

Opening Statement

Chairman Michael G. Oxley

Committee on Financial Services

Subcommittee on Oversight and Investigations

January 28, 2004

“Congressional Review of OCC Preemption”

I want to begin by commending Chairwoman Kelly for holding the first congressional oversight hearing on the OCC’s recently issued regulations setting forth standards for determining when State laws can be applied to the operations of national banks.

Our dual system of national and State bank chartering is a unique feature of the U.S. financial marketplace, and has served the American economy and American consumers well for almost 200 years. Since the inception of the dual banking system, tension has periodically flared between Federal and State authorities over the proper allocation of responsibility for overseeing the activities of national banks. The regulations issued in final form by the Comptroller earlier this month, after a period for notice and comment, are the latest chapter in that long-running debate.

While most of the attention in the media and elsewhere has focused on the OCC’s pre-emption of predatory lending laws that an increasing number of states and municipalities have enacted in recent years, the regulations are in fact much broader in scope, and raise issues that go to the heart of the dual banking system, including the following:

-- Should institutions that are chartered by the Federal government and operate on a nationwide basis be required to comply with laws passed by State or local governments that address core bank functions such as lending and deposit-taking?

-- Should the authority to enforce Federal and State laws against national banks reside exclusively with the OCC – except as otherwise provided by Federal law – or do State Attorneys General and other State agencies have a role to play?

-- Does the application of uniform Federal standards to lending and deposit-taking – and the centralization of authority for enforcing those standards – promote the safety and soundness of national banks and yield benefits for their customers?

In my view, the OCC regulations represent a thoughtful attempt to codify and harmonize past legal precedents, and there are many, and regulatory guidance into a coherent framework for resolving conflicts between Federal and State laws as they apply to national banks.

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The regulations largely conform the pre-emption standards applicable to national banks to those that have long been applied to Federally chartered thrifts by the Office of Thrift Supervision, and to Federal credit unions by the National Credit Union Administration.

With respect to the charge that the OCC's regulations leave customers of national banks exposed to abusive lending practices, it should be noted that there is a decided lack of evidence that national banks have engaged in such practices, which tend to be centered instead in non-Federally regulated mortgage and finance companies that remain fully subject to state and local anti-predatory lending laws.

Moreover, for those national banks that **do** engage in abusive or unscrupulous tactics, the OCC's regulations contain new standards prohibiting institutions from making loans based predominantly on the foreclosure value of the collateral and without regard to the borrower's ability to repay, and from engaging in "unfair and deceptive trade practices" as defined in the Federal Trade Commission Act. We will hear from opponents of the OCC's regulations at today's hearing who question the agency's commitment to enforcing its new anti-predatory lending standards, and argue that consumers are better served by a regime in which national banks must answer to both Federal and State authorities.

In closing, let me again commend Chairwoman Kelly for tackling this difficult issue, and for vigorously asserting this Committee's oversight prerogatives to ensure that the Federal agencies within our jurisdiction act in the public interest.

Let me also welcome all of our witnesses to today's hearing, particularly OCC Chief Counsel Julie Williams, who is here pinch-hitting for Comptroller Jerry Hawke as he prepares to undergo surgery later this week in New York. We wish the Comptroller a speedy recovery, and look forward to continuing this Committee's dialogue with him on this and other issues of concern upon his return to duty in March.

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