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OCC ISSUES PREDATORY PRACTICE GUIDELINES FOR RESIDENTIAL MORTGAGE LENDING

The Office of the Comptroller of the Currency (OCC) today issued Guidelines reinforcing the existing prohibitions against predatory or abusive, or unfair or deceptive mortgage lending practices by national banks and their operating subsidiaries.

The Guidelines are derived from two advisory letters (2003-2 and 2003-3) that spelled out practices that the OCC considers predatory or abusive in mortgage origination practices and in the purchasing of loans and the use of third party originators. The Guidelines are intended by the OCC “to more effectively apply the principles described” in the advisory letters. The advisories remain in effect, however, as supervisory guidance providing a context and explanation of the issues described in the Guidelines.

Drawing upon the advisories, the Guidelines describe particular practices inconsistent with sound residential mortgage lending practices by national banks and their operating subsidiaries. They also set forth terms and practices that may be conducive to predatory or unfair or deceptive practices, depending on the circumstances, and which warrant a higher degree of care. Finally, the Guidelines address the steps the institutions should take to mitigate risks associated with the use of brokers and the purchase of residential mortgage loans.

Adopted as a new Appendix C to part 30 of the OCC regulations, the Guidelines will be enforceable under the process provided in Section 39 of the Federal Deposit Insurance Act, 12 USC 1831p-1 and Part 30. Under Section 39, if a financial institution fails to meet a standard prescribed by the Guidelines, the OCC may require the submission of a plan specifying the steps it will take to comply. Failure to submit or comply materially with an acceptable plan may result in the issuance of an Order, enforceable in federal district court or through the assessment of civil money penalties. The OCC also continues to have the authority to address violations as unsafe or unsound, or unfair or deceptive practices. Thus, under the Guidelines, examiners retain flexibility but can employ a variety of strong enforcement regimens.

The Guidelines will take effect 60 days after publication in the Federal Register, which is expected in a few days. Until that time, a copy of the OCC Bulletin 2005-3 and the Guidelines can be located on the OCC web site at

<http://www.occ.treas.gov/ftp/bulletin/2005-3.doc>. For further information, contact Steven Zeisel, CBA Senior Counsel, at szeisel@cbanet.org.

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