



NEWS RELEASE

Comptroller of the Currency
Administrator of National Banks

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Comptroller Calls Preemption a Major Advantage of National Bank Charter

WASHINGTON-- Comptroller of the Currency John D. Hawke, Jr. said today that the creation in 1863 of a uniform charter which allows national banks to operate with immunity from many state and local laws has benefited both banks and the nation's consumers.

"The ability of national banks to conduct a multistate business subject to a single uniform set of federal laws, under the supervision of a single regulator, free from visitorial powers of various state authorities, is a major advantage of the national charter," Mr. Hawke said in a speech before a professional organization, Women in Housing and Finance.

At the same time, the Comptroller said, the OCC takes tremendous pride in its ability to deliver a high level of protection to consumers nationwide without subjecting national banks to excessive and costly regulation.

In one recent case, Mr. Hawke said, the OCC brought an action against a bank on behalf of consumers nationwide -- and won more than \$300 million for customers wronged by the bank's marketing practices. That decision involved a groundbreaking interpretation of the Federal Trade Commission Act.

In his [speech](#), the Comptroller described the role of federal preemption. Acting under the Supremacy Clause of the Constitution, the courts have consistently limited the ability of states to prevent or significantly interfere with lawful activities of national banks. The courts have held that states may not prevent national banks from engaging in congressionally-granted powers, or stand as an obstacle to the purposes for which the national bank charter was created. In addition, the states may not regulate at all in areas where federal interest predominates or where Congress has fully "occupied the field."

"The Office of the Comptroller of the Currency was created to charter and supervise national banks, which would serve as instruments of a uniform and secure national currency, and help stabilize and support the national economy," said the Comptroller.

"Operating under a broad and potent grant of enumerated powers and such 'incidental powers as shall be necessary to carry on the business of banking,' the national banks were designed from the outset to carry on the business under uniform rules, uniformly high standards, and uniform federal supervision," Mr. Hawke added.

The Comptroller noted that preemption must be “value-blind” with respect to the desirability of the state law involved. In preemption situations, the only relevant issue is whether the state law would impair or significantly interfere with a national bank’s exercise of powers granted to it under federal law.

The Comptroller raised one caution about preemption. “The benefit that national banks enjoy by reason of this important constitutional doctrine cannot be treated as a piece of disposable property that a bank may rent out to a third party that is not a national bank. Preemption is not like excess space in a bank-owned office building. It is an inalienable right of the bank itself.”

In the case of the payday lending industry, Mr. Hawke said, the OCC has opposed arrangements in which third parties effectively “rent out” the preemption privileges of a national bank for the sole purpose of evading state law.

“Not only do these arrangements constitute an abuse of the national charter, but they are highly conducive to the creation of safety and soundness problems at the bank, which may not have the capacity to manage effectively a multistate loan origination operation that is in reality the business of the payday lender.”

While some state laws may be preempted because they conflict with federal law, Mr. Hawke noted that the OCC enforces an array of federal consumer protection laws on behalf of bank customers nationwide.

“We conscientiously enforce all of those laws,” he said. “In fact, we have more than 300 examiners who spend all or part of their time on consumer protection compliance.”

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The OCC charters, regulates and examines approximately 2,200 national banks and 52 federal branches of foreign banks in the U.S., accounting for more than 54 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.