Remarks by
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Let me first extend my sincere thanks to Steve Brobeck and the Consumer Federation of America for inviting me to take part in this 15th Annual Consumer Financial Services Conference. I am honored to be here, and I truly appreciate that you have asked me to address a very timely topic -- "Financial Services Regulation: What Should Be the Role of the States?" I also welcome the chance for some give and take after these prepared remarks.

This is an opportunity to address some very important issues – and, I believe, some key misperceptions – that have arisen in connection with positions of the Office of the Comptroller of the Currency concerning the application of state laws to national banks, and the role of state authorities in enforcing those laws.

At the heart of these issues are Constitutional principles of Federal preemption. We are acutely aware that in many quarters the very concept of preemption is unpopular. In some respects, the fact that Federal preemption arises from the federal charter of national banks seems to put us, inescapably, at odds with some state authorities. This is unfortunate, because the OCC and the states do not have fundamentally different goals.

We probably do, however, have different ways of getting to them, consistent with our different sources of statutory authority and our respective authorities thereunder. But, that does not mean that we cannot work together.

To start, it is helpful to provide just a bit of background on the issue of Federal preemption of state law in the context of the operations of national banks. But notwithstanding this beginning, I want to give away the ending:

- Standards of Federal preemption applicable to activities of national banks are derived from the Supremacy Clause of the U.S. Constitution and are well established.
- Those standards have repeatedly been reaffirmed by the courts.
- The OCC did not invent preemption and we are not the only ones that can assert it.
- Sparring over the extent of Federal preemption of state laws applicable to operations of national banks is counterproductive.
- Protection of consumers can be maximized if states and the OCC look for ways to spread their oversight to provide the most efficient, broadest coverage for consumers.

Let me now turn to a little background. The Constitutional doctrine of preemption, which holds that federal authorities prevail over conflicting restraints or conditions imposed by state laws, is a subject that has been addressed by successive generations of legal scholars going back to the 19th century.

The OCC has issued many preemption rulings over its 140-year history, but it has never done so except after careful study, and scrupulous consideration of Supreme Court precedents and the intent of Congress. Importantly, the latter includes recognition of the original intent of Congress to establish a uniform, nationwide system of federally chartered financial institutions. That intent was first reflected in the National Currency

Act of 1863, repeatedly elaborated and reaffirmed by subsequent Congresses, and upheld in a remarkably consistent and supportive series of Supreme Court rulings.

It is also material in the present context to recall the considerations that prompted Congress and President Lincoln to create the National Banking System in 1863. It was part of a broader vision of economic development and financial stability, designed to put an end to the monetary confusion, disunion, and the pervasive sense that America had until then failed to deliver the goods, so to speak, for too many of its people.

The National Banking System, along with other enactments of that period, including the Pacific Railroad Act, the Land-Grant Colleges Act, and lots more, were integral parts of a plan to deliver on America's economic promise. Integral to our mission then – and today – is assuring that national banks' standards of operation are of the highest caliber. This includes not just their financial stability, but also the integrity with which they conduct their business and deal with their customers. Some recent history in this regard is instructive.

Thirty years ago, the OCC established a consumer affairs division, reporting directly to the Comptroller.

The OCC was the first federal banking agency to conduct regular, separate, full-scope consumer examinations, using specially-trained consumer examination specialists, and to produce consumer examination manuals and policy guidelines for bankers. That was in 1976.

Also in 1976, the OCC implemented a consumer complaint information system to track complaints systematically. That early attempt to assemble a consumer database has

evolved into our world-class Customer Assistance Group, headed by our Ombudsman, who reports directly to the Comptroller.

Where we have found that national banks have engaged in abusive practices, we have not only acted with dispatch to end those practices, but have also used every legal and supervisory tool available – and have developed new tools -- in order to secure restitution to consumers and penalize the institutions involved.

We have pioneered the use of section 5 of the Federal Trade Commission Act as a basis to take enforcement action where we found instances of unfair or deceptive practices by national banks.

In August of this year, the OCC entered into a formal agreement that required a national bank in Oregon to refund various credit card fees to customers.

