

April 1, 2004
Statement of Congressman Gutierrez
OCC preemption hearing

Good morning. I would like to thank Sue Kelly, my Oversight Subcommittee Chairwoman, for originally calling this hearing, a follow up to our hearing on January 28. I am pleased that Comptroller Hawke has recovered from his illness and able to join us here today and work with us on this issue. Due to the great interest in this issue, this has become a full committee hearing.

I would also like to thank Ms. Kelly and Mr. Paul for their work on this important issue of OCC preemption. We are committed to working together with a number of our other colleagues on both sides of the aisle, including Ranking Member Frank, to ensure that our states have the power to protect consumers.

And to stop the OCC from eroding strong safeguards that have been used by the states for more than a century to enforce consumer protection laws.

It makes no sense to me that the OCC would attempt this misguided, unprecedented, unchecked expansion of its authority, when the states currently have the tools and resources to effectively enforce consumer protection and other important laws.

As many of you know, since our last hearing in January, Rep. Ron Paul and I passed an amendment to the Financial Services Committees Budget Views expressing concern regarding the budgetary effects of the OCC's recently published preemption rules. The budget views now put the Financial Services Committee on record that the OCC's preemption rules represent an unprecedented expansion of authority, and one that was instituted without Congressional authorization.

We were particularly concerned because the Administration's budget projects OCC spending as increasing only 2 percent from fiscal year 2004 to fiscal year 2005, and provided no staffing increases in FY 2005.

In fact, Mr. Hawke's prepared testimony today indicates that the number of full time employees and bank examiners, in particular, have steadily declined each year over the past three years.

The OCC seems to believe it can function under a budget that is virtually the same

as when it didn't have this vastly increased portfolio of regulatory responsibilities. This means the OCC would have to divert resources from mission critical functions or fail to enforce these consumer protections as diligently as the states have done.

Alternatively, they could significantly increase their bank examination fees, which provide their revenue, but I don't think they (or the banks they serve) are eager for that to happen.

We were pleased that the Committee agrees with us on this important issue and we look forward to continuing to work with our colleagues in Congress as well as the state Attorneys General and others who share our concerns.

I think it is clear that we will never agree with the OCC regarding the authority it purports to have. We may simply have to put it aside as a philosophical difference.

It is more important that we clearly define what responsibilities should remain with the states, including the right of attorneys general to protect their citizens by litigating against banks who violate state laws. I have, in fact, urged the Comptroller to sit down with the Attorneys General and other state regulators to work out some form of cooperative and shared jurisdiction, including state licensing and the applicability of state consumer laws to national banks and their operating subsidiaries. I would hope that some agreement would be reached so that further Congressional action would be unnecessary.

In the meantime, Chairwoman Kelly and I have asked the GAO to investigate and examine the OCC's conduct relating to the finalization of these rules as well as the impact of these rules on the dual banking system. I will eagerly await their report on these issues, and, more immediately, I look forward to the testimony of Comptroller Hawke here today. Hopefully it will be as entertaining as his recent remarks to the American Banker on this issue. Thank you.