WRITTEN STATEMENT

OF

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FOR THE HEARING ON:

"CONGRESSIONAL REVIEW OF OCC PREEMPTION"

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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Good morning Chairman Kelly, Ranking Member Gutierrez, and Members of the Subcommittee on Oversight and Investigations. My name is W. Lee Hammond. I am a member of AARP's Board of Directors.

I appreciate this opportunity to offer AARP's assessment of the Office of the Comptroller of the Currency's (OCC) recent action to preempt the applicability of state laws to national banks and their state chartered, non-bank, operating subsidiaries.[1] While the recent rulemaking by OCC broadly preempts state laws affecting virtually all aspects of national bank and operating subsidiary activities, including deposit-taking, consumer lending and real estate lending, I have focused my testimony on the rules' impact on state laws and enforcement actions designed to stop predatory mortgage lending, AARP's primary area of focus in recent years.

We are very concerned that the OCC has both exceeded its authority and has minimized the breadth of the problem of predatory mortgage lending in its rule to substitute a single substantive regulatory provision for the broad panoply of protections that currently exist under state anti-predatory mortgage lending and unfair, deceptive acts and practices laws. In so doing, the OCC is undermining state efforts to protect consumers and thereby taking action that is injurious to the public interest. AARP believes that Congressional action is necessary to protect consumers from predatory mortgage lending.

My testimony will focus on the following areas:

- National banking laws do not afford unfettered preemption authority over activities of national banks.
- State predatory lending laws are authorized by Home Ownership and Equity Protection Act (HOEPA).
- Overbroad preemption of all state consumer protection laws is an unwarranted intrusion into the exercise of legitimate state powers and injurious to the public interest.
- Preemption invades and purports to restrict express powers of judicial visitation over national banks.
- Operating subsidiaries of national banks are subject to state consumer protection laws and visitorial powers.

[1] See Final Rule on Visitorial Powers, 12 CFR Part 7, 69 Fed. Reg. 1895 (January 13, 2004); Final Rule on Preemption, 12 CFR Parts 7 & 34, 69 Fed. Reg. 1904 (January 13, 2004) "Generally, the rule provides that state laws do not apply to national banks [and their operating subsidiaries] if they obstruct, impair, or condition a national bank's exercise of its federally-authorized lending, deposit taking, and other powers." OCC Bulletin, OCC 2004-6.

Background

Throughout the past decade, AARP has been engaged in a range of activities targeted at curbing the growth of predatory mortgage lending in this country. AARP actively participated in negotiations leading to the passage of the Home Ownership and Equity Protection Act; participated with representatives of the mortgage industry in HUD sponsored negotiated rule-making under *S*ection 8 of the Real Estate Settlement Procedures Act (RESPA); and has engaged in extensive discussions with consumer and industry representatives aimed at broad based mortgage reform. In these discussions, AARP has expressed the need for changes in the nation's federal laws to address abusive lending practices, and has proposed measures that would offer substantive protections against predatory mortgage lending. During this time, the number of victims of predatory lending, many of whom have come to AARP, has grown dramatically. In 1998 and 2000 HUD, the Federal Reserve Board, and the Treasury Department issued extensive reports defining predatory mortgage lending, chronicling its established patterns and its continued growth.[2] AARP has also supported federal legislative efforts to respond to these reports and stem the tide of predatory mortgage lending.

In 1999, consumers, government officials, and industry representatives in North Carolina worked together to pass the first state bill to address predatory mortgage lending. AARP, the National Consumer Law Center, and Self-Help Credit Union drafted a model bill based on the North Carolina law, that established a starting point for further state legislative advocacy. From these seeds, at least 15 other states enacted predatory mortgage lending laws or regulations. These state laws and regulations were designed to avoid preemption problems by avoiding rate and fee setting and by using the HOEPA model.

It is against this backdrop that AARP addresses the OCC's action that preempts the application of state laws to national banks and their operating subsidiaries. AARP believes that OCC's action will expose older borrowers to intensified predatory behavior, equity stripping and foreclosures.

[2] *See* Federal Reserve Board and U.S. Department of Housing and Urban Development *Truth in Lending Act and the Real Estate Settlement Procedures Act: A Joint Report* (July 1998); U.S. Department of Housing and Urban Development and U.S. Department of Treasury *Curbing Predatory Home Mortgage Lending: A Joint Report* (June 2000).

