



GUIDANCE ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES

FIL-57-2002  
May 30, 2002

TO: CHIEF EXECUTIVE OFFICER  
SUBJECT: *Unfair or Deceptive Acts or Practices:  
Applicability of the Federal Trade Commission Act*

The Federal Trade Commission Act (FTC Act) declares that unfair or deceptive trade practices are illegal. **See** 15 USC § 45(a) (FTC Act Section 5). This letter confirms that the Federal Deposit Insurance Corporation (FDIC) intends to cite state nonmember banks and their institution-affiliated parties for violations of FTC Act Section 5 and will take appropriate action pursuant to its authority under Section 8 of the Federal Deposit Insurance Act (FDI Act) when unfair or deceptive trade practices are discovered. FDIC enforcement action against entities other than banks will be coordinated with the Federal Trade Commission, which also has authority to take action against nonbank parties that engage in unfair or deceptive trade practices.

In order to determine whether a practice is "unfair," the FDIC will consider whether the practice "causes or is likely to cause substantial injury to consumers which is not reasonably avoided by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. § 45(n). By adhering to this tenet, the FDIC will take action to address conduct that falls well below the high standards of business practice expected of most banks and the parties affiliated with them.

In addition, to correct deceptive trade practices, the FDIC will take action against representations, omissions, or practices that are likely to mislead consumers acting reasonably under the circumstances, and are likely to cause such consumers harm. The FDIC will focus on material misrepresentations, i.e., those that affect choices made by consumers because such misrepresentations are most likely to cause consumers financial harm.

The FDIC recognizes that the institutions that it supervises generally adhere to high standards of conduct. The agency, therefore, anticipates that it will not be required to take action to correct unfair or deceptive practices on a frequent basis. However, to avoid misunderstanding about the applicability of the FTC Act, this letter is intended to clarify that the FTC Act's prohibition against unfair and deceptive trade practices does apply to your institution, and to its subsidiaries and third-party contractors.

While the Federal Trade Commission has adopted policy statements on unfairness (FTC Policy Statement on Unfairness, December 17, 1980) and deception (FTC Policy Statement on Deception, October 14, 1983), most unfair and deceptive trade practices have been defined in fact-specific, case-by-case adjudications. The FDIC anticipates that additional guidance will be provided in similar fashion going forward.

Please contact Division of Compliance and Consumer Affairs (DCA) staff in your regional office for more information. To obtain Federal Trade Commission business guidance on unfair and deceptive practices and other topics, please link to: [www.ftc.gov/ftc/business.htm](http://www.ftc.gov/ftc/business.htm). For assistance from the DCA Washington Office, please call April Breslaw, Senior Policy Analyst, at (202) 942-3061, Louise Kotoshirodo Kramer, Policy Analyst, at (202) 942-3599, or David LaFleur, Policy Analyst, at (202) 942-3466.

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Director

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