



NEWS RELEASE

Comptroller of the Currency
Administrator of National Banks

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**OCC Issues Guidelines to National Banks to Guard Against Abusive Lending Practices;
Invites Comments on Request to Determine that Georgia Law is Preempted**

WASHINGTON – The Office of the Comptroller of the Currency issued two releases today establishing nationwide guidance to guard against predatory lending practices among institutions it supervises. Concurrently, it published for comment a request for an opinion that a Georgia law concerning predatory lending is preempted insofar as it might apply to national banks.

In two separate letters to national banks, the OCC noted that many common types of abusive practices are already illegal under federal law. But even in the absence of specific legal prohibitions, the OCC believes abusive lending practices may present significant safety and soundness problems or may involve unfair and deceptive practices in violation of the Federal Trade Commission Act.

The advisory letters emphasized that national banks should have policies and procedures in place to ensure that neither they nor their subsidiaries engage in any practices that might be considered predatory, and that their lending complies with safety and soundness standards and consumer protection laws.

“Our guidance provides a framework to deal effectively with predatory lending without setting up a rigid system that creates burdens and obstacles for lenders to serve low-income customers,” said Comptroller of the Currency John D. Hawke, Jr.

The Comptroller said that while the OCC has no reason to believe that any national bank is engaging in predatory lending, the agency’s guidance will help prevent problems from arising in the future by prescribing steps national banks should take to avoid abusive practices.

The guidance emphasizes that the OCC will review credible evidence that a national bank has engaged in abusive lending practices. If the bank is found to have violated an applicable law or safety and soundness standard, the OCC will take appropriate supervisory action.

One of the two advisory letters issued by the OCC provides guidelines to help banks avoid engaging in predatory and abusive lending practices, while the other covers abusive and

predatory practices in brokered and purchased loans.

The advisory letters emphasize that it is an unsafe and unsound practice to extend credit to consumers based on the liquidation value of the collateral, rather than the borrower's ability to repay the loan. These loans pose a high risk of default, and represent a defining characteristic of predatory lending – credit extended with the expectation of seizing the borrower's equity in a home or other collateral.

“Our guidance goes right to the heart of predatory lending – the provision of credit to people who cannot afford the terms being offered and who may lose their homes as a result,” said Mr. Hawke.

The guidance also makes clear that abusive lending may constitute unfair and deceptive practices under Section 5 of the Federal Trade Commission Act. The OCC took the lead among the federal bank and thrift regulatory agencies in applying Section 5 to banks through a series of enforcement actions beginning in 2000, and in a 2002 Advisory Letter that provided guidance on unfair and deceptive practices.

The guidance issued today said practices may be considered deceptive if:

- There is a representation, omission, act or practice that is likely to mislead;
- The act or practice would likely mislead a reasonable consumer in the targeted audience; and
- The representation, omission, act, or practice is likely to mislead in a material way.

A practice may be found to be unfair if:

- The practice causes substantial consumer injury such as monetary harm;
- The injury is not outweighed by benefits to the consumer or to competition; and
- The injury caused by the practice is one that consumers could not reasonably have avoided.

In addition, the guidance also outlines a number of abusive lending practices that often accompany predatory loans, such as packaging excessive or hidden fees in the amount financed, refinancings of subsidized mortgages that result in the loss of beneficial terms, and “equity stripping.” Other practices that may be abusive include:

- Loan flipping, or the repeated refinancing of a loan under circumstances that result in little or no economic benefit to the borrower, with the objective of generating additional loan points, loan fees, prepayment penalties and fees from the sale of credit-related products.
- The use of loan terms or structures, such as negative amortization, that make it more difficult or impossible for borrowers to reduce or repay their indebtedness;
- Balloon payments that conceal the true burden of the financing and force borrowers into costly refinancing transactions or foreclosures;
- The targeting of inappropriate or excessively expensive credit products to the elderly, to persons who are not financially sophisticated or who may be otherwise vulnerable to abusive practices, and to persons who could qualify for mainstream credit products and terms;
- Inadequate disclosure of the true costs, risks and, where necessary, appropriateness to the borrower, of a loan transactions;

- The offering of single premium credit life insurance, and the use of mandatory arbitration clauses.

The OCC also announced that it is publishing notice in the Federal Register to give interested members of the public 30 days to comment on a request the agency has received to issue a preemption determination or order on the Georgia Fair Lending Act. The Georgia law restricts the ability of creditors to charge certain fees and engage in some practices when making three types of loans, each of which is characterized by the annual percentage rate and the amount of points and fees charged.

The request for a preemption determination or order was sought by National City Bank, N.A., National City Bank of Indiana, N.A., and two of their operating subsidiaries, National City Mortgage Company and First Franklin Financial Company.

In its letter, National City asked the OCC to determine that the Georgia law is preempted by 12 U.S.C. 24 (Seventh) and 12 U.S.C. 371. Section 371 provides that national banks may make real estate loans and that their authority is subject only to “such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.” The exercise of lending powers under the section is not conditioned on compliance with any state law.

National City argues that in implementing section 371, the OCC has occupied the field of regulation of national banks’ real estate lending activities. National City points out that the OCC has already expressly provided by regulation that five types of state limitations on real estate loans are not applicable to national banks or their operating subsidiaries, including the schedule for repayment of principal and interest.

National City argued that a number of provisions of the Georgia law, including the prohibition on balloon payments, fall within the scope of that section and are therefore preempted. National City also argues that because 12 U.S.C. 371 and OCC regulations occupy the field for real estate lending for national banks, other provisions of the Georgia law are also inapplicable to national banks.

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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.

Related Links: [Letter 2](#), [Letter 3](#), [Preemption](#), [Q&A](#)