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Statement of NCLC Managing Attorney Lauren Saunders On OCC Final Preemption Rule

We are disappointed that the Office of the Comptroller of the Currency (OCC), in its final rule implementing the preemption amendments of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, continues to thumb its nose at state efforts to protect consumers. The agency gives national banks immunity from state laws protecting consumers from abusive mortgage, credit card and overdraft fee practices.

The OCC distorts history by ignoring numerous Supreme Court decisions confirming that national banks “are subject to the laws of the State, and are governed in their daily course of business far more by the laws of the State than of the nation.”¹ While the OCC has made some changes in its proposed rule, the agency has failed to correct the fundamental flaws in the rule that violate several aspects of the Dodd-Frank Act:

- The OCC’s sweeping preemption of broad fields of state law governing deposit-taking and lending violates the mandate that the OCC cannot “occupy the field in any area of State law” and can preempt “only if” the OCC determines on a “*case-by-case basis*” that a “particular” state law, or a substantially equivalent one, prevents or significantly interferes with the exercise of bank powers.
- The OCC ignores the fact that the Dodd-Frank *grandfather clause* preserves prior OCC regulations only for contracts entered into before July 22, 2010.
- The OCC refuses to use the congressionally mandated standard that a state law is preempted “only if” the state law “*prevents or significantly interferes*” with the exercise of bank powers. The OCC asserts the right to nullify state consumer protection laws that do not significantly interfere with bank powers.
- Dodd-Frank makes clear that “no regulation or order” of the OCC may preempt state law “*unless substantial evidence, made on the record of the proceeding*” supports the OCC’s finding that a particular state law is preempted. The OCC has offered no evidence, produced no record, and held no proceeding.

Lax oversight by the OCC and other federal bank regulators caused the financial crisis. The OCC fails to learn from history: states are partners, not enemies. Restoring states’ role as first responders on the front lines of protecting consumers from unfair bank practices is an essential element of final reform.

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National Consumer Law Center® (NCLC®) is a non-profit organization specializing in consumer issues on behalf of low-income and other vulnerable people. Since 1969, NCLC has worked with legal services and nonprofit organizations as well as government and private attorneys across the United States, to create sound public policy for low-income and elderly individuals on consumer issues.

¹ National Bank v. Commonwealth, 76 U.S. (9 Wall.) 353, 362 (1869); *see generally* See Lauren Saunders, National Consumer Law Center, Restore The States’ Traditional Role As “First Responder” (Sept. 2009), available at <http://www.nclc.org/images/pdf/preemption/restore-the-role-of-states-2009.pdf>.