



NEWS RELEASE

Comptroller of the Currency
Administrator of National Banks

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Comptroller Hawke Tells Senate Panel of Overarching Considerations for Preemption and Visitorial Powers Rules

WASHINGTON -- Comptroller of the Currency John D. Hawke, Jr. told a Senate panel today that there are a few overarching considerations as background for discussion of the OCC's recently issued rules on preemption and visitorial powers.

Mr. Hawke opened his [testimony](#) before the Senate Committee on Banking, Housing, and Urban Affairs by emphasizing that:

- “National banks and their subsidiaries are highly regulated and closely supervised. While we occasionally confront instances of abusive conduct at our banks, the overwhelming number of our banks operate in conformity with the law and with recognized standards of sound banking and fair practices. Because of this it is not at all surprising that the state attorneys general have repeatedly stated that predatory lending is not a problem in the regulated banking system.
- The OCC is committed to protecting and helping customers of national banks and we have ample resources and formidable enforcement powers to carry out that commitment. We have a world-class customer assistance group that resolves literally tens of thousands of inquiries and complaints every year. And where continued or persistent problems have arisen, our track record shows that we will use our supervisory and enforcement powers promptly and effectively to fix them. With the formal enforcement powers that we have, plus the authority and influence that our examiners exercise over the banks they supervise, I believe we have an unmatched ability to afford consumers the protections we all want for them.
- We recognize that our counterparts at other agencies and in state law enforcement share this commitment to protect consumers, and we welcome opportunities to share information and cooperate and coordinate with them to address customer complaints and consumer protection issues. Through a coordinated and cooperative approach to the remedying of abuses I believe we can achieve a high level of protection for consumers.”

Concerned by the widespread misunderstanding and mischaracterization of the OCC's rules, Comptroller Hawke articulated what the OCC's new regulations do and what they would not do.

“The first regulation – which I'll call the preemption rule – codifies principles that have been established in almost 200 years of decisions by the Supreme Court and lower federal courts, that have been applied in innumerable interpretations and rulings of the OCC over many years, and that have been embodied in regulations of our sister agency, the Office of Thrift Supervision, for many years,” said Mr. Hawke.

“It's important to emphasize what the regulation does not change, since some confusion may exist on this score,” said Comptroller Hawke. The OCC's preemption regulation does not preempt state laws other than those listed; does not immunize national banks from complying with a host of state laws such as contract law, tort law, public safety laws, and generally applicable criminal laws; does not preempt anti-discrimination laws; does not extend to activities authorized for financial subsidiaries of national banks; does not impinge on the

functional regulation framework that Congress set in place in the Gramm-Leach-Bliley Act; does not allow national banks to charge higher rates of interest than they previously could; does not authorize any new national bank powers—such as real estate brokerage; and makes no changes to existing OCC rules governing the activities of operating subsidiaries.

“Our second rule – the “visitorial powers” rule -- amends an existing regulation implementing a federal statute that is as old as the national banking system itself and that grants the OCC exclusive authority to supervise, examine, and regulate the national banking system,” Mr. Hawke told the committee. “Congress reemphasized this principle of exclusive visitorial powers only recently in the Riegle-Neal Interstate Branching law by explicitly providing that to the extent state consumer protection laws apply to the interstate branches of national banks – that is, where those laws are not preempted under the long-standing principles I have referred to -- the OCC is the exclusive enforcement authority for such laws with respect to national banks.”

Mr. Hawke addressed the positive effects of the rule changes on enabling banks to operate more efficiently. “The rule also puts into place additional focused standards to protect customers of national banks from unfair, deceptive, abusive or predatory lending practices. These new standards apply nationwide, to all national banks, and provide additional protections to national bank customers in every state – including those states that do not have their own predatory lending standards. The rule does not leave customers of national banks or their subsidiaries vulnerable to predatory lending practices.”

“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,” Mr. Hawke said. “This will target the most egregious aspect of predatory lending, where a lender extends credit, based not on a reasonable determination of a borrower’s ability to repay, but on a lender’s calculation of its ability to seize the borrower’s accumulated equity in his or her home.”

Mr. Hawke underscored that the regulation specifically provides that national banks shall not engage in unfair or deceptive practices within the meaning of section 5 of the Federal Trade Commission Act in their lending activities and that the OCC was the first federal banking agency to assert the power to take enforcement actions for violations of section 5.

State attorneys general have repeatedly stated that the problems of predatory lending are largely confined to unregulated, nondepository institutions and have not been in evidence in regulated banks or their subsidiaries, he said.

“Our approach to predatory lending is a comprehensive, ongoing, integrated supervisory approach, focused on preventing predatory practices, not on banning or restricting specified loan products based on their terms,” Comptroller Hawke said. “We have substantial resources available, nationwide, to make sure that our supervision, in this and other areas, is effective. We believe our approach does not constrict credit availability from legitimate – highly regulated – lenders, and effectively protects customers of national banks and their subsidiaries against predatory lending practices.”

Comptroller Hawke concluded his testimony by stating that, “We believe that our new rules are legally sound, that they enable national banks to operate in a manner fully consistent with the character of their federal charter. Most importantly, coupled with the strong oversight and enforcement powers that the OCC can and will bring to bear, they do not leave national bank customers exposed to abusive practices. We share with our colleagues in the states a commitment to assuring that national banks’ treatment of their customers meets the highest standards, and I am confident that if we work in cooperation and coordination we can all fulfill that commitment.”

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The OCC charters, regulates and examines approximately 2,000 national banks and 51 federal branches of foreign banks in the U.S., accounting for more than 56 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.

