

Statement Of
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Office Of The Comptroller Of The Currency
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Subcommittee On Oversight And Investigations
Of The
Committee On Financial Services
Of The
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Chairwoman Kelly, Ranking Member Gutierrez and members of the Subcommittee, I appreciate the invitation to discuss the OCC's recently issued preemption rules. I'll begin by describing what our new rules do – and what they do not do. Then I'll explain why we took the actions we did and why we acted when we did. Then I'll address one of the misperceptions – one of many, unfortunately – that surround the new rules.

There have been some rather extreme characterizations of these new rules, so let me begin by explaining exactly what they do.

The first regulation – I'll call it the preemption rule – clarifies the extent to which national banks' lending, deposit-taking, and other Federally-authorized activities are subject to state laws. The rule provides that a state law does not apply to a national bank if the state law "obstructs, impairs, or conditions" the bank's ability to exercise a power granted to it under Federal law, by Congress, unless Congress has provided that the state law does apply.

This approach reflects fundamental, Constitutional, Supremacy Clause doctrine. The regulation carefully follows standards established by the U.S. Supreme Court going back more than 130 years; our rulemaking authority is based on several sources in Federal law; and the types of state laws the rule preempts substantially mirror those already preempted by the Office of Thrift Supervision in its preemption regulations for Federally-chartered savings associations.

It is important also to recognize what the OCC's preemption regulation does not change. It does not immunize national banks from complying with a host of state laws that form the infrastructure of doing the business of banking, such as contract law, tort law, public safety laws, and generally applicable criminal law. It does not preempt anti-

discrimination laws. It does not change the allowable rates of interest a national bank may charge on a loan. It does not authorize any new national bank powers or activities. And it makes no changes to existing OCC rules governing the activities of operating subsidiaries.

Our second new regulation interprets a provision of the National Bank Act that grants the OCC exclusive authority to supervise, examine and regulate the national banking system. In this, what we call our “visitorial powers” rule, we clarified that the scope of the OCC’s exclusive authority focuses on the content and conduct of the banking business authorized under Federal law. We also interpreted a portion of the statute referring to powers of “courts of justice” as not granting state officials any additional authority, beyond what they may otherwise possess, to examine, supervise or regulate the banking business of national banks.

That’s what we did.

The second point I want to address is why we took these actions, and why we took them now.

We have recently seen an unprecedented number and variety of state and local enactments intended to limit and control the ability of national banks to engage in banking activities authorized for them by Congress. These state and local enactments prevent national banks from operating to the full extent lawful under their federal charters. They also undermine the vitality of the dual banking system, which is predicated on distinctions between state and Federal bank powers and regulation.

These laws, many with laudable goals, also have real, practical, daily consequences. They have unsettled mortgage markets, reduced the availability of legitimate subprime loans to some consumers, increased regulatory burden, added operational costs, and created unpredictable standards of operation and uncertain risk exposures. My written statement discusses these issues in more detail. The OCC’s new rules were designed to supply urgently needed clarification of the standards applicable to national banks’ activities and to restore predictability to their operations.

Our process was neither sudden nor secret, our rules are based on existing law, and we acted as the circumstances became compelling. In developing these rules over a period of many months, now dating back almost two years, we solicited comments from all concerned parties, and consulted widely with representatives of the financial industry, public interest groups, other regulatory agencies, and state officials. From the very beginning of our consideration of these issues, we briefed House and Senate members and their staffs, on both sides of the aisle, and made ourselves available to answer any and all questions.

Finally, let me address one of the misperceptions that has arisen around our rules – namely, its impact on predatory lending.

The OCC has zero tolerance for unfair, deceptive, abusive or predatory lenders. We know its tragic consequences. We rigorously supervise national banks and their lending subsidiaries and there is scant evidence that they are the source of the predatory lending problem in this country. Our track record demonstrates that we will act vigorously if problems arise.

Two new provisions that we included in our preemption regulation will make it even less likely that predators will find refuge in any national bank. The regulation first provides that national banks may not make consumer loans based predominantly on the

foreclosure or liquidation value of a borrower's collateral. This will target the most egregious aspect of predatory lending, where a lender extends credit, not based on a reasonable determination of a borrower's ability to repay, but on the lender's calculation of its ability to seize the borrower's accumulated equity in his or her home.

The regulation also recognizes that other practices are also associated with predatory lending. Some may not realize that the OCC does not have authority under the Federal Trade Commission Act to adopt rules defining particular acts or practices as unfair or deceptive under that Act. However, we can take enforcement actions in specific cases where we find unfair or deceptive practices. Our new regulation therefore specifically provides that national banks shall not engage in unfair or deceptive practices within the meaning of section 5 of the FTC Act in connection with their lending activities.

In conclusion, Madam Chairman, we believe our new rules protect as well as provide benefits for national bank customers, and are entirely consistent with the fundamentals of the dual banking system and with Congress' design of the national banking system.

Thank you, and I will be happy to answer any questions the Subcommittee may have.