The National Banking Laws Do Not Afford Unfettered Preemption Authority Over Real Estate Lending by National Banks [and their operating subsidiaries]

Despite the OCC's assertion that there are virtually no limitations on its exclusive authority to regulate the deposit-taking, consumer lending and real estate lending activities of national banks, for nearly 200 years Congress[3] and the judiciary[4] have clearly imposed limitations on this activity and have made national banks subject to a variety of state laws. More recently, in 1994, Congress took action that plainly instructed the OCC that it did not have the unfettered authority to preempt the field with respect to national bank powers. In the Interstate Banking and Branching Efficiency Act, 12 U.S.C. § 36, Congress explicitly stated that state laws apply to national bank branches located in that state. This provision makes clear that there is no intent on the part of Congress to afford unfettered preemption of state law as to national banks.

> Law applicable to national bank branches. (A) In general. The laws of the host State regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State. . .[5]

There are only two exceptions to this rule: (1) when federal law by its own terms preempts the state law; and (2) when a state law has a discriminatory effect on national banks, as determined by the OCC. In taking this action, Congress made clear the very limited preemption authority of the OCC.

Interpretive Letter 674, issued by the OCC in 1995, expressed the OCC's view of the limitations on its preemption authority. Through this Letter, the OCC acknowledged the general rule that states have concurrent powers with the federal government on banking matters and that state law will be "presumed valid unless it conflicts with federal law, frustrates the purpose for

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[3] Congressional action over the course of the past century has supported the application of state laws to national banks. Recognizing the healthy competition and innovation of the dual banking system, Congress has repeatedly acted to maintain equal powers for and equal treatment of state and national banks. Examples include Congressional action providing FDIC coverage to both state and national banks; allowing national banks the same intrastate branching ability as their state counterparts; imposing the same reserve requirements on state FDIC insured banks as are imposed on national banks, and giving state banks parity with national banks regarding usury limits.

[4] As recently as 1996, the U.S. Supreme Court, in holding that a state may not "forbid, or impair significantly, the exercise of a power that Congress explicitly granted" to national banks, took pains to clarify that, "to say this is not to deprive States of the power to regulate national banks, where. . . doing so does not prevent or significantly interfere with the national bank's exercise of its powers." *Barnett Bank v. v. Nelson*, 517 U.S. 25, 33 (1996). See also, *National Bank v. Commonwealth*, 76 U.S. (2 Wall.) 353, 362 (1870) ("national banks are governed in their daily course of business far more by the laws of the State than of the nation. . . . It is only when State law incapacitates the [national] banks from discharging their duties to the federal government that it becomes unconstitutional"); *Atherton v. FDIC*, 519 U.S. 213, 222 (1997) (as a general principle, "federally chartered banks are subject to state law").

[5] 12 U.S.C. §36(f)(1)(A).

which the national banks were created, or impairs their efficiency to discharge the duties imposed upon them by federal law."[6] Moreover, the OCC's painstaking and particularized listing of preempted laws in its annual description of permissible activities for national banks reinforces the principle that preemption is appropriately analyzed on a case-by-case basis, not through field preemption.[7] The OCC's newly adopted standard significantly lowers the bar, to the detriment of consumers.

State Predatory Lending Laws Are Authorized by HOEPA and Are Necessary To Protect Consumers

AARP believes that state predatory lending laws are consistent with the purposes and objectives of Congress. Federal statutes such as the Truth-in-Lending Act and HOEPA have established the Congressional intent and purpose of eliminating abusive and predatory lending practices of all lenders including national banks. HOEPA establishes a category of high cost real estate loans and restricts the activities of mortgage lenders in connection with those loans. As a result of Congress' imposition of substantive restrictions on abusive high cost loans and affirmative invitation to the states to enact broader and stricter laws, national banks and other HOEPA lenders are now subject to more protective, state-enacted versions of HOEPA.

