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Attention: Docket No. 03-04

To whom it may concern:

The Woodstock Institute is extremely concerned about National City's request to the OCC to pre-empt the Georgia Fair Lending Act. We note that the Georgia statute has recently been amended and that some key features have been changed.

We have several different kinds of concerns with possible OCC action. But first we should sketch out the broad context. High cost, high fee mortgage lending--or predatory and abusive lending practices as they are called in the recent OCC advisories-- became a serious problem in the mid-1990s when a secondary market was developed for such loans. While national data are lacking on the number and distribution of these loans (a situation that will be improved by recent changes to HMDA reporting requirements), individual studies point to the size of the problem. A recent Chicago study of foreclosures by the National Training and Information Center showed an almost 500% increase in foreclosures associated with high cost loans. In 2001, 40 percent of those loans had interest rates 3-5 points above prime and 18 percent of the loans were 6 points or more above prime. But most worrisome, 30 percent of the loans went into foreclosure proceedings within two years of origination. You should not underestimate the appalling long-term damage predatory lending inflicts on a growing number of victims

While there have been modest changes in HOEPA regulation, the task of controlling predatory lending has fallen on state and local governments. They have taken up the task by necessity in the absence of appropriate legislative or regulatory action. Regulatory action to preempt those laws is a double attack on households whose financial futures are threatened by lending practices that deceive and rob those households of hard won assets. It is a double attack because of the failure of the regulatory agencies to act with dispatch to

prevent predatory lending, and because current and proposed regulatory action weakens the safeguards states have erected against this menace.

The National City letter to OCC is a broad-based attack on the Georgia law. It is seemingly based on the theory that in an overabundant, ill-chosen volley of arguments, some will stick, or that any valid argument will gain more attention as the regulators are obliged to discount the invalid arguments. Such an approach offers little concern for the victims of predatory lenders.

National City claims that the National Bank Act authorizes the OCC to occupy the field of real estate lending regulation thus suggesting that all the provisions of GFLA are preempted. There are strong grounds for arguing that Congress never intended the OCC to preempt the field of real estate lending. Indeed, the OCC has never claimed this type of preemption in interpretative letters nor when it published regulations related to real estate lending following a Congressional overhaul of national bank power to engage in real estate lending in 1982. The proper analysis is whether a state law is "in conflict with some Act of Congress, or where it tends to impair or destroy the utility of such bank, as agents or instrumentalities of the United States, or interferes with the purposes of their creation (Waite v. Dowley, 94 U.S. 527, 533 1877. See also Barnett Bank of Marion County v. Nelson, 517 U.S. 25, 31 1996)." In light of a specific grant of authority from Congress regarding real estate lending and OCC regulations promulgated thereunder, certain provisions of the revised GFLA are preempted and other are not. We assume that the OCC will determine which provisions are obviously not covered and we ask that it apply the strictest standards to provisions whose preemption status are in doubt.

OCC did indeed set the tone of limited preemption in the regulations it promulgated in response to the Garn-St. Germain Depository Institutions Act of 1982 where it set out five specific areas under which national banks might proceed without regard to state law. The OCC opined then that "the Office is preempting, at this time, only those state laws that govern those areas in which federal limitations and restrictions are eliminated. The final rule clarifies the limited scope of the preemption".

It seems to us that the OCC has several ways to recognize the serious consequences of predatory lending in its response to National City. In the first place, OCC should refrain from the preemption of state law on predatory lending until it has promulgated and implemented regulation that effectively

deals with the problem. The 1982 statute codifies the prior statute with regard to the OCC's powers to regulate national banks but left a very clear mandate.

Any national banking association may make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate, subject to such terms, conditions, and limitations as may be prescribed by the Comptroller of the Currency by order, rule, or regulation.

The OCC's advisory letter on predatory lending contains detailed descriptions of the different character-istics of loans that might be considered predatory. This is a useful start but falls far short of a mandate such as contained in the Georgia law that prohibits certain practices in high cost loans. While the charac-ter of a loan depends on several sometimes interacting loan features and the condition of the borrower and the property, the experience of predatory lending shows that bright line prohibitions are the only effective way to stop it. Such lines may sometimes prevent a few appropriate loans, but when those lines are carefully drawn they harm they prevent far outweighs the few appropriate loans they may prohibit.

Second, the Georgia Legislature has recently significantly changed the GFLA. The entire category of covered loans was removed. The anti-flipping provisions have been weakened. Certain types of loans such as bridge loans have been excluded from coverage of the Act and the assignee liability provisions that National City argued impaired their ability to securitize or sell their loans has been eliminated. This change in the statute means that National City's broad challenge to the GFLA and its claims about the effects of the statute on national banks are significantly overstated. In consequence, the OCC should rescind the notice for public comment until such time as it receives a revised request for preemption determination regarding the current version of the GFLA.

The large question, however, is whether the OCC as a public body within the Department of the Treasury believes there are any occasions when its responsibility to the public should outweigh any particular responsibility to national banks. There are, after all, several federal statutes that show clear Congressional intent to protect victims of financial service fraud and deception. These include the Home Ownership and Equity Protection Act, the Real Estate Settlement Procedures Act, the Fair Housing Act, the Equal Credit Opportunity Act and the Truth-in Lending Act. We believe that the OCC, as it considers National City's request, should examine all the statutes governing predatory lending with as much zeal to protect innocent homeowners as it does to protect its national bank franchise. We are aware that the competition

between state and federal bank regulators for client banks can create the conditions for a race to the bottom on regulatory protection. It would massively shake the public's confidence in the OCC if the public concluded that the OCC was destroying protections from quite vicious lending schemes merely to maintain the number of banks seeking a national charter.

Sincerely,

Malcolm Bush
President