Several weeks ago, we announced a precedent-setting agreement that requires the complete reimbursement of fees and interest charged by a Texas national bank in a series of abusive loans that we considered "unfair" within the meaning of the FTC Act.

We have thwarted payday lenders in their "rent-a-charter" designs to use national banks as a cover for evading state consumer protection laws.

We have taken the lead in raising concerns about abusive practices in connection with so-called bounce protection products and in urging the other federal banking agencies to adopt standards to address those practices.

And we have issued the most comprehensive supervisory guidance ever issued by any federal banking agency, defining and describing predatory lending and warning banks about the supervisory consequences of engaging, directly or indirectly, in such practices.

Just last month, the OCC joined the Securities and Exchange Commission, the Labor Department, and the New York State Attorney General in taking a series of actions against the Arizona-based Security Trust Company, N.A., which had participated in mutual fund late trading and market timing schemes. In announcing the actions, New York Attorney General Eliot Spitzer praised the OCC and the other federal agencies for their "excellent assistance and cooperation," noting that "coordination by regulators is imperative" and "this case shows how that can be accomplished."

In light of all this, you need to appreciate why it's so frustrating to the hundreds of dedicated consumer and community development specialists, compliance examiners, and attorneys at the OCC – and to all of us who work with them and support them – to hear our motives impugned or our commitment or competence in regard to consumer protection questioned. It is regrettable that this type of allegation and innuendo seems to have become standard fare, disparaging the efforts of federal regulators to carry out their responsibilities under federal law.

For example, in the case of the Texas national bank and its illegal loans that I mentioned a moment ago, not only did an organization that had taken strenuous exception to our view of preemption of state predatory lending laws not come out in support of our enforcement actions, but actually used the occasion to criticize us further.

That kind of sniping is unconstructive -- and it is surely unproductive for consumers.

Unfortunately, the fact that we at the OCC are responsible for administering a system of national banks, operating under national standards, has led some to suggest that

we and state authorities have different *goals* regarding fair treatment of bank customers and high integrity of bank conduct. That is simply not so.

We implement different statutory authorities, and thus we may have different approaches. For the OCC, our approach reflects, as it must, the fact that we administer a system composed of federally chartered entities whose powers and the restraints on them flow from Federal law. That being the case, certain results follow under doctrines of Federal preemption. But make no mistake: our fundamental goals are the same.

Misperceptions persist, however, and they seem to turn us into adversaries when we should be allies. That is a terrible waste. Instead of dissipating energy and resources, there is a way that States could be combining efforts with the OCC and leveraging resources to combat abusive financial providers.

Continuing an adversarial approach drains resources as well as good will – resources that all of us must husband carefully. Given the budget difficulties many states face, protracted legal battles over jurisdiction would seem harder and harder to defend at a time when some of them are reportedly considering the possibility of discharging convicted felons in order to cut costs.

Indeed, there has even been a proposal to impose a surcharge on each loan transaction – it sounds like the borrowers' version of a gas tax – to establish a special enforcement fund to augment state budgets for consumer protection activities. Surely there is a better approach than charging consumers extra to ensure that they are treated fairly.

Yet in contesting for the ability to subject national banks to various state laws – laws that the courts repeatedly have held to be preempted as applied to national banks –

states are spending time and money that could be directed at practices by entities – unlike banks – that are not already subject to comprehensive regulation.

The OCC has adopted special procedures to expedite referrals of consumer complaints regarding national banks from State Attorneys Generals and state banking departments, and we have offered to enter into formal information-sharing agreements with the states to formalize these arrangements. Recently we concluded the first of these arrangements, with the Office of Consumer Credit Regulation of the State of Maine. We hope that this is the first of many.

By coordinating our resources and working cooperatively with the states, the OCC and the states can cover more ground. We can maximize the benefit to consumers, help to close loopholes in existing consumer protection laws, and better target those financial providers who prey on vulnerable members of our society.

We are committed to those goals. We stand ready to work with the states to achieve them.

Thank you.