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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

March 9, 2004

**Interpretive Letter #998**  
**August 2004**

The Honorable Barney Frank  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Frank:

Thank you for your letter of February 5, which raises a concern about the OCC's recent regulation addressing the applicability of State laws to national banks. Your letter raises basically two issues: whether State anti-discrimination laws are preempted by the new rule, and whether States may enforce those laws.

First, let me assure you that State anti-discrimination laws are not preempted by the regulation. The rule preempts only those types of State laws pertaining to making loans and taking deposits that appear on the lists contained in the rule. Anti-discrimination laws are on neither list; thus they are not preempted by the rule. Any question about the applicability of a particular anti-discrimination law would be dealt with on a case-by-case basis, applying the “obstruct, impair, or condition” analysis, which was intended to distill, and will be applied consistent with, established judicial tests of preemption. Thus, the standards applicable for determining preemption of a State anti-discrimination law are not changed by the new rule. Under those standards, what would generally be understood to be an “anti-discrimination” law<sup>1</sup> would *not* be preempted.

With regard to the enforcement of State anti-discrimination laws, the relative roles of the OCC and the States will likely depend on the particular type of law at issue. For example, in the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,<sup>2</sup> Congress expressly provided that the OCC enforces any State “fair lending” laws that are applicable to a national bank's interstate branches in a host state.<sup>3</sup> The OCC also has been held to be the appropriate

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<sup>1</sup> *E.g.*, laws that prohibit lenders from discriminating on the basis of race, religion, ethnicity, gender, sexual orientation, disability, or the like.

<sup>2</sup> Pub. L. 103-328, 108 Stat. 2338 (Sept. 29, 1994).

<sup>3</sup> *See* 12 U.S.C. § 36(f)(1)(C).

authority to enforce State anti-redlining laws.<sup>4</sup> Thus, while we agree that States may enforce many “anti-discrimination” laws against national banks and their subsidiaries, (and our new rules do not change their ability to do so), Congress and the courts have recognized types of laws that could be characterized as “anti-discrimination” laws, where the OCC does have exclusive enforcement authority.

I hope the foregoing is helpful. We would be pleased to provide you with any further information you require.

Sincerely,

**signed**

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel

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<sup>4</sup> *National State Bank v. Long*, 630 F.2d 981 (3d Cir. 1980) (finding that the OCC had exclusive authority to enforce applicable provisions of the New Jersey anti-redlining statute with respect to national banks).