



Neighborhood Economic Development Advocacy Project

176 Grand Street, Suite 300, New York, NY 10013
Tel: (212) 680-5100 Fax: (212) 680-5104
www.nedap.org

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Acting Comptroller John Walsh
Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219

Re: OTS Integration; Dodd-Frank Implementation, Docket IS OCC-2011-0006, RIN 1557-AD41

Dear Comptroller Walsh:

The Neighborhood Economic Development Advocacy Project (NEDAP) respectfully submits the following comments requesting that the OCC withdraw its proposed regulations on the preemption and state enforcement provisions of the Dodd-Frank Act Implementation.

NEDAP is a resource and advocacy center that works with community groups in New York City's low and moderate income neighborhoods. Our mission is to promote community economic justice and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. Founded in 1995, NEDAP employs multiple strategies – including community outreach and education, advocacy, policy research and analysis, and direct legal services – to ensure that communities have access to fair and affordable credit and financial services, and to address inequities in the financial services system.

NEDAP also facilitates the statewide New Yorkers for Responsible Lending coalition (NYRL), whose 154 members include community financial institutions, community based organizations, affordable housing groups, legal services organizations, advocates for senior citizens and community reinvestment, and fair lending and consumer advocacy groups.

NEDAP and the other organizations in NYRL have detailed knowledge of the array of abusive financial services practices in our local communities and state-wide, and the devastating effect that those practices have had on low- and moderate-income communities and communities of color. Leading up to the 2008 financial crisis, ineffective federal regulation of nationally chartered banks and their subsidiaries was a major contributor to this rampant financial abuse.

New York has long had some of the strongest state consumer protection laws in the country. As one of several examples, in 2002 and 2008, New York passed landmark laws prohibiting abusive and predatory mortgage lending. Crafted by state legislators to address specific problems faced by New York State, the two laws prohibit identified abuses without interfering with an equitable mortgage market. A key provision in both laws allows an aggrieved borrower to raise violations of the statute against an assignee as a defense or counterclaim in a foreclosure action. This limited assignee

liability under New York State law is critical toward allowing borrowers who have been targeted for predatory loans to prevent the loss of their homes.

By preempting these and other key New York State laws for nationally chartered banks and their operating subsidiaries, the OCC's 2004 regulations gutted the very protections that the state legislature deemed necessary to enact in order to restore order and fairness to the housing market and protect lower income consumers. The OCC's action essentially enabled nationally chartered banks and their subsidiaries to violate State law without any repercussions. States have a long tradition of effectively protecting their residents from unfair and unethical business practices. For these protections to remain effective, states must be able to retain the authority to address consumer and community-related issues, even when they apply to nationally chartered banks.

As Congress worked to ensure consumer protection and accountability in the Dodd-Frank Wall Street Reform and Consumer Protection Act, it chose to encourage an active and effective partnership between the states and federal financial regulatory agencies. Even with a strong new Consumer Financial Protection Bureau, states are essential first responders that are better positioned to identify local abuses and respond quickly and effectively.

We are deeply concerned that instead of supporting the mandates of Dodd-Frank, the OCC's proposed rules would continue to broadly preempt state consumer protection laws governing mortgages, credit cards, small-dollar loans, bank accounts, and other financial products and services. The proposed regulations also impermissibly restrict the enforcement actions states may take.

Congress adopted the preemption reforms in the Dodd-Frank Act for the purpose of "undoing broader standards adopted by rules, orders, and interpretations issued by the OCC in 2004."ⁱ The OCC is therefore required to rescind the 2004 regulations and issue new regulations consistent with the mandates of Dodd-Frank. Instead, in its proposed regulation the OCC leaves in place the overly broad 2004 preemption rules.

The proposed regulations violate the Dodd-Frank Act because they:

- Apply the 2004 regulations (with minor changes) to new contracts, even though the Dodd-Frank Act grandfathered only contracts entered into on or before July 21, 2010.
- Broadly preempt state laws governing lending and deposit taking, effectively preempting the field in those areas.
- Preempt state laws without determining if they prevent or significantly interfere with the exercise by the national bank of its powers.
- Preempt entire classes of laws without examining particular state laws on a case-by-case basis or consulting with the Consumer Financial Protection Bureau.
- Preempt state laws without conducting a proceeding where substantial evidence is put on the record.
- Assert authority to preempt general state laws despite Congress's decision to give the OCC authority only over state consumer financial laws.

The OCC must repeal its 2004 preemption regulations and proceed in accordance with the substantive and procedural standards that Congress explicitly specified in the Dodd-Frank Act.

In addition, the OCC's proposed regulations inappropriately restrict state enforcement actions with regard to nationally chartered banks. The Dodd-Frank Act codified the Supreme Court's decision in *Cuomo v. Clearing House Association*, which rejected the OCC's position that states could not bring enforcement actions against national banks. Congress specifically provided that states can enforce "applicable" laws, state or federal, in addition to the state fair lending law at issue in *Cuomo*. The OCC's proposed regulations, however, would continue to restrict state enforcement actions, especially actions under federal law, except under "limited circumstances."

As the financial crisis has shown, we need strong state regulation and enforcement to ensure that abusive banking practices do not harm consumers or the nation. Federal regulators failed to enforce the law leading up to the financial crisis, and even with increased vigilance they will not have the resources to police every violation. Enlisting the resources of the state attorneys general to ensure that every bank complies with the law will save resources at the federal level while ensuring a level playing field, protecting consumers and honest industry players alike. The OCC must revise its visitorial regulations to conform to Dodd-Frank and the *Cuomo* decision.

Strong consumer protection ultimately helps people, communities, and the banking system as a whole, and the states play an essential role. It is critical for the OCC to change course and allow states to effectively police financial services abuses, thus helping to ensure that banks are held accountable to people and communities. For the reasons above, we respectfully urge the OCC to comply with the requirements of Dodd-Frank by withdrawing its proposed implementation regulations on preemption and state enforcement powers; explicitly repealing its prior 2004 preemption regulations; and revising its visitorial powers regulations.

Sincerely,

Josh Zinner, Co-Director
Sarah Ludwig, Co-Director
Neighborhood Economic Development Advocacy Project (NEDAP)
176 Grand Street, Suite 300
New York, NY 10013

ⁱ The Restoring American Financial Stability Act of 2010, Sen. Comm. On Banking, Housing & Urban Affairs, S. Rep. No. 111-176, at 175 (Apr. 30, 2010).