Testimony of

Joe Belew

President, Consumer Bankers Association

on

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before the

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of the

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of the

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Madam Chairman and members of the subcommittee, my name is Joe Belew. I am President of the Consumer Bankers Association, a national trade association representing banks nationwide. CBA members include most of the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry's total assets. The vast majority of our members are national banks. At CBA, in my role as President of the association, I interact daily with the heads of the retail banking operations—the men and women who are responsible for many of the lending and deposit taking activities that are subject to the OCC's actions. I am very pleased to have the opportunity to share with you CBA's views on this subject—a subject that is so important to our member institutions. For the record, I am also attaching CBA's comment letter to the OCC in response to the preemption proposal.

We strongly support the OCC's regulations that define the applicability of state laws to the activity of national banks and their operating subsidiaries. Increasingly, in recent years, national banks have been facing the intrusion of state and local statutes and regulations on their federally created powers. The courts and the OCC have uniformly and consistently resolved each such instance by reaffirming the supremacy of the national bank powers and the constitutionally based preemptive effect of the National Bank Act. But there has remained a need for greater uniformity and predictability for the banks operating in multiple jurisdictions nationwide, and these regulations will provide that helpful guidance.

The final regulation clarifies the extent to which national banks are subject to state laws. The rule identifies the types of state laws that are preempted by the National Bank Act, as well as the types of state laws that are not preempted. Reflecting the history of judicial rulings, the types of laws that are preempted include those laws regulating loan terms, imposing conditions on lending and deposit relationships, and requiring state licenses. These are types of laws that create impediments to the ability of national banks to exercise powers that are granted under federal law. Incidentally, they are virtually identical to the types of laws preempted for federally chartered thrifts by the regulations of the Office of Thrift Supervision. The OTS authority has been in place for many years.

The OCC regulation is clear that there are many state laws that are <u>not</u> preempted by the National Bank Act. These are laws that do not regulate the manner or content of the business of banking authorized for national banks, but rather establish what the OCC calls the "legal infrastructure" of that business. These generally include laws on contracts, rights to collect debts, acquisition and transfer of property, taxation, zoning, crimes and torts. The agency has also made it clear that any other law it determines would only incidentally affect national banks' lending, deposit-taking, or other operations would not be preempted.

It is important to recognize that the agency is not breaking new ground by issuing this rule. The regulation is based on Supreme Court precedent dating back to 1869—135 years—consistently holding that national banks were designed to operate under uniform, federal standards of banking operations nationwide. By codifying over a century of court decisions and OCC interpretations, the agency is clarifying the law and responding to numerous questions about the extent to which various types of state laws apply to national banks and their operating subsidiaries. By a separate rulemaking, the OCC is also clarifying the authority of state or other agencies to take actions against national banks and their operating subsidiaries. These rules will give national banks the uniform and predictable standards that permit them to serve their customers in diverse markets nationwide.

Nor is it correct to accuse the OCC by its actions of threatening the dual banking system. Many states, including Georgia—which was the subject of the OCC's recent preemption determination-- have "parity" or "wild card" laws that give state chartered institutions the same coverage as national banks and federally chartered thrifts. Therefore, the states can and do protect their state chartered institutions if they believe such protection is warranted. Furthermore, as the Comptroller has pointed out, it is up to the states to determine whether they believe a separate state code is appropriate to continue to operate as a laboratory for innovation, rather than emulation.

Because so much attention has been directed at the important area of predatory lending and the recent enactment of state laws to address the problem, a charge has inevitably been leveled at the OCC that its actions will leave consumers vulnerable, by sweeping away these state protections and leaving nothing in their place. On the contrary, the OCC is second to none in its regulation and enforcement of consumer protection laws. National banks are subject to the whole array of federal consumer protection laws, from the Truth in Lending Act and the protections accorded by the Home Ownership and Equity Protection Act to the anti-discrimination provisions of the Equal Credit Opportunity Act and the Fair Housing Act. But the OCC has additional tough guidelines in place that are unique to national banks, spelling out in detail what rules the banks and their operating subsidiaries must follow in order to ensure that all national bank lending, deposit taking, and other activity remain above reproach. We have attached a list of the many consumer protection laws to which national banks must stringently adhere.

As part of the preemption regulation, the agency has also added two additional provisions applicable to national banks, designed to provide an additional layer of protection for consumers. One provides that a national bank may not make consumer loans based predominantly on the foreclosure or liquidation value of the borrower's collateral. This places a total ban on any lending by a national bank that does not take into consideration the borrower's ability to repay, a ban on loans made with the expectation of profiting from foreclosure. The second provision added to the new rules states that a violation of section 5 of the FTC Act, which protects consumers against unfair or deceptive acts or

practices, is a violation of the National Bank Act. This ensures that the OCC can employ its enforcement authority against banks that engage in any unfair or deceptive practices as defined by that act.

