



Highlights of [GAO-06-387](#), a report to the Subcommittee on Oversight and Investigations, Committee on Financial Services, U.S. House of Representatives

Why GAO Did This Study

In January 2004, the Office of the Comptroller of the Currency (OCC)—the federal supervisor of federally chartered or “national” banks—issued two final rules referred to jointly as the preemption rules. The “bank activities” rule addressed the applicability of state laws to national banking activities, while the “visitorial powers” rule set forth OCC’s view of its authority to inspect, examine, supervise, and regulate national banks and their operating subsidiaries. The rules raised concerns among some state officials and consumer advocates. GAO examined (1) how the rules clarify the applicability of state laws to national banks, (2) how the rules have affected state-level consumer protection efforts, (3) the rules’ potential effects on banks’ choices of a federal or state charter, and (4) measures that could address states’ concerns regarding consumer protection.

What GAO Recommends

GAO recommends that the OCC undertake an initiative to clarify the characteristics of state consumer protection laws that would make them subject to federal preemption.

OCC generally concurred with the report and agreed with the recommendation.

www.gao.gov/cgi-bin/getrpt?GAO-06-387.

To view the full product, including the scope and methodology, click on the link above. For more information, contact David G. Wood at (202) 512-8678 or woodd@gao.gov.

OCC PREEMPTION RULES

OCC Should Further Clarify the Applicability of State Consumer Protection Laws to National Banks

What GAO Found

In the bank activities rule, OCC sought to clarify the applicability of state laws by relating them to certain categories, or subjects, of activity conducted by national banks and their operating subsidiaries. However, the rule does not fully resolve uncertainties about the applicability of state consumer protection laws, particularly those aimed at preventing unfair and deceptive acts and practices. OCC has indicated that, even under the standard for preemption set forth in the rules, state consumer protection laws can apply; for example, OCC has said that state consumer protection laws, and specifically fair lending laws, may apply to national banks and their operating subsidiaries.

State officials reacted differently to the rules’ effect on relationships with national banks. In the views of most officials GAO contacted, the preemption rules have had the effects of limiting the actions states can take to resolve consumer issues, as well as adversely changing the way national banks respond to consumer complaints and inquiries from state officials. OCC has issued guidance to national banks and proposed an agreement with the states designed to facilitate the resolution of, and sharing information about, individual consumer complaints. Other state officials said that they still have good working relationships with national banks and their operating subsidiaries, and some national bank officials stated that they view cooperation with state attorneys general as good business practice.

Because many factors, including the size and complexity of banking operations and an institution’s business needs, can affect a bank’s choice of a federal or state charter, it is difficult to isolate the effects, if any, of the preemption rules. GAO’s analysis of OCC and other data shows that, from 1990 to 2004, less than 2 percent of the nation’s thousands of banks changed between the federal and state charters. Because OCC and state regulators are funded by fees paid by entities they supervise, however, the shift of a large bank can affect their budgets. In response to the perceived disadvantages of the state charter, some states have reported actions to address potential charter changes by their state banks.

Measures that could address states’ concerns about protecting consumers include providing for some state jurisdiction over operating subsidiaries, establishing a consensus-based national consumer protection lending standard, and further clarifying the applicability of state consumer protection laws. The first two measures present complex legal and policy issues, as well as implementation challenges. However, an OCC initiative to clarify the rules’ applicability would be consistent with one of OCC’s strategic goals and could assist both the states and the OCC in their consumer protection efforts—for example, by providing a means to systematically share relevant information on local conditions.