



WASHINGTON BUREAU  
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

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**Statement of Hilary Shelton  
Director  
Washington Bureau of the  
National Association for the Advancement of Colored People  
Before the U.S House of Representatives  
Committee on Financial Services  
Subcommittee on Oversight and Investigations  
Hearing on “Congressional Review of OCC Preemption”  
January 28, 2004**

Thank you, Chairwoman Kelly, Congressman Frank, Congressman Gutierrez, and to all the members of the full committee and the subcommittee for inviting me here today. I appreciate the opportunity to provide you with the views of the National Association for the Advancement of Colored People (NAACP) on this very important matter.

My name is Hilary Shelton and I am the Director of the Washington Bureau of the NAACP. The Washington Bureau is the federal policy arm of our nation’s oldest, largest and most widely-recognized grassroots civil rights organization. With more than 2,200 membership units in every state in our nation, the NAACP knows that predatory lending, which is rampant in our communities, hurts individuals, destroys neighborhoods, and poses a real risk to our nation’s future.

Let me begin by saying that the NAACP is strongly opposed to the new regulations issued by the Office of the Comptroller of the Currency, as they will clearly eviscerate the limited protections that we currently have in place in a few states to begin to address the scourge of predatory lending. Furthermore, as put forth by the OCC, the new regulations will, in fact, exacerbate a broken financial system which results in prolonged poverty and the targeting of individuals and neighborhoods because of their racial or ethnic make-up.

Predatory lending is clearly a major civil rights issue. As several studies have shown, predatory lenders prey on African Americans and other racial and ethnic minorities in vastly disproportionate numbers. Two important reports from 2002 showed that “African Americans were 4.4 times more likely to receive a subprime loan, and Latinos were 2.2 times more likely to do so” than their white counterparts<sup>1</sup>, and that “the disparity (in subprime loans) between whites and African-Americans and other minorities actually grows at upper-income levels

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<sup>1</sup> ACORN, “*Separate But Unequal: Predatory Lending in America*”, November, 2002

and is greater for higher-income African-American homeowners than for lower-income white homeowners.”<sup>2</sup>

Another, more recent study from the National Community Reinvestment Coalition shows that the trends identified have not abated, and that “...discrimination is widespread in America...African-American and predominantly elderly communities receive a considerably higher level of high cost subprime loans than is justified based on the credit risk of neighborhood residents.”<sup>3</sup>

All of these studies bear out a fact that the NAACP has known for years through our grassroots efforts at increasing homeownership in our communities and through personal experiences: African Americans are disproportionately targeted by predatory lenders for subprime loans, and the results are incredibly destructive. And the problem appears to be getting worse.

It is because of the disparate, and frankly injurious, manner in which some financial institutions continue to deal with the African American community that the NAACP has, at the national, state and local level pushed for stronger anti-predatory lending laws.

In the interest of time, Madame Chairwoman, I am asking that two recent NAACP resolutions dealing with predatory lending which were included in my written testimony be inserted into the record. I would call special attention to the resolution passed in February of last year, which specifically states the NAACP's opposition to federal preemption of state laws.

So why is the NAACP so opposed to the federal preemption of state laws, and specifically to the OCC's recent action? Put simply, by preempting state and local anti-predatory lending laws, the OCC is effectively doing away with the few protections we have been able to put in place to address the scourge of predatory lending.

The only way we can truly put a dent in the problems that result from predatory lending is to change the mortgage lending marketplace, so as to make predatory loans too risky, too expensive for lenders, and no longer good financial investments. We must take away the monetary incentives to make predatory loans.

It is true that historically, national banks have been less likely to perpetrate predatory lending practices. This does not mean, however, that national banks and their subsidiaries do not participate in, or profit from, predatory lending. On

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<sup>2</sup> Center for Community Change, “Risk or Race? Racial Disparities and the Subprime Refinance Market”, May, 2002, p.1

<sup>3</sup> The National Community Reinvestment Coalition, “The Broken Credit System: Discrimination and Unequal Access to Affordable Loans by Race and Age”, December, 2003, p.4

the contrary, there are numerous cases in which national banks, their operating subsidiaries or their affiliates have clearly profited from predatory lending.<sup>4</sup>

National banks, their subsidiaries and their affiliates profit from predatory lending practices in numerous ways, including: making direct loans, buying predatory loans from brokers, investing in loan portfolios that contain predatory loans, and providing securitization services for trusts which contain predatory loans.

Because the federal government has, frankly, done little to make it less profitable for banks to engage in predatory lending or at least supporting predatory lending, several states have stepped in to protect their citizens. I must point out that all of these laws were enacted only after research, extensive debate and negotiations, and many were made with local economic conditions and concerns in mind.