> The provisions of section 1639 of this title do not annul, alter, or affect the applicability of laws of any State or exempt any person subject to the provisions of section 1639 . . . from complying with the laws of any State, with respect to the requirements for [high cost] mortgages, except to the extent those State laws are inconsistent with any provision of section 1639 . . . and then only to the extent of the inconsistency.[8]

The Conferees concluded that "Loans that do not meet the triggers will continue to be regulated . . . by other applicable laws."[9] Congress has thus made clear that HOEPA and its state progeny legitimately restrict the activities of any high cost lender, including a national bank.

Confronted with growing complaints about abusive lending practices against their citizens, and with homeowners losing their homes to foreclosure, state legislatures and regulatory bodies seized upon the authority granted them by Congress under HOEPA to expand its protections.[10] In response to our members' own experiences with abusive mortgage lending practices, AARP developed a national campaign. AARP's campaign includes a three-pronged approach to stop predatory lending through education, litigation and legislation.

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[6] OCC Interpretive Letter No. 674, June 9, 1995; 1995 OCC Ltr. 73 at 8-9.
[7] *See*, OCC's 2002 Activities Permissible for a National Bank
[8] 15 U.S.C. §1610(b).
[9] H.R. Conf. Rep. No. 652, 103d Cong. 2d Sess. 147, 159 (1994).
[10] *See, e.g*., Brief of *Amici Curiae* in Support of Appellee OBRE, *Illinois Association of Mortgage Brokers v. OBRE*, No. 02-1018 (U.S. Court of Appeals for the 7th Circuit).

AARP has actively engaged in state legislative efforts to pass anti-predatory mortgage lending laws in North Carolina, New York, Massachusetts, Pennsylvania, Georgia, Ohio, California, Colorado, Kentucky, New Jersey, Florida, South Carolina, Arkansas, Oklahoma, New Mexico and Illinois. AARP continues to work for passage of such laws in five additional states: Arizona, Indiana, Michigan, Minnesota and Tennessee.

These legislative efforts track HOEPA, while providing stronger consumer protections. These laws create a class of loans (high cost), like HOEPA, that are more likely to be abusive or predatory. Lending practices that are restricted or limited regarding these high cost loans are the same as those included in HOEPA. HOEPA and the state predatory lending laws place limitations and/or restrictions on practices such as loan flipping, asset-based lending, and packing of excessive fees and costs (e.g., single premium credit insurance) in the principal amount of the loan. The OCC has itself acknowledged the need for national banks to guard against these abusive and predatory lending practices.[11]

AARP is concerned, however, that rather than recognizing the important contribution of state laws in seeking to eradicate predatory mortgage lending, the OCC has chosen to preempt them. In so doing, the OCC has not offered a comprehensive and uniform regulation to replace these important state laws. Instead, the OCC has adopted a single, narrowly drafted provision which prohibits national banks and their operating subsidiaries from making a home secured consumer loan "based predominantly on. . . the foreclosure or liquidation value" of the home and "without regard to the borrower's ability to repay the loan. . . ." 12 CFR 34.3(b). Even this narrow prohibition is further constrained by the broad authority granted to banks to determine when a borrower has the "ability to repay." *Id*.

The OCC's second "consumer protection" effort—a simple restatement of the Federal Trade Commission's prohibition against unfair and deceptive practices—is already applicable to these institutions and imposes no additional duties on banks and their operating subsidiaries. See 12 CFR 34.3(c); 7.4008(c).[12] Indeed, the OCC could have chosen to more comprehensively address the unfair and deceptive practices while affording uniformity to national banks by drawing upon state models to remedy these serious problems.[13] Instead, no other regulatory provisions have been adopted to replace these important laws. OCC Advisory Letters which

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[11] *See, e.g.* 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, *Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans* (February 21, 2003).

[12] Moreover, OCC apparently regards even the FTC Act prohibition as applicable only to a bank's lending activities and not more broadly to deposit-taking and other bank activities. Compare 12 CFR 34.3(c) and 7.4008(c) with 7.4007 and 7.4009.

