

N A C C A

National Association of Consumer Credit Administrators

PO Box 20871 · Columbus, Ohio · 43220-0871 · Phone (614) 326-1165 · Fax (614) 326-1162 · E-mail NACCA2001@aol.com - www.naccaonline.org

Elected Officers and Executive Committee

President

Kevin C. Glendening
Kansas

First Vice President

Robert A. Tedcastle
Florida

Second Vice President

Theresa L. Brady
Mississippi

Secretary-Treasurer

J. Philip Goddard
Indiana

Laura E. Udis
Colorado

Donald K. Hardin
Oklahoma

Joseph L. Mulberry
Wyoming

Executive Director

Raymond J. Sasala

Director John M. Reich
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Director Reich:

The National Association of Consumer Credit Administrators (NACCA) would like to submit the following comments on the Office of Thrift Supervision (OTS) legal opinion letter dated October 25, 2004 from Chief Counsel John Bowman, establishing that state licensing and registration requirements will not apply to the agents of federal savings associations under certain conditions. We appreciate both your consideration of this matter and the opportunity to make public our position on the issues addressed in the OTS letter.

NACCA is an association of state regulators. The association's membership is comprised of 49 state regulators of consumer protection laws in addition to Puerto Rico, the District of Columbia, and Alberta, Canada. NACCA and its membership have represented the primary regulators of consumer credit licensing and protection agencies for 70 years.

NACCA respectfully requests that the proposed letter dated October 25, 2004, as opined by Mr. John Bowman, concerning the preemption of state laws affecting agents of federal thrifts be withdrawn. The position of the OTS on this issue has ramifications that could materially alter the regulatory scheme and the relevancy of state law. NACCA strenuously objects to this position and also requests that the proposed apparent position of the OTS have the oversight, knowledge and input of the United States Congress before further action or consideration is given.

It is with regret that NACCA and other associations that promote state regulation are once again experiencing the erosion of the system of state regulation by a federal agency. The Office of the Comptroller of the Currency (OCC) has also been active in attempting to set aside state regulation through its opinions and other actions.

Based on the legal opinion of the October 25 letter, the OTS is exercising a preemption power on behalf of non-depository, third party, entities that was not contemplated nor mentioned in the Home Owners Loan Act (HOLA). NACCA finds this to be an exercise of authority that exceeds the power possessed by the OTS. Preemption for federal thrifts is derived from HOLA and is to be applied to federal thrifts. It does not purport, by implication or by specific wording of the act, to apply to entities that contract with federal thrifts. It is true that the OTS has the authority to examine and regulate third parties who contract with federal thrifts in the areas of marketing, solicitation and customer service activities. As of March 20, 1998, pursuant to 12 USC 1464(d) (7) such authority was solely for the purposes of assuring the safety and soundness of the federal thrifts. It certainly was not for the purposes of exempting such third parties from all licensing and other consumer protection provisions of state laws.

N A C C A

National Association of Consumer Credit Administrators

PO Box 20871 · Columbus, Ohio · 43220-0871 · Phone (614) 326-1165 · Fax (614) 326-1162 · E-mail NACCA2001@aol.com - www.naccaonline.org

Director John M. Reich
Office of Thrift Supervision
Page 2

NACCA cannot help but raise the larger question of why this is being done. In reviewing the rationale of the OTS and the OCC, it is readily apparent that to arrive at the preemptive extreme being exercised, takes an imaginative application of the construction of the English language to accomplish a specific objective. It is this objective that concerns NACCA and its state regulators. In reviewing the totality of the positions taken by the OTS and the OCC concerning preemption, it is obvious to even the casual observer that the objective is to strip states of any and all powers relating to the protections of its state's citizenry via state law if a federally chartered institution is even remotely involved with a credit transaction. By doing so, the federally chartered institution will appear to be the more preferred charter. By creating an uneven playing field in this regard, the federal agencies involved will be delivering a damaging blow to the integrity of the dual regulatory system.

State legislatures have enacted consumer protections and restrictions on lending transactions. Such protections and restrictions are not directed at nor meant to be punitive to any state or federally chartered depository institution or its agents. They are designed to protect the citizens of the various states from less than scrupulous lenders or their agents. Many of the protective provisions are based on the economic and sociological factors of the particular state enacting such restrictions. Thus, it is the states and the state legislatures that are comprised of citizens from those states that are in the best position to determine what is best for their citizens. For employees of a federal agency to be empowered to strike down such provisions with a total disregard of the reasons for enacting such provisions seems to be a power that was not contemplated by Congress. This is especially true when the safety of the federal thrift is not in question. It is apparent that the preemption is being done to shield a third party agent from any licensing inconvenience and to circumvent any profit limitations that might exist within state laws. In the opinion letter, there seems to be some dispute as to whether or not a principal-agency relationship even exists.

NACCA also believes that Presidential Executive Order 13132 was totally disregarded. This order was developed to address the concern that various federal agencies were not considering the importance of state legislatures. It directs and encourages executive departments and federal agencies to closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such action. It further provides the "National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance." This Order was issued to avoid the very situation to which NACCA now takes exception. NACCA is not aware of any communications or joint collaboration with state officials prior to the issuance of the letter in question in October of 2004.

Because of the broad public policy implications associated with the General Counsel's opinion letter, NACCA submits that an opportunity for public comment would have been far more appropriate and might have provided information to the OTS that would have averted such a position as taken in the letter.

Our association hopes, in the future, to be afforded the opportunity to work in coordination with the OTS in providing input to issues of such importance.

Sincerely,



Kevin Glendening, President
National Association of Consumer Credit Administrators

Cc: Members of the United States Senate Banking, Housing and Urban Affairs Committee
Members of the United States House of Representatives Financial Services Committee