



Consumer Federation of America

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CFA'S ALLEN FISHBEIN SPEAKS OUT AGAINST U.S. COMPTROLLER'S ATTEMPT TO PREEMPT STATE CONSUMER REGULATION OF BANKS.

Consumer Groups¹ Join to Persuade Congress to Protect State Banking Regulations

Statement of Allen Fishbein
Director of Housing and Credit Policy

Washington, D.C., March 17, 2004- On behalf of the Consumer Federation of America and the other abovementioned national consumer and community organizations I am proud to join with distinguished members of Congress, State Attorneys General, state bank supervisors, and others here today to call for reversal of the sweeping and controversial rules to preempt state authority issued by the Office of the Comptroller of the Currency (OCC). These new OCC rules are bad public policy and bad news for consumers.

We are disturbed that the OCC rules override the application of critical state consumer protections as they apply to national banks and their operating subsidiaries. These rules permit OCC regulated institutions to ignore state consumer protections, including predatory lending and privacy safeguards. They also tie the hands of state officials from taking enforcement actions on behalf of national bank customers. All of our organizations have expressed their strong opposition to this aggressive preemption approach. Unfortunately, this little known federal agency seems to be more interested in protecting its turf than in protecting consumers. As a consequence, we believe that the time has come for Congress to take the necessary actions to rein in this runaway agency and curb the reach of these rules.

The OCC says that their new rules merely codify long-standing practice and authority in this area. This is not true. The overly broad new preemption standards adopted by the OCC pushed the outer edge of the envelope of federal authority in this area. For many years it has been widely accepted in law and in practice that national banks are subject to state laws unless such laws discriminate against, or significantly burden, the operations of national banks. The OCC preemption rule radically changes this traditional view and dictates that national banks in the

¹ In conjunction with ACORN, Center for Responsible Lending, Consumers Union, National Association of Consumer Advocates, National Community Reinvestment Coalition, National Consumer Law Center, U.S. Public Interest Research Group.

future will be immune from a host of consumer lending and deposit taking laws that have any impact on them.

The OCC says the new rules will bring more uniformity for the laws that govern national banks. Yet such uniformity will come at the expense of consumer protection. Many states now provide consumer protections stronger than those provided under federal law. Consumers residing in those states will now likely find themselves at greater risk of exposure to predatory lending and other abusive practices when they use the services of a national bank or one of its operating subsidiaries, than they would receive elsewhere in the marketplace.

The OCC is kidding itself, or worse still, trying to fool the public into believing that the agency has adequate resources to take on the sole responsibility for protecting customers of national banks and for addressing their grievances. A majority of the OCC bank examiners are assigned to monitoring the safety and soundness of national banks, while the agency has only 40-customer service agents assigned to deal with all consumer complaints against all national banks and all their operating subsidiaries. The numbers simply do not work.

In asserting its exclusive jurisdiction in this area, the OCC has all but acknowledged the lack of adequate existing federal standards to protect vulnerable consumers from lending abuse. OCC has attempted to bridge this gap by adopting a rule to deter certain collateral based loans that are made to borrowers without consideration of their ability to repay. Unfortunately, such an approach alone is unlikely to curb some of the more egregious practices. OCC rules do not expand borrower protections by prohibiting any specific abusive lending practice, including those which many states have acted either to bar or restrict. In the mortgage lending area these include the imposition of high prepayment penalties, sale of single premium credit life insurance and other fee packing, forced arbitration clauses, and high balloon payments, all features usually associated with predatory lending.

The OCC claims that the application of the unfair and deceptive practices provisions of Section 5 of the FTC Act may help to deter abusive lending practices. Yet the FTC Act does not provide consumers with a private right of action against lenders, unlike state UDAP laws. Should the OCC determine that it also has exclusive jurisdiction over UDAP enforcement for national banks and national bank operating subsidiaries, consumers would be severely hampered in their ability to seek direct action against OCC- regulated institutions.

For these reasons we strongly oppose this preemption rule. We recognize that the OCC has a valuable role to fill in regulating national banks and discouraging abusive practices by these institutions. We believe, however, that the nation's long-standing federalist approach to enforcement – with both state and federal governments working to protect borrowers – is the best system for consumers. It is regrettable that the OCC has chosen an approach that will block states' efforts to protect their citizens, while failing to substitute meaningful and stronger national consumer protections. We are deeply disappointed that this federal agency has elected to operate in this manner and very much look forward to working with those in Congress seeking to undo these rules should they not be withdrawn.