Yet the OCC is exempting national banks and their subsidiaries from these protections without offering any real alternative protections from predatory lending. While the regulation, as we understand it, does offer a few new protections, they are incredibly weak and will clearly not even begin to be as effective against predatory lending as many of the state laws, including those in North Carolina, Georgia, New Jersey and New York to name a few.

Furthermore, the list of state laws that will be preempted by this new regulation is long and, in many cases, very vague. When closely scrutinized, it is clear that under the new regulation the OCC intends to preempt national banks and their operating subsidiaries from hundreds, and potentially thousands, of consumer protection and anti-predatory lending laws. This means that instead of all fifty state attorneys generals, all fifty state offices of consumer protection, and all the private attorneys who may bring suits against banks under state laws, enforcement of very vital and necessary consumer protection and anti-predatory lending laws will be left up to the OCC's Consumer Advisory Group, an office of 22 people located in Texas.

Thus 22 people, located in one office in one city in one state will be responsible for monitoring and enforcing against the predatory lending actions of thousands of financial institutions across the nation. The exact number of financial institutions for which these 22 individuals will be responsible is unclear: suffice it to say, however, that according to the OCC there are more than 2,500 national banks<sup>5</sup>, and one of the largest, Wells Fargo, had 76 operating subsidiaries that engaged in consumer mortgage lending in May of 2002,<sup>6</sup> the most recent data we were able to obtain.

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<sup>4</sup> See the comments of the National Consumer Law Center and the Consumer Federation of America, National Association of Consumer Advocates and the US Public Interest Research Group to the OCC's proposed regulations, Docket No. 03-16, October 6, 2003, pp. 7-12, for a partial list of pending and closed cases involving national banks or their operating subsidiaries or affiliates where violations of law and/or predatory practices are alleged.

<sup>5</sup> OCC website: [www.occ.treas.gov](http://www.occ.treas.gov)

<sup>6</sup> United States Senate Banking committee staff

In other words, rather than a multitude of regulators and watchdogs located throughout the nation and our communities monitoring the behavior of national banks and their subsidiaries, enforcement of anti-predatory lending laws will be left to a few individuals. Thus, not only does the NAACP decry the evisceration of many of the state laws that are protecting our members and our communities from predatory lending, but we are also extremely troubled by the practical impact of this new regulation: the few laws that are left that protect us will, frankly, not be enforceable.

Predatory lending has ruined individuals' lives, communities, and represents a real threat to our nation's continued economic well being. As a result of predatory lending, millions of Americans across our nation have lost their homes and their primary source of savings. We should be taking more proactive steps to address this problem and expanding on the initiatives advanced by state laws, not exempting a whole class of financial institutions from state regulations that protect individual consumers.

As I said in the beginning of my testimony, predatory lending is clearly a civil rights issue, given the egregious way in which racial and ethnic minorities are targeted by some financial institutions for predatory loans. The fact that the Office of the Comptroller of the Currency does not appear concerned about the disparities that exist in our nation's financial arena today, and in fact has chosen to belittle the problems of our communities by exempting national banks and their subsidiaries from laws intended to address this problem, is alarming and insulting to the NAACP and the communities we serve, to say the least.

By putting these regulations in place, the OCC is setting a precedent to allow some national banks to continue to target racial and ethnic minorities and the elderly for their own monetary gain. This is contrary to the long-held view of the NAACP that the primary responsibility of the government is to protect its citizens, all of its citizens, not to exploit them for the gain of a few.

There has been lots of talk and debate about whether the OCC has the legal authority to preempt state predatory lending laws. I am sure that this debate will continue for some time. I will not even begin to enter that fray.

One thing should be clear, however: regardless of the outcome of the debate over legal authority, the OCC clearly does not have the moral authority to take this action.

I would like to again thank the members of the subcommittee for their interest in this matter, and for inviting me here today to share with you the opinions of the NAACP. I welcome any questions.

**ECONOMIC DEVELOPMENT [ADOPTED]**

1. **Predatory Lending and Payday Lending Practices**  
Vance, North Carolina Branch

**Concurred as Amended**

**WHEREAS**, the economic status of African-Americans in general is worse than that of white Americans; and

**WHEREAS**, the net worth of African-Americans is approximately 10% of that of white Americans; and

**WHEREAS**, many African-Americans, as well as other minorities and low-wealth citizens struggle each day to meet basic needs; and

**WHEREAS**, wages have not kept pace with the cost of living; and

**WHEREAS**, the credit needs of African-Americans and other low-wealth citizens is evident in the disparities between net worth, as well as income, and the overall cost of living; and

**WHEREAS**, many financial institutions, including responsible lenders in the subprime sector, are knowledgeable of the credit needs of the low-wealth population and many have responded responsibly; and

**WHEREAS**, these credit needs are now targeted and exploited by a growing number of predatory and payday lenders; and

**WHEREAS**, these predatory and payday lenders are concentrated in the subprime sector; and

**WHEREAS**, a recent study by the U.S. Department of Housing and Urban Development showed that borrowers in African-American neighborhoods are five times more likely to get a loan from a subprime lender – and therefore pay more – than borrowers in white neighborhoods; and

