Consumer Federation of America
1620 I Street, N.W., Suite 200 * Washington, DC 20006

CFA on Financial Reform:
A Daily Look at Reform Proposals and Their Effects on Consumers
May 4, 2010: Preemption of State Laws Leaves Consumers Vulnerable

Dear Senator:

The Consumer Federation of America urges you to reject amendments to S. 3217, the "Restoring American Financial Stability Act "that further preempt applying state consumer protection laws to national lenders. Recent history demonstrates how federal preemption has hurt consumers. Most notoriously, the Office of the Comptroller of the Currency (OCC) and Office of Thrift Supervision (OTS) blocked many states from applying their laws on abusive lending to national mortgage lenders and their subsidiaries. By the time federal regulators finally put meaningful rules on the books to stem predatory mortgage lending by national institutions, foreclosures were escalating to their highest levels in history.

Numerous additional actions and inactions by federal bank regulators have led to or encouraged unfair practices, higher prices for consumers, and less competition. To name just a few examples, over the past several years, the Office of Comptroller of the Currency:

(1) preempted Maryland law limiting prepayment penalties that made it difficult for homeowners to refinance out of adjustable rate mortgages;
(2) preempted a Michigan law prescribing excessive "document preparation" fees by mortgage lenders; and
(3) preempted a New Hampshire law on "gift cards"[1]

States are the first responders to consumer protection problems. State laws and state enforcement of federal law can ensure that a local problem doesn't metastasize into a national disaster. Despite the rhetoric coming from the banks, many national industries deal with state laws every day. And state laws really aren't that different. States typically work to harmonize their own laws with related state and federal laws. In fact, states often pass uniform and model laws and work through multistate enforcement task forces to harmonize their state laws. History has shown that only a small number of states usually pass laws that move beyond federal protections.

Even a strong federal agency will not have sufficient resources to address violations of consumer protection laws. While preemption didn't cause our recent economic crisis, it certainly helped to add fuel to the flames of the mortgage meltdown, as states were preempted from acting on behalf of their own citizens. The Consumer Financial Protection Bureau must be a floor of consumer protection, not a ceiling. **We urge you to oppose amendments to further preempt states from protecting their citizens.**

Sincerely,

Travis Plunkett
Legislative Director

Susan Weinstock
Director, Financial Reform Campaign

[1] Testimony of Kathleen Keest, before the U.S. House of Representatives, Committee on Financial Services, Hearing on Regulatory Restructuring: Enhancing Consumer Financial Products Regulation, June 24, 2009.