



NEWS RELEASE

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Administrator of National Banks

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OCC Takes Steps To Keep Abusive Practices Out Of National Banking System While Ensuring Continued Access To Credit For Low-Income Americans

WASHINGTON – The Office of the Comptroller of the Currency issued an order today holding that the Georgia Fair Lending Act does not apply to national banks and proposed a new regulation that would clarify what types of state laws apply to national banks.

The proposed regulation also establishes a strong anti-predatory lending standard that is aimed at keeping abusive practices out of the national banking system without denying low-income Americans and other subprime borrowers access to credit they need to improve their lives.

“We have no evidence that national banks are engaged in predatory lending practices,” said Comptroller of the Currency John D. Hawke, Jr. “The standards we are proposing today will not only keep abuses from creeping into the system, but will protect consumers without having the unintended consequence of restricting access to credit.”

The OCC’s proposed predatory lending standard is based on safety-and-soundness principles, and complements the OCC’s approach to preventing unfair and deceptive practices. The proposed rule would prohibit national banks from making loans that they cannot reasonably expect to be repaid without recourse to the borrower’s collateral.

“Our regulation addresses one of the defining characteristics of predatory lending – the extension of credit with the intent of seizing a borrower’s home or other collateral,” said Mr. Hawke.

“We have seen too many cases where the most vulnerable members of our society are talked into refinancing a mortgage or taking on credit they cannot afford to repay, only to lose their home as a result,” Mr. Hawke added. “That is the type of abusive practice that we are determined to keep out of the national banking system.”

The preamble to the regulation also makes note of the OCC’s pioneering approach to preventing unfair and deceptive practices. The OCC has taken a number of enforcement actions over the past three years – requiring one lender to pay out over \$300 million in restitution nationwide – in response to unfair or deceptive marketing practices. To the extent that unfair and deceptive marketing may induce consumers into taking credit that they do not need or under terms they do not understand, such practices can be predatory.

The proposed regulation would apply the OCC's predatory lending standard to all lending activities, including real estate.

"I firmly believe that we have found a better way to combat abusive lending practices and I would invite state regulators to apply similar standards to the institutions they supervise," said Mr. Hawke.

In the Georgia case, the OCC responded to a request by National City Bank, National City Bank of Indiana, and their operating subsidiaries for a determination about whether the Georgia Fair Lending Act applied to national banks. The National City request was published for comment in the *Federal Register* on February 26, 2003.

In the order, the OCC noted that the authority of national banks to engage in real estate lending derives exclusively from federal law and, under applicable preemption principles, states may not modify or limit a national bank's exercise of that power.

"It is a matter of constitutional law and federal statute that the powers of national banks cannot be obstructed by state laws or regulation," said Comptroller Hawke. "Federal preemption is a principle that is almost as old as our nation itself and the Supreme Court has repeatedly ruled against the states when they have sought to limit the activities national banks are authorized to conduct under federal law."

The order on the Georgia law notes that much of the law was already preempted under existing OCC regulations. For example, Part 34 of the OCC's rules says expressly that state laws concerning repayment schedules or the term to maturity of a loan do not apply to national banks. Therefore, federal law already preempts provisions of the Georgia law that impose limits or restrictions concerning the schedule for repayment of principal and interest or the term to maturity of a loan extended by a national bank.

Other parts of the Georgia law that were also found to be preempted include:
Provisions that purport to limit the interest a national bank can charge for loans.
Permissible interest rates for national banks are determined under federal law based on the most favorable rate in the state in which the bank is located, which for National City is Indiana.

Provisions that purport to limit the non-interest fees a national bank can charge in connection with a loan, since these provisions are inconsistent with the well-recognized right of a national bank to establish fees based on the National Bank Act and OCC regulations.

In addition, the OCC order concludes that the Georgia law is preempted with respect to national bank operating subsidiaries. Federal law allows national banks to conduct lawful activities through operating subsidiaries and those activities are subject to the same terms and conditions that would apply to the parent bank.

The proposed regulation responds to numerous requests the OCC has received in recent years about the extent to which state law applies to national banks. Without further clarification, national banks, particularly those with customers in multiple states, face uncertain compliance risks and substantial additional compliance burdens and expenses that materially impact their ability to offer particular products and services.

The proposal addresses two specific parts of the OCC's regulations, Part 34, which deals with real estate lending, and Part 7, which governs non-real estate lending, deposit-taking and other national bank activities.

Part 34

The proposed regulation notes that 12 U.S.C. 371 provides a broad grant of authority for national banks to engage in real estate lending. Under the statute, only the Comptroller of the Currency may promulgate regulations or orders governing real estate lending by national banks.

The proposal sets out examples of the types of state statutes the OCC or the courts have concluded would be preempted. They include licensing laws, laws that address the terms of credit, permissible rates of interest, escrow accounts, and disclosure and advertising.

The list is not intended to be exhaustive. The proposal notes that other types of state laws that obstruct, in whole or in part, or condition the exercise of national banks' real estate lending powers may be identified and will be addressed on a case-by-case basis.

In addition, the proposal lists examples of state laws that would not be preempted for national banks, including laws that generally pertain to contracts, debt collection, acquisition and transfer of property, taxation, zoning, crimes, torts, and homestead rights. Other laws that interfere to only an insignificant extent with national banks' real estate lending powers or are otherwise consistent with national banks' authority to engage in real estate lending would not be preempted under this proposal.

Part 7

Deposit-taking and lending powers are specifically enumerated in federal statute. The same federal law also grants to national banks the broader power to engage in activities that are part of, or incidental to, the business of banking.

The OCC's regulations already address the applicability of state law to a number of specific types of activities. Because questions continue to arise about other Part 7 activities, the proposed regulation provides that state laws do not apply to national banks if they obstruct, in whole or in part, or condition a national bank's ability to exercise fully the powers authorized it under federal law.

The proposal lists several types of state laws that are preempted under federal law, and types of laws that would not be preempted, and notes that in some circumstances Federal law specifically may require the application of a state law to a national bank.

The proposal dealing with the applicability of state laws affecting other national bank activities is similar to the proposal for deposit taking and non-real estate lending. Laws that obstruct, in whole or in part, or condition, a national bank's ability to fully exercise its authorized powers do not apply to the national bank.

The lending activities covered under Part 7 are also subject to the OCC's safety-and-soundness-based anti-predatory lending prohibition.

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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.

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