[13] If, as OCC suggests, it does not have authority to issue regulations identifying bank practices it regards as unfair and deceptive, it could easily have included the broad category of state unfair deceptive acts and practices laws in its list of state laws not ordinarily preempted. *See* 69 Fed. Reg. 1904 at 1911.

address predatory lending practices articulate no clear legal standards. See OCC Advisory Letters 2003-2 and 2003-3. More significantly, they afford no legal redress to consumers, and cannot fill the void created by these broadly preemptive rules. The OCC apparently justifies this action by its conclusion that banks and their operating subsidiaries are not significantly involved in predatory lending.[14] However, this conclusion has been significantly called into question by the Center for Responsible Lending's analysis of OCC's research,[15] by comments received by the OCC and by the prevalence of predatory mortgage lending litigation against large national banks and their affiliates.[16]

The Overbroad Preemption of All State Consumer Protection Laws Is An Unwarranted Intrusion into the Exercise of Legitimate State Powers, An Encroachment Onto Express Judicial Powers of Visitation and Injurious to the Public Interest

AARP is concerned that the OCC's new rules are not limited to preemption of state predatory mortgage lending laws, but have implications that are far more extensive. The OCC has broadly preempted "state laws that obstruct, impair, or condition" national banks' exercise of their deposit-taking, consumer lending and real estate lending powers. At the same time, the OCC has identified limited categories of state laws that are not "inconsistent with the real estate lending powers of national banks" and are not ordinarily preempted. Even these laws—governing such traditional areas of state authority as, contracts, torts, debt collection, real estate transfer—are preempted if their effect on the full exercise of the powers of national banks and their operating subsidiaries is more than "incidental."[17] *See* 12 CFR 34.4; 7.4007(b & c), 7.4008(d & e). Notably absent from the short list of normally non-preempted state laws are state unfair and deceptive acts and practices (UDAP) statutes and state common law claims for fraud and unconscionability. AARP submits that the OCC's broad preemption is not merely unauthorized, but that it ignores pressing problems identified by the states and thereby is detrimental to the public interest.

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[14] *See*, OCC Working Paper, Economic Issues In Predatory Lending, July 30, 2003.

[15] *See*, Center for Responsible Lending, Comments on the OCC Working Paper, (September 2003).

[16] *See e.g., Sandy and Michael Packer v. Bank One*, Case No: ___ (Case Number to be assigned.) (Court of Common Pleas, Fairfield County, Ohio). This case, against a national bank, challenges the bank's repeated refinancings of its own mortgage loan, with points and fees exceeding $12,000 on loans of $140,000, with interest rates over 10% when conforming rates were close to 7%, and unaffordable monthly payments that increased with refinancing; *Wells Fargo Home Mortgage v. Denise Brown et al. v. Peach & Pep Construction Co.,* Case No. 00-CH-481 (Cir. Ct. St. Clair County, Ill.). Case is against an operating subsidiary of Wells Fargo national bank; *Hopkins v. Anderson, et al.,* Case No: C2 03 612 (Court of Common Pleas, Muskingum County, Ohio). This case is against ABN AMRO Mortgage Group, a subsidiary of Standard National Bank; *Jefferson v. Citibank* as Trustee for Chase Manhattan Mortgage Corp, Case No. # 03-cv-4366 (D.C. Superior Court). Suit involves Citibank's role as trustee. National banks often derive significant profits from their role as trustees for securtization trusts that include significant numbers of predatory mortgage loans. For example, Bankers Trust Co., N.A., Chemical Bank and Norwest Bank, N.A. served as trustees in securitizations for loans made by the now defunct predatory mortgage lender, First Alliance Mortgage Co.

[17] Docket No. 03-16 at 21.

Laws to protect consumers have traditionally been the province of state government. State consumer protection laws that are generally applicable to all consumer transactions offer a range of protections to consumers in their everyday business dealings. These laws establish minimum codes of conduct, provide redress and cannot reasonably be found to "significantly interfere with the national bank's exercise of its powers."[18] Other state laws, such as laws licensing mortgage brokers and lenders, home improvement contractors, automobile dealers, and finance companies serve an important function in regulating local commerce and ensuring fairness in consumer transactions. To the extent that these state licensed entities are doing business with national banks, these laws are also preempted under the OCC's broad rulemaking.[19] This action, which enables state licensees to ignore state legislative and regulatory requirements, extends the reach of the OCC into an area well beyond its enforcement capacity and expertise.

AARP is further concerned that the OCC's action not only limits the substantive protections in these state laws, but also effectively nullifies the ability of consumers to obtain access to and redress through the courts, by preempting both state and private rights of action. Moreover, OCC's belief that it cannot adopt a comprehensive regulation—analogous to state UDAP laws—defining and prohibiting specific practices as unfair and deceptive highlights the limbo into which injured consumers have been thrust by OCC's action.