National banks are leaders in responsible lending. In fact, all the evidence suggests that national banks and their subsidiaries are not a principal source of concern when it comes to any abusive or predatory practices. For example, an *amicus* brief filed last year by 22 state Attorneys General in the U.S. District Court for the District of Columbia stated, "Based on consumer complaints received, as well as investigations and enforcement actions undertaken by the Attorneys General, predatory lending abuses are largely confined to the subprime mortgage lending market and to non-depository institutions. Almost all the leading subprime lenders are mortgage companies and finance companies, not banks or direct bank subsidiaries."[1] The object of the OCC's comprehensive rules and guidelines—along with the additional standards being adopted as part of this regulation-- is to ensure that national banks remain the gold standard in responsible lending.

Our experience at CBA supports the assertion that national banks also take proactive steps to protect consumers from abusive practices of others. One universally recognized

[1] National Home Equity Mortgage Association v. Office of Thrift Supervision, Brief of Amicus Curiae State Attorneys General in Opposition to Plaintiff's Motion to Summary Judgment and in Support of Defendant's Motion for Summary Judgment, Civ. Act. No. 1:02CV02506 (GK), US Dist. Ct, D.C., March 21, 2003 (Emphasis added)

way to shield consumers is to give them the education in financial services that permits them to recognize and avoid bad practices. As Federal Reserve Board Chairman Alan Greenspan said, "Regulators, consumer advocates, and policymakers all agree that consumer education is essential in the quest to stem the occurrence of abusive, and at times illegal, lending practices." National banks have demonstrated an ongoing commitment to educating customers as a means of protecting them from predatory practices

For three years, we have surveyed our member banks to determine how involved they are in financial literacy efforts, as a measure of their sense of responsibility to the communities they serve. The most recent survey showed that 98% of the respondents-with the majority being national banks-sponsor financial literacy programs or partner on financial education initiatives.

CBA's *Survey of Bank-Sponsored Financial Literacy Programs* shows a significant increase, from 60% to 72%, in bank programs aimed at helping consumers avoid abusive or predatory lending practices such as flipping, avoiding unscrupulous lenders, excessive interest rates, or payday loans. Thirty-eight of 53 respondents stated that their banks offered programs targeting issues such as flipping, avoiding unscrupulous lenders, excessive interest rates or payday loans.

Additionally, 96% of banks offer mortgage and home ownership counseling, typically in connection with an affordable mortgage program, which is offered by 93% of responding banks. With 73%, credit counseling is mandatory to qualify for such programs. In addition, 37% of the 2003 respondents indicated that the institution had a foreclosure prevention program in place. This commitment to financial literacy is actively encouraged by the OCC as a means of combating predatory practices.

The vast array of laws and guidelines to which national banks are subject is very effective. Because of the comprehensive examination oversight to which national banks are subject, the OCC can find and stop problems before they occur. If anything slips through the net, the agency can and will take enforcement action—everything from cease and desist orders to monetary penalties, which can be very punitive. The OCC has a strong track record of taking action on the rare occasion it discovers national banks that may be engaged in abusive practices. In several recent cases, the agency has imposed substantial monetary penalties on institutions. But the OCC's scrutiny in this area goes back for a number of years. At a CBA conference, June 5, 2000, for instance, OCC Special Counsel Julie Williams stated: "We plan to use our supervisory powers -- through our safety and soundness, fair lending, and consumer compliance examinations; our licensing and chartering process; and individual enforcement actions -- to address any potential predatory lending concerns that might arise in national banks and their subsidiaries." National banks have long been on notice that the OCC's examination and enforcement in this area is rigorous.

The OCC has also sought cooperation from the states where there may be allegations of wrongdoing by national banks or their operating subsidiaries and established special procedures for expedited referrals of consumer complaints from State Attorneys General and banking departments. In this way, the state law enforcement officers can pass on complaints to the OCC for follow up, and preserve their resources to enforce the state laws against the predatory lenders and other bad actors.

National banks benefit from being subject to a uniform set of rules that do not vary from state to state. Banks today operate across many state lines, permitting them to serve the needs of an increasingly mobile society. A single set of rules also permits them to provide economies of scale and streamlined services in a cost-effective way. As heavily regulated financial institutions, they can provide the quality products and services that can, through competition in the marketplace, drive out the bad actors that we all are trying to eliminate—the marginal and high-cost operators. But their ability to do so is severely hampered by the laws, regulations, and ordinances adopted in each jurisdiction. Since states do not have the kind of on-going scrutiny of unregulated lenders and brokers that the OCC has over national banks, the laws are often overbroad—driving out the good with the bad. Forcing national banks to comply with all these myriad, often conflicting, state laws, would make it difficult if not impossible for national banks to operate in the uniform and efficient manner envisioned in the National Bank Act.

In conclusion, we strongly support the OCC's regulations clarifying the applicability of state laws to the activity of national banks and their operating subsidiaries. Its actions are in accord with the letter and spirit of the National Bank Act, as it has been consistently interpreted by over a century of court opinions; permitting national banks and their operating subsidiaries efficiently to serve the needs of their customers nationwide without being hobbled by a hodge-podge of well-intentioned but disruptive laws in every locality. The extensive consumer protection laws to which national banks and their operating subsidiaries are subject, together with strong leadership and rigorous oversight by the OCC and its examination force, will ensure that national banks continue to serve consumers well in the future.

Once again, thank you for this opportunity to share our views.