



Predatory Lending Update

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In Brief: Dems: Proposed Rule Beyond OCC's Scope

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By Todd Davenport

A group of Senate Democrats on Monday asked the Office of the Comptroller of the Currency to delay a real estate lending rule that would preempt a swath of state anti-predator laws.

In addition, Sen. Paul Sarbanes of Maryland, the ranking Democrat on the Banking Committee, introduced legislation to curb predatory lending. Sen. Sarbanes has introduced similar legislation in the past.

The request to delay the proposed rule came in a letter to Comptroller John D. Hawke Jr. from Sen. Sarbanes and fellow committee Democrats. The letter said the agency's recent preemptions, as well as its proposal, exceeded its authority.

"The OCC now appears to be ignoring both the Supreme Court and Congress by pursuing a preemption agenda that would override any state law that has any impact on a national bank," the letter said. "The OCC's actions and proposals would dramatically alter established preemption standards and would radically affect state-federal relations and consumer protection in the areas of banking."

The letter asked the OCC "to defer any further rulemaking on preemption of state laws at this time."

A spokesman for Sen. Sarbanes said all 10 committee Democrats signed it.

An OCC spokesman declined to comment until agency officials had reviewed the letter.

In the meantime, community groups that have opposed the OCC's proposal welcomed the letter.

"I think it is very helpful," said John Taylor, the president of the National Community Reinvestment Coalition. "I would think that Jerry Hawke and the career people at the OCC wouldn't want to necessarily ignore the will of every Democrat on the Senate Banking committee. I don't think that's a group that they want to en masse ignore."

Margot Saunders, the managing attorney at the National Consumer Law Center, said the OCC's proposal is as much about politics as it is about the law. It is a contest among the Comptroller's Office, the Office of Thrift Supervision, and the Federal Deposit Insurance Corp. over "who gets to provide the best benefits to banks to see which one they want to be," she said. That, she said, will be "a race to the bottom that is going to hurt American consumers."

An industry representative defended the agency.

"The OCC is a very careful regulator and they are especially careful when it comes to preempting state law," said Kathleen Collins, a banking partner at Morgan Lewis & Bockius in Washington. "It would seem to me that if states disagree with the final regulation, it's easy enough to test the OCC's position in litigation. That seems to me to be the place to test whether or not the OCC has this power."

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