The new rule also unjustifiably cuts off the visitorial powers granted to the judiciary under the National Bank Act.[20] Despite OCC assurances in its January 2003 proposed rulemaking that it was not encroaching upon the visitorial powers expressly reserved to the judiciary by the National Bank Act, the current action does just that.[21] Preempting state laws that provide state and individual rights of action undermines the judicial oversight over banks and operating subsidiaries that is afforded through those mechanisms. Here, the OCC would deny consumer protection enforcement, not only to those individuals and to the states, but also to the judiciary. Victims of misrepresentation, deception, fraud and unconscionable practices may be denied redress against the perpetrators of these offenses, if the perpetrators are national banks or their operating subsidiaries.

AARP, which has been representing homeowners victimized by predatory mortgage lending practices for 12 years, has long relied on state UDAP laws to obtain redress for victims of predatory mortgage lending. A recent case, involving a subsidiary of National City Bank, the initiator of the process that led to the new rule, highlights the important role of these laws in obtaining redress for consumers when federal law is not a sufficient deterrent, and the important role of the judiciary in visiting the behavior of national bank subsidiaries. AARP attorneys represented ten older homeowners in a predatory mortgage lending suit in federal court involving ten loans originated by the same mortgage lender and sold to assignees in the secondary

[18] *Barnett Bank v. Nelson*, 517 U.S. 25, 33 (1996).
[19] *See*, Preemption Determination, 66 Fed. Reg. 28593 (May 23, 2001) (preempting application of Michigan motor vehicle finance laws to "agent" of national bank).
[20] 12 U.S.C. §484(A).
[21] Docket No. 0302 at 24, Jan. 27, 2003.

market.[22] Altegra Credit Corporation, a subsidiary of National City Bank, purchased one of the loans. The loan was already in arrears at the time of its purchase, its income verification had been fraudulently produced by the lender, and its documentation failed to comply even with Altegra's own underwriting requirements. The lawsuit alleged—and ultimately proved—that the loans were unconscionable under state UDAP law and were made without regard to the borrower's ability to repay in violation of HOEPA.

Altegra's conduct of the litigation was singular. Altegra demonstrated repeatedly that it had no understanding of HOEPA or its due diligence responsibilities as an assignee and that through its own conduct, Altegra aided and abetted the making of an unaffordable and fraudulent loan. Altegra settled on the eve of trial. The jury returned a verdict affirming the Truth in Lending Act and HOEPA violations. More importantly, in March 2003, the jury awarded $4.1million in punitive damages to six of the plaintiffs based on their finding that the loans in question were unconscionable under the state UDAP law.

Under the OCC's preemption rule, these homeowners, some of whom were facing foreclosure, would have been deprived of the ability to seek judicial redress. The rule preempts the direct state law claims brought by the *Cooper* plaintiffs without offering any alternate private right of action. Beyond this, the preemption action deprives the judiciary itself of the visitorial powers granted it by Congress and leaves regulation of a huge segment of the mortgage market to the limited resources of the OCC.

The breadth of preemption remains to be tested in litigation, but the harshest impact will likely be felt by those with the greatest need for state law protection—homeowners facing foreclosure. With this rule, the OCC likely deprived these homeowners of their ability to raise state law defenses to foreclosure when the mortgage is originated by a national bank or its state licensed, non-bank operating subsidiary. Unprecedented numbers of homeowners, who have in the past been able to rely on state protections in defending foreclosures, are likely to lose their homes as a result of OCC's action. Moreover, as a practical matter, the OCC does not have the resources to step in to stop individuals' foreclosures.

State consumer protection laws, and the consequent ability to seek redress, ensure bedrock principles of fairness in consumer transactions. AARP believes the OCC's rule undermines these fundamental consumer protections. In addition, the combination of the OCC's rules on preemption and visitorial authority wrest authority from states even to enforce those few laws that the OCC does not preempt, thus enabling national banks to avoid these laws as well.

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22 Notably, assignees of the other loans included Wells Fargo, First Union and Household, all affiliates of national banks. National banks or subsidiaries involved in other AARP Foundation litigation include Bank One, Provident, and Citibank. *See Cooper v. First Government Mortgage and Investors Corp., et. al.,* (CA 1:00CV 00536, U.S. District Court for the District of Columbia).

