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**VIA email at [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)**

June 24, 2011

Office of the Comptroller of the Currency  
250 E Street, SW Mail Stop 2-3  
Washington, D.C. 20219

**Re: Docket ID OCC-2011-0006, RIN 1557-AD41**

To Whom It May Concern:

I am contacting you on behalf of Woodstock Institute regarding the Office of the Comptroller of the Currency's Notice of Proposed Rulemaking "Office of Thrift Supervision Integration; Dodd-Frank Act Implementation" regarding the preemption interpretation required to move forward with the agency's Dodd-Frank Act implementation.

Woodstock Institute opposed the "obstruct, impair, or condition" formulation of the *Barnett* standards in 2003, as well as the preemption formulation established by the Office of Thrift Supervision that allowed the OTS to "occupy the field" of real estate activities by national thrifts. Woodstock supports the agency's removal of the contentious "obstruct, impair, or condition" language and the reestablishment of the "conflict" preemption formulation for national banks and thrifts as required by Dodd-Frank. However, we urge the OCC to repeal its existing preemption orders, make public its process for the preemption of existing state consumer protections and to apply the reformulated preemption standard with the intent of expanding, rather than reducing, consumer protections.

**About Woodstock Institute**

Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. We conduct research on financial products and practices, promote effective state and federal policies, convene a coalition of community investment stakeholders working to improve access to credit, and help people use our work to understand the issues and develop and implement solutions.

### **Federal safeguards proved insufficient**

The OCC's 2003 proposed rule "Bank Activities and Operations; Real Estate Lending and Appraisals" triggered by an inquiry from National City Bank of Indiana concerning the Georgia Fair Lending Act.<sup>1</sup> The OCC's justification for preemption in 2004 stemmed in part from the assurance that preemption would not lead to certain banking practices carried out by national banks going unregulated. Rather, the OCC argued that real estate lending was "pervasively regulated under Federal standards and subject to comprehensive supervision."<sup>2</sup> As an example of the agency's supervision, the proposed rule referenced OCC Advisory Letter 2003-2 entitled "Guidelines for National Banks to Guard against Predatory and Abusive Lending Practices" and OCC Advisory Letter 2003-3 entitled "Guidelines for National Banks to Guard against Predatory and Abusive Practices in Brokered and Purchased Loans."<sup>3</sup> AL 2003-2 provides that bank policies and procedures should reflect the degree of care that is appropriate to the risk of particular transactions. The ongoing foreclosure and financial crisis that began in 2007 clearly shows that these advisory letters and other regulatory efforts to eliminate undue payment risk in the mortgage industry were wholly insufficient.

### **Preemption determination must be public and carried out with the intent of expanding, rather than reducing, consumer protections**

Woodstock Institute opposed the agency's preemption standard on the grounds that it exempted national banks from state anti-predatory lending laws such as the Georgia Fair Lending Act without replacing state consumer protections with an acceptable level of federal protection.<sup>4</sup> Since the adoption of the 2003 standard, the OCC has exercised its preemption authority on numerous occasions. The agency has stated that it has reviewed existing rules for consistency with the new standard. Woodstock requests the OCC repeal all its existing preemption rules and provide public notice of the specific agency rules that it reviewed in the context of the Dodd-Frank definition of "state consumer financial law."

### **Preemption changes required by Dodd-Frank were initiated because real harm to consumers had occurred**

The agency's proposed rule also suggests that much of the concern surrounding the preemption of state consumer protections was the result of confusion or inconsistencies that resulted from "obstruct, impair, or condition" interpretation of the *Barnett* standard – not the end effect of preemption on the

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<sup>1</sup> "Preemption Determination and Order." *Federal Register* 68 (5 August 2003): 46264. Print.

<sup>2</sup> "Bank Activities and Operations; Real Estate Lending and Appraisals." *Federal Register* 68 (5 August 2003): 46125. Print.

<sup>3</sup> OCC Advisory Letter 2003-2 (Guidelines for National Banks to Guard against Predatory and Abusive Lending Practices), February 21, 2003 and OCC Advisory Letter 2003-3 (Guidelines for National Banks to Guard against Predatory and Abusive Practices in Brokered and Purchased Loans), February 21, 2003.

<sup>4</sup> O.C.G.A. Title 7, Chapter 6A

availability of consumer protections as part of certain financial transactions. Woodstock Institute disagrees, and we believe that real harm to consumers occurred as a result of preemption of consumer protection efforts such as the Georgia Fair Lending Act.

Since the foreclosure and economic crisis began, states have reacted to the lack of federal oversight of national banks in a number of different ways. First, elected officials in many states publicly called for the establishment of the Consumer Financial Protection Bureau to establish minimum protections for consumer financial transactions. States also worked to establish new state protections to protect against undue foreclosures, high-cost, short-term consumer credit, high bank fees with a discriminatory effect, and other concerns. Many of these efforts were carried out as a result of federal inaction.

In light of the changes required by Dodd-Frank, we encourage the OCC to be judicious in its application of preemption authority of state consumer financial laws going forward and ensure that future preemption rules truly reflect the intent of Dodd-Frank. We also encourage the OCC to establish regulations for national banks and thrifts that are comparable to the strongest possible state consumer financial laws in situations where it determines that preemption “prevents or significantly impairs” the activities of national banks.

In 2003, we called for the OCC to preempt state statutes only if they were inconsistent with federal consumer protections, and then only to the extent of the inconsistency. In light of these changes under consideration, we also encourage the OCC carefully consider the circumstances in which a state consumer financial law has substantively equal terms, to make the process for this determination public and clear, and to consult with the new Consumer Financial Protection Bureau on consumer protection preemption issues, and provide information to state attorneys general as needed during the enforcement of any non-preempted state law against national banks.

We appreciate the opportunity to comment on this proposed rule and look forward to the publication of the final rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Feltner', with a stylized flourish at the end.

Tom Feltner  
Vice President  
Woodstock Institute

TF/bab