**WHEREAS**, borrowers in upper-income African-American neighborhoods are twice as likely as homeowners in low-income white areas to receive subprime refinance loans when refinancing; and

**WHEREAS**, over half of mortgage refinancing is in predominately white neighborhoods; and

**WHEREAS**, studies by Fannie Mae and Freddie Mac suggest that subprime lenders charge prime borrowers who meet conventional underwriting standards higher rates than those for which they qualify; and

**WHEREAS**, the practice of predatory lending and high cost payday lending are stripping the wealth from these sectors of the populations; and

**WHEREAS**, these predatory and payday lending practices are deepening debt and stripping equity from these populations; and

**WHEREAS**, predatory lending strips over \$9 billion of wealth annually from Americans families; and

**WHEREAS**, the financing of excessive upfront fees strips equity from homes without providing any benefit to borrowers; and

**WHEREAS**, the practices of “flipping” borrowers through repeated fee-loaded refinancing strips hard-earned equity repeatedly without providing a net tangible benefit for the borrower; and

**WHEREAS**, responsible lenders in the subprime sector play an important role for providing borrowers, who have encountered temporary credit problems, with a bridge to conventional financing; and

**WHEREAS**, abusive practices such as prepayment penalties, balloon payments and negative amortization prevent this transition from taking place; and

**WHEREAS**, payday lenders regularly charge customers making five or more loans per year thus, creating a debt treadmill for borrowers; and

**WHEREAS**, payday lenders regularly charge customers rates in excess of 500%; and

**WHEREAS**, ninety (90) percent of total payday loans come from customers taking five or more loans per year, creating a debt treadmill for borrowers; and

**WHEREAS**, forced arbitration clauses in consumer contracts insulates unfair and deceptive practices from effective review and closes the courtroom door for borrowers who have been wronged; and

**WHEREAS**, mortgage brokers originate over half of all mortgage loans and a relatively small number of brokers are responsible for a large percentage of predatory loans: such broker practices are largely unregulated; and

**WHEREAS**, many borrowers are denied justice because a predatory loan has been purchased or assigned to a third party; and

**WHEREAS**, disclosure, education and protections and remedies under the Federal Home Ownership and Equity Protection Act are important but inadequate responses to the problem of payday and predatory lending.

**THEREFORE, BE IT RESOLVED**, that the NAACP shall stand against such practices and vigorously seek to prohibit payday and predatory lending. These reforms should address steering borrowers to subprime loans, preventing financing of excessive fees, limiting prepayment penalties, sufficiently addressing mortgage broker abuse and addressing unfair forced arbitration clauses; and

**THEREFORE, BE IT FINALLY RESOLVED**, that the NAACP shall seek the advanced reforms by financial institutions, regulators and policymakers.

**ACTION ITEM IN FAVOR OF AGGRESSIVE, EFFECTIVE ANTI-PREDATORY LENDING LEGISLATION**

*February 15, 2003*

WHEREAS the NAACP has strong, established policy against predatory lending; and

WHEREAS numerous studies, including two recent ones by the Center for Community Change and ACORN, clearly demonstrate that predatory lending is especially prevalent in communities of color and that the disparity between whites and African –Americans and other racial and ethnic minorities actually grows at upper-income levels and is greater for higher-income African-American homeowners than for lower-income white homeowners; and

WHEREAS predatory lending is clearly an important civil rights issue; and

WHEREAS predatory lending ruins lives, families and whole communities; and

WHEREAS some states and communities, including California, North Carolina, Georgia, New York City and Oakland, California have enacted strong anti-predatory lending laws; and

WHEREAS the problem of predatory lending has exploded in the last two decades and is continuing to grow; and

WHEREAS there is a clear need for strong federal legislation to address this serious problem.

THEREFORE BE IT RESOLVED that the NAACP calls on Congress to swiftly and without delay enact legislation that expands the Home Ownership and Equity Protection Act (“HOEPA”) to all home mortgage lending; and

THEREFORE BE IT FURTHER RESOLVED that the NAACP calls on Congress to reject any proposal that would preempt effective state or local anti-predatory lending laws; and

THEREFORE BE IT FURTHER RESOLVED that the NAACP calls upon Congress to pass legislation to significantly lower the threshold of high cost loans; and

THEREFORE BE IT FURTHER RESOLVED that the NAACP calls on anti-predatory lending legislation that significantly limits or eliminates prepayment penalties; and

THEREFORE BE IT FURTHER RESOLVED that the NAACP calls for the enactment of legislation that places very strict limits on the amount of points and fees financed into a high cost loan; and

THEREFORE BE IT FURTHER RESOLVED that the NAACP calls on Congress to include the expansion of grassroots housing counseling programs in any predatory lending legislation.