Operating subsidiaries of national banks are subject to state consumer protection laws and visitorial powers

AARP is particularly concerned about the OCC's decision to extend the preemption of state laws to operating subsidiaries of national banks. While the national banking laws preempt some state laws as to national banks, grant the OCC some preemption authority as to national banks, and give the OCC primary visitorial power over national banks, these laws apply only to national banks. What these laws do *not* do is make operating subsidiaries synonymous with national banks. Nor do they grant the OCC authority to treat them as such. As a result, there is no authority in federal law that would: (1) allow the OCC exclusive visitorial powers over operating subsidiaries; and (2) allow operating subsidiaries of national banks the same preemption of state laws as is available to national banks. AARP strongly opposes the OCC's expansion of its power over these creatures of state law.

Despite the OCC's assertions, operating subsidiaries are not departments of national banks but are separate, state-created legal entities. They are not "national banks" or "national bank associations" and the primary authority granted the OCC to examine "national banks" does not extend to them.[23] In fact, as the statute makes clear, the OCC's authority over affiliates such as operating subsidiaries is quite limited.[24]

National banks are well defined in federal law as instrumentalities of the federal government that are federally chartered and are, among other things, eligible to become members of the Federal Reserve System.[25] Section 371, which grants "national banks" authority to do real estate lending, does *not* extend that authority to operating subsidiaries and other affiliates of national banks.[26] The OCC's reliance on the Graham-Leach-Bliley Act (GLBA), 15 U.S.C.§41, as establishing its authority to regulate operating subsidiaries of national banks is misplaced.[27] As a result, states are completely free to license and examine operating subsidiaries.

The OCC has failed to address commenters' legitimate concerns that it has vastly overstepped its bounds in sweeping state chartered non-bank operating subsidiaries into its rules preempting state law and state visitorial authority. OCC's aggressive extension of its visitorial powers deflects attention from commenters' primary concern—the campaign by the national banks to insulate these banks and their state chartered non-bank operating subsidiaries from both state and judicial scrutiny.

Operating subsidiaries of national banks are state-chartered, non-bank corporations that exist under the laws of the state in which they are incorporated, exist only at the pleasure of that state, and are subject to dissolution by that state. In addition, these entities are entitled to do

[23] *Compare* 12 U.S.C.§§221 & 221a with §§484 & 481.
[24] 12 U.S.C.§481.
[25] 12 U.S.C.§221.
[26] *Compare* 12 U.S.C.§§221 and 221a with 12 U.S.C. §484.
[27] *See, Minn. v. Fleet Mortgage Corp.*, 181 F.Supp.2d 995 (D.Minn. 2001) (operating subsidiary of national bank is not a national bank under GLBA and the OCC does not have exclusive jurisdiction over it).

business in other states only if they comply with state licensing and other state regulatory requirements. They are guests of other states in which they do business. They are, as a result, subject to the laws of the states in which they are incorporated and in which they operate.

AARP is particularly concerned that the OCC's action preempts state laws as to national bank operating subsidiaries. In AARP's experience, these entities are much more likely than the national banks themselves to engage in abusive mortgage lending practices. AARP believes the activity of these entities must be subject to examination and regulation by the states and to state-created private rights of action to provide redress to their consumers.

Conclusion

AARP does not believe that the OCC has the authority to broadly preempt state laws that affect national banks. State predatory lending and UDAP laws play an important role in ensuring fairness in consumer transactions, through substantive protections and access to the courts. AARP believes that preemption of these state laws will expose older borrowers to intensified predatory behavior, equity stripping and foreclosures. Older borrowers will find it much more difficult to make comparisons when shopping for loans if different lenders are able to follow different rules in the states. Finally, AARP is concerned that, even if the OCC had the authority to adopt this broad based preemption, it does not now have the resources sufficient to substitute for state enforcement and private rights of action necessary to ensure fairness in the marketplace.

I appreciate this opportunity to testify on behalf of AARP on this important issue. We urge Congress to take steps to curb the OCC's overbroad exercise of power and to better protect consumers in the marketplace. I would be happy to answer any questions you may have.