*.

1. Except as modified in these Guidelines, or unless the context otherwise requires, the terms used in these Guidelines have the same meanings as set forth in sections 3 and 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1813 and 1831p–1.

2. For purposes of these Guidelines, the following definitions apply:

a. *Residential mortgage loan* means any loan or other extension of credit made to one or more individuals for personal, family, or household purposes secured by an owner-occupied 1–4 family residential dwelling, including a cooperative unit or mobile home.

b. *National bank or Federal savings association* means any national bank, Federal savings association, Federal branch or Federal agency of a foreign bank, and any operating subsidiary thereof that is subject to these Guidelines.

II. Standards for Residential Mortgage Lending Practices

A. *General*. A national bank's or Federal savings association's residential mortgage lending activities should reflect standards and practices consistent with and appropriate to the size and complexity of the bank or savings association and the nature and scope of its lending activities.

B. *Objectives*. A national bank's or Federal savings association's residential mortgage lending activities should reflect standards and practices that:

1. Enable the national bank or Federal savings association to effectively manage the credit, legal, compliance, reputation, and other risks associated with the bank's or savings association's consumer residential mortgage lending activities.

2. Effectively prevent the national bank or Federal savings association from becoming engaged in abusive, predatory, unfair, or deceptive practices, directly, indirectly through mortgage brokers or other intermediaries, or through purchased loans.

III. Implementation of Residential Mortgage Lending Standards

A. *Avoidance of Particular Loan Terms, Conditions, and Features*. A national bank or Federal savings association should not become involved, directly or indirectly in residential mortgage lending activities involving abusive, predatory, unfair or deceptive lending practices, including, but not limited to:

1. *Equity Stripping and Fee Packing*. Repeat refinancings where a borrower's equity is depleted as a result of financing excessive fees for the loan or ancillary products.

2. *Loan Flipping*. Repeat refinancings under circumstances where the relative terms of the new and refinanced loan and the cost of the new loan do not provide a tangible economic benefit to the borrower.

3. *Refinancing of Special Mortgages*. Refinancing of a special subsidized mortgage that contains terms favorable to the borrower with a loan that does not provide a tangible economic benefit to the borrower relative to the refinanced loan.

4. *Encouragement of Default*. Encouraging a borrower to breach a contract and default on an existing loan prior to and in connection with the consummation of a loan that refinances all or part of the existing loan.

B. *Prudent Consideration of Certain Loan Terms, Conditions and Features*. Certain loan terms, conditions and features, may, under particular circumstances, be susceptible to abusive, predatory, unfair or deceptive practices, yet may be appropriate and acceptable risk mitigation measures, consistent with safe and sound lending, and benefit customers under other circumstances. A national bank or Federal savings association should prudently consider the circumstances, including the characteristics of a targeted market and applicable consumer and safety and soundness safeguards, under which the national bank or Federal savings association will engage directly or indirectly in making residential mortgage loans with the following loan terms, conditions and features:

1. Financing single premium credit life, disability or unemployment insurance.

2. Negative amortization, involving a payment schedule in which regular periodic payments cause the principal balance to increase.

3. Balloon payments in short-term transactions.

4. Prepayment penalties that are not limited to the early years of the loan, particularly in subprime loans.

5. Interest rate increases upon default at a level not commensurate with risk mitigation.

6. Call provisions permitting the national bank or Federal savings association to accelerate payment of the loan under circumstances other than the borrower's default under the credit agreement or to mitigate the bank's or savings association's exposure to loss.

7. Absence of an appropriate assessment and documentation of the consumer's ability to repay the loan in accordance with its terms, commensurate with the type of loan, as required by appendix A of this part.

8. Mandatory arbitration clauses or agreements, particularly if the eligibility of the loan for purchase in the secondary market is thereby impaired.

9. Pricing terms that result in the loan's being subject to the provisions of the Home Ownership and Equity Protection Act. 15 U.S.C. 1639 *et seq.*

10. Original principal balance of the loan in excess of appraised value.

11. Payment schedules that consolidate more than two periodic payments and pay them in advance from the loan proceeds.

12. Payments to home improvement contractors under a home improvement contract from the proceeds of a residential mortgage loan other than by an instrument payable to the consumer, jointly to the consumer and the contractor, or through an independent third party escrow agent.

C. *Enhanced Care to Avoid Abusive Loan Terms, Conditions, and Features in Certain Mortgages.* A national bank or Federal savings association may face heightened risks when it solicits or offers loans to consumers who are not financially sophisticated, have language barriers, or are elderly, or have limited or poor credit histories, are substantially indebted, or have other characteristics that limit their credit choices. In connection with such consumers, a national bank or Federal savings association should exercise enhanced care if it employs the residential mortgage loan terms, conditions, and features described in paragraph B of this section III, and should also apply appropriate heightened internal controls and monitoring to any line of business that does so.

