

How The OCC's Part 30 Enforcement Process Can Address Predatory Lending

If the OCC determines that a national bank or national bank operating subsidiary is engaging in mortgage lending practices of the type described in the "OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices" (Standards), the OCC can take action under the procedures found in Part 30 of its regulations.

For example, assume that a national bank is believed to be engaged in the following practices:

1. Refinancing special subsidized mortgages that contain terms favorable to consumers and providing new loans that do not provide a tangible economic benefit to those consumers, relative to the refinanced loan, and
2. Making subprime mortgage loans that involve a payment schedule in which regular periodic payments do not cause the principal balance to decrease.

The bank's practices in this example would have failed to meet the Standards, which are set forth in new Appendix C of the OCC's Part 30 rules. The OCC may then issue a notice, through a letter or as part of a report of examination (Notice of Deficiency), that the national bank has failed to meet the Standards and require submission of a compliance plan to the OCC detailing the steps the bank will take to correct the deficiencies and the time within which those steps will be taken. Upon receiving a Notice of Deficiency from the OCC, the bank must submit the compliance plan to the OCC for approval within 30 days (unless the OCC imposes a different deadline). An acceptable plan in this example could provide that the bank will adopt specific new criteria for the circumstances that would provide a tangible economic benefit to the consumer when it will consider refinancing special mortgages, and that it will discontinue subprime residential mortgage lending involving negative amortizations. In addition to changes to practices going forward, an acceptable plan also could provide for appropriate remedial relief for borrowers affected by the bank's practices.

If the bank fails to submit an acceptable compliance plan, or fails materially to comply with its compliance plan, which the OCC approved, the OCC can issue a Notice of Intent to Issue a Safety and Soundness Order (Notice of Intent). The bank would have 14 days to respond to the Notice of Intent (unless the OCC imposes a different deadline). If the bank fails to respond, or submits a deficient plan, the OCC may issue the Safety and Soundness Order, seek additional information from the bank before making a final decision, or not issue an Order.

Alternatively, the OCC can issue immediately a Safety and Soundness Order, without providing this bank with advance notice. The bank would be permitted to appeal issuance of the order to the OCC, and the OCC has 60 days to consider the appeal and render a final decision.

A Safety and Soundness Order is a formal, public document that is legally equivalent to a Cease and Desist Order issued pursuant to 12 U.S.C. §1818(b). As with a Cease and Desist Order, a bank that fails to comply with a Safety and Soundness Order is subject to an enforcement proceeding in federal District Court and/or assessment of civil money penalties under 12 U.S.C. §1818.