



NEWS RELEASE

Comptroller of the Currency
Administrator of National Banks

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OCC Issues Final Rules on National Bank Preemption and Visitorial Powers; Includes Strong Standard to Keep Predatory Lending out of National Banks

WASHINGTON – The Office of the Comptroller of the Currency issued two final rules today that reflect the federal character of the national banking system. The regulations enhance the ability of national banks to plan their activities with predictability and to operate efficiently, subject to effective and efficient supervision.

The first rule codifies a series of court decisions and OCC interpretations, and establishes symmetry with federal thrifts regarding the types of state laws that apply to national banks, and includes a strong anti-predatory lending standard. The second rule clarifies the scope of the OCC's visitorial authority under federal law.

The new rules respond to numerous questions the OCC has received in recent years about the extent to which state laws apply to national banks and the authority of state or other agencies to examine or take actions against national banks. National banks are already subject to a comprehensive set of federal requirements, and the overlay of multiple state law standards would impose unnecessary and excessively costly burdens.

“When national banks are unable to operate under uniform, consistent and predictable standards, their business suffers and so does the safety and soundness of the national banking system,” said Comptroller of the Currency John D. Hawke, Jr. “The application of multiple and often unpredictable state laws interferes with their ability to plan and manage their business, as well as their ability to serve the people, the communities and the economy of the United States.”

Mr. Hawke noted that national banks operate in an environment characterized by rapidly-evolving technology, a highly mobile customer base and credit markets that are national, if not international in scope. In that environment, the proliferation of state and local laws leads to higher costs that banks must either absorb themselves, pass on to their customers, or avoid by dropping products and reducing the availability of credit.

While states are free to pass laws governing the operation of the institutions they supervise and regulate, customers of national banks will continue to benefit from an array of consumer protections available through federal law, OCC regulations and the rigorous supervision of national banks and their subsidiaries by the OCC, the Comptroller added.

In the area of predatory lending, national bank customers would be protected by the comprehensive standard included in today's rulemaking. The standard, which applies to all consumer lending activities, codifies the OCC's pioneering approach to combating unfair and deceptive practices and bars loans that rely upon the foreclosure value of the collateral for repayment, a restriction that will prevent lenders from extending credit

with an eye toward seizing a borrower's home.

"We have seen only isolated cases of abusive practices among national banks," Mr. Hawke added. "But when we have identified problems, we have taken quick and effective action. Our enforcement actions have resulted in the payment of hundreds of millions of dollars in restitution to national bank customers."

The Comptroller said that the OCC's anti-predatory lending standard is a preventive measure that is aimed at keeping abuses out of the national banking system.

"Predatory lending is a very significant problem in many American communities, but there is scant evidence that regulated banks are engaged in abusive or predatory practices," he said. "Our regulation will ensure that predatory lending does not gain a foothold in the national banking system."

The prohibition on basing loans on the foreclosure value of the borrower's collateral is grounded in safety and soundness principles. However, in response to comment letters noting that such practices are common in business lending and with some types of loans such as reverse mortgages, the OCC specified that the rule applies only to consumer loans and that loans could be based on collateral values if the borrower and lender agree that it is likely the collateral will be used to repay the debt.

While the OCC does not have legal authority to issue regulations defining particular acts or practices as unfair and deceptive practices under the Federal Trade Commission Act, the agency does have the authority to take enforcement actions where a national bank is found to have engaged in unfair or deceptive practices. The rule thus specifically provides that national banks shall not engage in unfair and deceptive practices within the meaning of Section 5 of the Act. In recent years, the OCC has taken a series of enforcement actions based on Section 5 of the FTC Act.

The preemption rule deals with lending, deposit taking and other national bank activities. OCC regulations already included a partial list of state laws that do not apply to national bank real estate lending activities, which are covered by a separate federal statute, 12 U.S.C. 371.

The preemption rule issued today builds on the current regulation by providing that state laws that "obstruct, impair or condition" a national bank's powers in the areas of lending, deposit taking and other national bank operations are not applicable to national banks. The rule identifies additional specific types of state laws that apply to national banks and specific types of laws that do not apply.

Examples of laws that do not apply to national banks are those that regulate loan terms, require state licenses, or impose conditions on deposit or credit relationships. Laws that do not affect the manner or content of national bank activities, such as those dealing with contracts, torts, taxation, or zoning, are not preempted under the rule.

"Federal preemption is not a new idea," Mr. Hawke said. "Its roots lie in the Supremacy Clause of the Constitution, and the courts have repeatedly held that the states cannot restrict the federally-authorized activities of national banks."

The Comptroller noted that the list of preempted state laws is nearly identical to the list incorporated into the regulations of the Office of Thrift Supervision, the federal agency that supervises nationally chartered thrift institutions.

The visitorial powers rule clarifies two points concerning the OCC's existing regulation

governing its exclusive power to supervise national banks. Under federal statute, “No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress. . .”

The rule clarifies that the scope of the OCC’s exclusive visitorial authority applies to the content and conduct of national bank activities authorized under federal law, but not to areas that have nothing to do with the business of banking, such as environmental laws and fire codes.

The regulation also clarifies that the exception for visitorial powers “vested in the courts of justice” pertains to the powers of the judiciary and does not grant state or other government authorities rights they do not otherwise possess to examine or supervise a national bank.

Under existing regulations that were not changed in today’s rulemakings, both the visitorial powers rule and the preemption regulation apply to the operating subsidiaries of national banks. They do not apply to financial subsidiaries, nor do they authorize any new powers or activities, such as real estate brokerage.

The two regulations will take effect 30 days after publication in the Federal Register.

The two regulations and additional explanatory materials are available on the OCC’s Internet site at: <http://www.occ.treas.gov/newrules.htm>

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The OCC charters, regulates and examines approximately 2,100 national banks and 52 federal branches of foreign banks in the U.S., accounting for more than 55 percent of the nation’s banking assets. Its mission is to ensure a safe and sound and competitive national banking system that supports the citizens, communities and economy of the United States.