D. *Avoidance of Consumer Misunderstanding.* A national bank's or Federal savings association's residential mortgage lending activities should include provision of timely, sufficient, and accurate information to a consumer concerning the terms and costs, risks, and benefits of the loan. Consumers should be provided with information sufficient to draw their attention to these key terms.

E. *Purchased and Brokered Loans.* With respect to consumer residential mortgage loans that the national bank or Federal savings association purchases, or makes through a mortgage broker or other intermediary, the national bank or Federal savings association's residential mortgage lending activities should reflect standards and practices consistent with those applied by the bank or savings association in its direct lending activities and include appropriate measures to mitigate risks, such as the following:

1. Criteria for entering into and continuing relationships with intermediaries and originators, including due diligence requirements.

2. Underwriting and appraisal requirements.

3. Standards related to total loan compensation and total compensation of intermediaries, including maximum rates, points, and other charges, and the use of overages and yield-spread premiums, structured to avoid providing an incentive to originate loans with predatory or abusive characteristics.

4. Requirements for agreements with intermediaries and originators, including with respect to risks identified in the due diligence process, compliance with appropriate national bank or Federal savings association policies, procedures and practices and with applicable law (including remedies for failure to comply), protection of the national bank or Federal savings association against risk, and termination procedures.

5. Loan documentation procedures, management information systems, quality control reviews, and other methods through which the national bank or Federal savings association will verify compliance with agreements, bank or savings association policies, and applicable laws, and otherwise retain appropriate oversight of mortgage origination functions, including loan sourcing, underwriting, and loan closings.

6. Criteria and procedures for the national bank or Federal savings association to take appropriate corrective action, including modification of loan terms and termination of the relationship with the intermediary or originator in question.

F. *Monitoring and Corrective Action.* A national bank's or Federal savings association's consumer residential mortgage lending activities should include appropriate monitoring of compliance with applicable law and the bank's or savings association's lending standards and practices, periodic monitoring and evaluation of the nature, quantity and resolution of customer complaints, and appropriate evaluation of the effectiveness of the bank's or savings association's standards and practices in accomplishing the objectives set forth in these Guidelines. The bank's or savings association's activities also should include appropriate steps for taking corrective action in response to failures to comply with applicable law and the bank's or savings association's lending standards, and for making adjustments to the bank's or savings association's activities as may be appropriate to enhance their effectiveness or to reflect changes in business practices, market conditions, or the bank's or savings association's lines of business, residential mortgage loan programs, or customer base.

[70 FR 6332, Feb. 7, 2005, as amended at 79 FR 54544, Sept. 11, 2014]

APPENDIX D TO PART 30—OCC GUIDELINES ESTABLISHING HEIGHTENED STANDARDS FOR CERTAIN LARGE INSURED NATIONAL BANKS, INSURED FEDERAL SAVINGS ASSOCIATIONS, AND INSURED FEDERAL BRANCHES

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I. INTRODUCTION

1. The OCC expects a covered bank, as that term is defined in paragraph I.E. to establish and implement a risk governance framework to manage and control the covered bank's risk-taking activities.

2. This appendix establishes minimum standards for the design and implementation of a covered bank's risk governance framework and minimum standards for the covered bank's board of directors in providing oversight to the framework's design and implementation (Guidelines). These standards are in addition to any other applicable requirements in law or regulation.

3. A covered bank may use its parent company's risk governance framework in its entirety, without modification, if the framework meets these minimum standards, the risk profiles of the parent company and the covered bank are substantially the same as set forth in paragraph I.4. of these Guidelines, and the covered bank has demonstrated through a documented assessment that its risk profile and its parent company's risk profile are substantially the same. The assessment should be conducted at least annually, in conjunction with the review and update of the risk governance framework performed by independent risk management, as set forth in paragraph II.A. of these Guidelines.

4. A parent company's and covered bank's risk profiles are substantially the same if, as reported on the covered bank's Federal Financial Institutions Examination Council Consolidated Reports of Condition and Income (Call Reports) for the four most recent consecutive quarters, the covered bank's average total consolidated assets, as calculated according to paragraph I.A. of these Guidelines, represent 95 percent or more of the parent company's average total consolidated assets.[1] A covered bank that does not satisfy this test may submit a written analysis to the OCC for consideration and approval that

[1] For a parent company, average total consolidated assets means the average of the parent company's total consolidated assets, as reported on the parent company's Form FR Y–9C to the Board of Governors of the Federal Reserve System, or equivalent regulatory report, for the four most recent consecutive quarters.