

**Statement of Chairwoman Sue Kelly**  
**Subcommittee on Oversight and Investigations**  
**“Congressional Review of OCC Preemption”**  
**January 28, 2004**

Today, the Subcommittee on Oversight and Investigations will conduct a review of two regulations that were finalized earlier this month by Office of the Comptroller of the Currency (OCC). The regulations preempt state laws that currently apply to national banks, and they restrict the authority of states and other agencies to examine or take actions against these entities. When they take effect on February 12<sup>th</sup>, these regulations will effectively prevent a state from determining and enforcing its own laws.

Preemption of any state law is an extremely serious issue with significant consequences for all Americans. The preemption of state banking regulation is even more serious because it has critical implications for consumer protections and the overall dual-banking system, which has served our country well for decades. A decision of this magnitude requires considerable review by Congress to ensure that consumer protections are not being undermined and that the balance of the dual-banking system is not disrupted.

The OCC is tasked with interpreting Congressional intent, and in terms of these regulations, the intent of Congress is unclear. The correspondence of several dozen members of Congress from both sides of the aisle, however, demonstrates that Congress has many unanswered questions and concerns that need to be thoroughly reviewed before these changes are implemented.

As the Chairwoman of the Financial Services Subcommittee on Oversight and Investigations, I wrote the OCC on December 1, 2003 asking the agency to delay these rules until Congress can hold hearings to review the agency’s proposal and signal our intent. The OCC went ahead and finalized these rules without this necessary review, an action that I believe demonstrates a lack of respect for Congress and this committee.

I am concerned that an agency tasked with interpreting the laws passed by the Congress has strayed from its obligations to protect consumers. The OCC is supposed to be an independent agency; its actions have led many of us to question whether they are also independent of the people’s best interests.

Unfortunately, this is not the first time that Congress has had difficulty working with the OCC, which indicates to me that there may be larger systemic problems at the agency. Congress must, and will, take all necessary steps to ensure that the interests of the American people come first – even if it means a ‘culture of change’ at the OCC. The American people expect, and deserve, real leadership and accountability when an action could potentially jeopardize crucial consumer protections. We are going to see to it that consumers get these assurances.

It may have been the agency's decision to move forward without congressional review, but this Committee's ability to protect consumers and provide this oversight will not be inhibited. We will begin our investigation today, and it will continue until all questions are answered and the Committee determines an appropriate course of action. I have personally spoken with Comptroller Hawke, and he has promised to testify before the Committee when he returns from medical leave.

I also have asked Mr. Hawke to take the necessary steps to delay the implementation of these regulations until we complete our review. The Comptroller of the Currency is a Presidential-appointed and Senate-confirmed position, and these regulations should not be implemented without direct explanation from the Comptroller. This request presents the OCC with a tremendous opportunity to display to Congress and consumers that the agency takes this review seriously and is willing to address concerns with the regulations.

In terms of the substance of these new regulations, my colleagues and I hope many questions can be answered today. I recognize that we live in a different world today with an advanced financial services sector, in which companies utilize technology and other resources to offer better and less costly products and services. In principle, I also understand that there is a need for more uniformity in regulation, and that we need to investigate whether a patchwork of laws may also impede progress that is beneficial to the consumers. In fact, this Committee has held several hearings on reforms in insurance and securities regulation, with the intent that changes could be made by Congress through a legislative process. However, for a regulator to single-handedly preempt a state's ability to both determine and enforce laws without public debate or explicit direction from Congress is troublesome and careless. The American people deserve a voice in these decisions.

I am certain that many members have questions today specifically on the issue of predatory lending. While this is one of the significant laws preempted, I caution that we not focus solely on this issue, given the overreaching nature of these regulations – which appear to be much larger than just this one issue. I hope my colleagues in the Subcommittees on Housing and Financial Institutions continue their investigations into predatory lending to address these specific concerns.

I want to remind members – this hearing is to collect facts to see if Congress needs to further clarify its intent to the OCC. As usual, the committee five- minute rule will be observed.

I would like thank the witnesses for their attendance here today. I look forward to working with you on these important issues that are critical to the American people.