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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
David C. Hollister, Director

LINDA A. WATTERS
COMMISSIONER

October 3, 2003

The Honorable John D. Hawke, Jr.
Office of the Comptroller of the Currency
250 E Street, SW
Public Information Room, Mailstop 1-5
Washington, DC 20219
VIA EMAIL: regs.comments@occ.treas.gov

Dear Mr. Hawke:

The Michigan Office of Financial and Insurance Services (OFIS) opposes the Office of the Comptroller of the Currency's (OCC) current preemption proposal (Docket No. 03-16; Notice of Proposed Rulemaking, 68 Fed. Reg. 46119, 2003) for the reasons set forth below. OFIS strongly supports the Conference of State Bank Supervisors (CSBS) comment letter regarding this proposal and, along with CSBS, asks the OCC to withdraw the preemption proposal.

The proposal would preempt virtually all state banking and financial services laws for national banks and their diverse range of non-bank, corporate operating subsidiaries that are created under state law. These operating subsidiaries include entities such as finance companies engaged in subprime lending, mortgage companies, title companies, leasing companies, and check cashing companies. The OCC also seeks to bar financial services regulators and law enforcement officials from national banks and national bank operating subsidiaries.

A significant concern is that the OCC lacks the authority to implement the expanded preemption standards in the proposal without Congressional intervention at a minimum. The sweeping preemptions proposed are inconsistent with judicial decisions and Congressional mandates that established a long-standing standard for federal preemption. That standard, clearly articulated in Barnett Bank of Marion County, N.A. v. Nelson, confirms state law applicability to national banks unless they either "prevent or significantly interfere with" a national bank's exercise of its powers.

To date it has not been demonstrated that state laws, state regulators and state law enforcement officials have prevented national banks from conducting, or significantly interfered with their ability to conduct, their business. There are over 9,000 banks in the United States that have earned record profits even during the recent economic slowdown, with the most recent quarter reaching a record high of \$30 billion.

Preemption on the scale proposed by the OCC would require action by the Congress. In addition, the proposal violates the recognized authority of the states to regulate state-chartered corporations.

A second, though no less important, concern is that if this proposal takes effect, Michigan consumers would be placed at serious risk. The wholesale preemption of state licensing and consumer protection laws over these financial service entities would create gaps in areas where there is no federal regulation or consumer protection to fill the vacuum. This would place Michigan consumers in a position of extreme vulnerability relative to individuals in the financial services industry that may engage in fraud and deceptive practices.

State consumer protection programs have been extremely effective in assisting consumers who have been abused by financial institutions. Last year alone roughly \$500 million was returned to consumers following investigations that disclosed misconduct. It should be noted that the combined consumer protection resources of the 50 states working to combat fraud and abusive practices dwarf those of the OCC. OFIS believes it is in the best interest of Michigan consumers to retain our ability to investigate violations and enforce the laws if violations by these entities are established. Forcing Michigan consumers to interface with a federal agency to ensure their rights are protected is not efficient or effective.

Our nation's banking system is vital to the health of our national economy, but the proposal threatens the strength of our dual banking system. This proposal undermines the dual banking system that has historically provided for strong and effective regulation in the nation and in the states. By preempting state consumer protection laws and actions of state regulators, the proposal appeals to banks that operate in multiple states - generally mid-size and larger banks. If virtually all such banks in this country become solely regulated by the OCC, regulatory power will be concentrated in the hands of a single individual. Problems that may emerge from national banks or their operating subsidiaries would be solved, not by state legislation designed to correct a problem in the impacted state or states, but by Congress in a manner that applies new standards, with costly compliance price tags, to all depository institutions (e.g., the detailed disclosures and documentation required of all lenders for a mortgage settlement).

Charter choice is an important factor in a balanced banking system that ensures the regulatory approaches at both the state and federal levels are reasonable and responsive to consumer needs. The strength of the dual banking system should not be jeopardized in favor of a proposal that would tilt this critical balance to federalization of our nation's banking system.

OFIS' concerns can be summarized as:

1. The OCC lacks the authority to implement the expanded preemption standards in the proposal.
2. Michigan consumers would be placed in serious jeopardy.
3. The proposal would concentrate power and policy development affecting the banking system in the hands of one regulatory agency in Washington, DC, undermining the historic successes of the dual banking system.

The OCC's proposal would have an enormous negative impact on millions of consumers nationwide, the dual banking system and the economy. I recommend that the proposal be withdrawn and a thorough review undertaken to determine the potential far-reaching implications that would result from such a dramatic change to the nation's banking system.

Sincerely,

Linda A. Watters
Commissioner