

13 May 2010

**OPPOSE CARPER #3949 GIVING NATIONAL BANKS IMMUNITY
FROM FEDERAL AND STATE CONSUMER PROTECTION LAWS
Don't Take States and AGs Off The Predatory Lending Beat**

Dear Senator,

We write on behalf of the members of state Public Interest Research Groups, which are non-partisan, non-profit public interest advocacy organizations. As a federation of state organizations, U.S. PIRG and its members have long been offended by numerous Congressional or federal agency efforts to limit the rights of the states to exercise both their longstanding police power to enforce the laws and their ability in our federal system to make the laws.

The Carper Amendment #3949 is a stealth attempt to give banks immunity from consumer protection, taken directly from the bank lobbyists' playbook. If you care more about protecting consumers from bank abuses than you care about protecting banks who are violating the law--you should oppose this amendment. The bill's enforcement and preemption provisions are already a compromise and must not be weakened further.

1. Would Eliminate Attorney General Enforcement of CFPB Rules:

The amendment would take our state cops off the predatory lending beat. The CFPB's authority has already been cut back, and the Carper amendment would leave enforcement for 98% of banks (all small banks) solely in the hands of the bank regulators who failed us in the past.

- Anyone who violates the law should be accountable. Do not give banks that violate specific CFPB rules a special pass against vigilant enforcement.
- Under another provision of the bill, the CFPB will have *no enforcement authority against 98% of banks*, making it critical that AGs be able to protect their states' residents.
- The CFPB cannot be everywhere, protecting consumers in all 50 states, and individuals won't have a right to enforce the CFPB rules themselves. AGs need to be able to protect residents in their states.
- Many existing federal laws permit enforcement by state AGs, with no ill effects.
- Before bringing an enforcement action, the bill already requires AGs to consult with the CFPB and bank regulators, and the CFPB may intervene or clarify its rules, ensuring consistency in enforcement standards.
- More law enforcement helps everyone, including honest competitors who follow the rules, have nothing to fear, and lose business to others who break the rules.

2. Establishes Immunity from State Law:

The amendment makes it easier for national banks to ignore state laws that address new bank abuses not yet covered by federal protection – the state laws we need the most. Preemption prevents states from stopping those abuses before they spread nationally.

U.S. PIRG Letter To U.S. Senate Opposing Carper #3949 Amendment, 13 May 2010, 2 of 2.

- The Senate compromise provision in the bill *already* gives the OCC, an agency with a history of hostility to consumer protection, far *too much power* to wipe out state consumer protection laws. The provision should not be weakened further.
- States are first responders who act first and stop local abuses from spreading to become a national problem. Their laws are *most important* when there is a gap in federal law.
- States that adopted tough anti-predatory lending laws before the OCC preempted those laws had lower foreclosure rates than states without those laws.
- National banks made riskier loans after the OCC issued a broad preemption rule. In 2006, from 32% to 50% of toxic loans, depending on the type, were made by banks and subsidiaries that states could not touch, and that share was growing.
- Preemption favors large national banks and weakens our dual banking system.

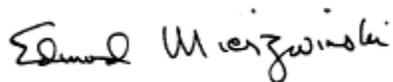
Banks – which have opposed stronger consumer protections all along -- have identified state attorney general enforcement and preemption of state laws as their key weakening amendments. The banks want to be able to ignore both state and federal law with impunity. **A vote for Carper #3949 is a vote against consumer protection.**

In a time of global economic crisis we clearly need more enforcers of consumer protection laws, not fewer.

Congress and previous executive branches, backed by the courts, have failed to learn what may be the most important lesson of the federalist system: competition for public policy ideas fosters accountability. A marketplace of public policy ideas is no different than a marketplace of consumer products—when you have only one seller, you have a monopoly. A monopoly of ideas is a market failure that leads to bad public policy. Congress rarely acts to protect consumers unless the states act first, unless there is a scandal. Even the epic Enron scandal didn't guarantee passage of a corporate reform law in 2002. Without the follow-on WorldCom scandal, the accountants and Wall Street would have blocked significant reforms. While the current Wall Street scandal and subsequent worldwide economic collapse will likely lead to enactment of some reforms, it shouldn't be at the expense of state action. We cannot wait for more scandals; we need to ensure that the states remain as sellers in the marketplace of ideas and as first responders when new, emerging problems occur.

Please oppose the Carper amendment. Contact Ed Mierzwinski (edm@pirg.org) with any questions.

Sincerely,



Edmund Mierzwinski
Consumer Program Director



Gary Kalman
Director, Federal Legislative Office