



**Americans for Financial Reform**  
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June 27, 2011

Acting Comptroller John Walsh  
Office of the Comptroller of the Currency  
250 E Street, SW, Mail Stop 2-3  
Washington, DC 20219

Re: OTS Integration; Dodd-Frank Implementation, Docket IS OCC-2011-0006, RIN 1557-AD41

Dear Comptroller Walsh:

On behalf of Americans for Financial Reform and the undersigned consumer, civil rights, legal services, labor and community organizations, many of which are AFR members, we respectfully submit the following comments on the preemption and state enforcement provisions of your proposed Dodd-Frank Act Implementation regulations.

We have seen the havoc that weak consumer protection wreaked on communities across the country. Dangerous mortgages, unfair credit card practices, plots to increase overdraft fees, and a number of other bank practices not only inflicted immense harm on consumers but destroyed banks, our financial system and our economy. States and state laws attempted to stop these practices but they were thwarted by federal preemption.

As Congress worked to rebuild our consumer protection system in the Dodd-Frank Wall Street Reform and Consumer Protection Act, it chose to encourage an active and effective partnership between the states and federal financial regulatory agencies. Even with a strong new Consumer Financial Protection Bureau, states are essential first responders, on the front lines where they see abuses first and can react more quickly, before problems become widespread nationally.

Rather than embrace the states' role as partners and the mandates of the Dodd-Frank Act, the OCC's proposed rules would continue to broadly preempt state consumer protection laws governing mortgages, credit cards, bank accounts, and other banking products. The proposed regulations also impermissibly restrict the enforcement actions states may take.

#### **I. The OCC Must Repeal Its Broad Preemption Rules**

Congress adopted the preemption reforms in the Dodd-Frank Act for the purpose of "undoing broader standards adopted by rules, orders, and interpretations issued by the OCC in

2004.”<sup>vi</sup> The OCC is therefore required to rescind the 2004 regulations and issue new regulations consistent with the mandates of Dodd-Frank. Instead, in its proposed rule the OCC leaves in place those broad 2004 preemption regulations.

The proposed regulations violate the Dodd-Frank Act because they:

- Apply the 2004 regulations (with minor changes) to new contracts, even though the Dodd-Frank Act grandfathered only contracts entered into on or before July 21, 2010.
- Broadly preempt state laws governing lending and deposit taking, effectively preempting the field in those areas.
- Preempt state laws without determining if they prevent or significantly interfere with the exercise by the national bank of its powers.
- Preempt entire classes of laws without examining particular state laws on a case-by-case basis or consulting with the Consumer Financial Protection Bureau.
- Preempt state laws without conducting a proceeding where substantial evidence is put on the record.
- Assert authority to preempt general state laws despite Congress’s decision to give the OCC authority only over state consumer financial laws.

The OCC must repeal its 2004 preemption regulations and proceed in accordance with the substantive and procedural standards that Congress specified.

## **II. The OCC Inappropriately Restricts State Enforcement Actions**

The Dodd-Frank Act codified the Supreme Court’s decision in *Cuomo v. Clearing House Association*, which rejected the OCC’s position that states could not bring enforcement actions against national banks. Congress specifically provided that states can enforce “applicable” laws, state or federal, in addition to the state fair lending law at issue in *Cuomo*. The OCC’s proposed regulations, however, would continue to restrict state enforcement actions, especially actions under federal law, except under “limited circumstances.”

As the financial crisis has shown, we need every cop on the beat to ensure that abusive banking practices do not harm consumers or the nation. Federal regulators failed to enforce the law, and even with increased vigilance they will not have the resources to police every violation. Enlisting the resources of the state attorneys general to ensure that every bank complies with the law will save resources at the federal level while ensuring a level playing field, protecting consumers and good industry players alike.

The OCC must revise its visitorial regulations to conform to Dodd-Frank and the *Cuomo* decision.

### **III. Conclusion**

The OCC must learn from the past. Strong consumer protection ultimately helps both consumers and the banking system, and the states play an essential role in defending it. We respectfully urge the OCC to repeal its preemption regulations and to revise its visitorial powers regulations in accordance with the requirements of the Dodd-Frank Act.

Sincerely,

Americans for Financial Reform

Arkansans Against Abusive Payday Lending

Atlanta Legal Aid Society, Inc.

Advocates for Basic Legal Equality

California Reinvestment Coalition

Center for Digital Democracy

Center for Responsible Lending

Civil Justice Inc. on behalf of its Maryland low and moderate income clients

Community Legal Services of Philadelphia

Community Legal Services of New York

Connecticut Fair Housing Center

Consumer Action

Consumer Federation of America

Consumer Law Section of the State Bar of Michigan

Consumer Watchdog

Consumers for Auto Reliability and Safety

Consumers Union

Democratic Processes Center, Inc

Economic Fairness Oregon

Empire Justice Center

Fair Housing Napa Valley  
Greenlining Institute  
Housing and Economic Rights Advocates  
Housing Research & Advocacy Center  
Jacksonville Area Legal Aid, Inc  
Law Foundation of Silicon Valley  
Legal Aid Foundation of Los Angeles  
Legal Services Advocacy Project  
Legal Services of New Jersey  
National Association of Consumer Advocates  
National Fair Housing Alliance  
Neighborhood Economic Development Advocacy Project (NEDAP)  
New York Public Interest Research Group (NYPIRG)  
North Carolina Justice Center  
Ohio Association for Justice  
PICO National Network  
Privacy Activism  
Privacy Rights Clearinghouse  
Sargent Shriver National Center on Poverty Law  
SC Appleseed Legal Justice Center  
SEIU  
The American Association for Justice  
U.S. PIRG  
Vermont Slauson Economic Development Corporation

Virginia Citizens Consumer Council

Western Center on Law and Poverty

Women's Economic Ventures of Santa Barbara

Woodstock Institute

## **Following are the partners of Americans for Financial Reform.**

*All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.*

- A New Way Forward
- AARP
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company

- Home Actions
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE!
- United Food and Commercial Workers

- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

*Partial list of State and Local Signers*

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR

- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY

- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

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<sup>i</sup> The Restoring American Financial Stability Act of 2010, Sen. Comm. On Banking, Housing & Urban Affairs, S. Rep. No. 111-176, at 175 (Apr. 30, 2010).