AMERICANS FOR FINANCIAL REFORM
ACCOUNTABILITY • FAIRNESS • SECURITY

7 May 2010

KEEP STATE ATTORNEYS GENERAL ON THE PREDATORY LENDING BEAT

OPPOSE AMENDMENTS TO FURTHER PREEMPT STATE AUTHORITY

Dear Senator,

We write on behalf of an unprecedented coalition of more than 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as Nobel Prize-winning economists.

We urge you to oppose efforts to weaken carefully crafted compromise provisions on state enforcement in S 3217, the Restoring America's Financial Stability Act. The weakening proposals would limit the authority of state attorneys general to enforce new federal financial rules and also slam shut any room for state legislatures to address new bank abuses before they spread. Please resist self-serving calls from Wall Street lobbyists to weaken the bill by gutting attorney general enforcement of consumer rules or weakening the current minimal protections in the bill against unnecessary preemption of state consumer protection laws. Instead, please heed the bipartisan call of attorneys general and governors to give states a role in protecting their consumers.

We face the worst crisis since the Great Depression because lax enforcement of federal consumer protection laws and preemption of state predatory lending laws left consumers at the mercy of bank abuses. The bill already contains numerous concessions to the banking industry, yet the banks are asking for more because they don't want to be held accountable at all under federal or state law.

Banks largely are already largely immune from state laws under the OCC's overbroad preemption approach, making it essential that federal rules are enforced. State attorneys general are a key part of that enforcement scheme. Even with the modest improvements to current law's preemption in the bill, banks still will be able to ignore many state consumer protection laws. So, federal law must be enforced adequately or consumers will be left without protection from predatory lending. But the bill has serious weaknesses on enforcement. It does not give injured consumers a private remedy against wrongdoers. It also fails to give the Consumer Financial Protection Bureau (CFPB) full enforcement powers against smaller institutions, leaving enforcement to the banking regulators whose failures caused this crisis. These flaws should be fixed, and the bill should not be weakened by taking state AGs off the beat.

State AG enforcement is necessary to hold violators of federal law accountable. Even a strong CFPB would not have sufficient resources to address all violations. The CFPB is responsible for protecting hundreds of millions of consumers in trillions of transactions. It cannot do the job alone with the resources proposed. Help from state AGs is critical to ensuring that consumers have at least minimum protections against reckless Wall Street practices. In addition, consumers are much more likely to complain to, and get a response from, state-based enforcement agencies. And federal regulators are more likely to be responsive if they know they do not have a monopoly on enforcement.

AGs regularly enforce other federal laws and would have detailed coordination requirements. Plus, consistent enforcement everywhere levels the playing field. AGs already enforce many federal laws against banks, including the Home Owners' Equity Protection Act, the Fair Credit Reporting Act and others. Under S. 3217, AGs must notify both the CFPB and the bank's prudential regulator before acting. The Bureau can intervene and provide guidance on its rules and bank regulators regularly file amicus briefs in court. Inconsistent interpretations of federal law have never been a problem. The bigger threat is gaps in enforcement, with violations in some states catching the attention of federal regulators and others going unaddressed. Consumers everywhere need protection, and weak or uneven consumer protection gives unscrupulous companies a competitive advantage over responsible ones.

States need to be able to address new problems before they spread nationally, without waiting for federal regulators to notice them and respond. Beginning in the late 1990s and culminating in a draconian 2004 regulation by the Office of the Comptroller of the Currency (OCC), state consumer protection laws that applied to national banks were wiped out under the theory that federal laws superseded them—this is called "preemption" of state law—even though federal law did not include consumer protections. But state consumer protection laws were working. States that had tough anti-predatory lending laws (until they were preempted) had lower foreclosure rates than states without those laws. After state laws were preempted, national banks made riskier loans,

The bill already gives the OCC or successors too much power to preempt state consumer protection laws. The modest steps to give states some room to protect consumers from new bank abuses should be strengthened, not weakened. Senator Dodd's original bill would have required national banks to comply with state laws. The current bill allows the OCC to exempt national banks from a state law if it decides that the law significantly interferes with banking and that there are some federal protections in place. This compromise responds to the concern that state laws might interfere with the business of banking, even though that concern is misplaced. *State* banks must comply with state laws regardless of federal preemption. If a state law really harmed the business of banking, then state banks would challenge it and, for a variety of reasons, it would not survive.

At the same time, the compromise seeks not to sacrifice too much protection for consumers. It is critical to require a case-by-case assessment of state laws for purposes of federal preemption rather than permitting state laws to be wiped out broadly without due consideration for each law. This is the least we can ask if we care at all about curbing bank abuses and protecting consumers. If federal protections are lacking, that is precisely when state laws should not be preempted. Most important, the protections in the bill against excessive preemption need to be strengthened, substantively and procedurally, to ensure that the OCC must undertake a serious inquiry and not a pro forma one.

In summary, respect for the role of states in our constitutional system of federalism and for the importance of consumer protection demands that states be allowed to protect their citizens and that state laws not be preempted cavalierly*. For information, please contact Lauren Saunders of the National Consumer Law Center (lsaunders@nclcdc.org); Gail Hillebrand at Consumers Union (hillga@consumer.org), Kathleen Keest at Center for Responsible Lending (kathleen.keest@responsiblelending.org); or, Lisa Donner at Americans for Financial Reform (lisa.donner@gmail.com).*

Sincerely,

Americans for Financial Reform
Our 250 member groups: http://ourfinancialsecurity.org/about/our-coalition/