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**TESTIMONY OF**

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**COMPTROLLER OF THE CURRENCY**

**BEFORE THE**

**COMMITTEE ON FINANCIAL SERVICES**

**OF THE**

**U.S. HOUSE OF REPRESENTATIVES**

**JUNE 13, 2007**

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The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

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## INTRODUCTION

Chairman Frank, Ranking Member Bachus, and members of the Committee, I welcome this opportunity to appear before you today to discuss consumer protection issues in the banking industry. In your letter of invitation, the Committee expressed interest in various issues relating to the adequacy of current federal consumer protection rules, including the federal banking agencies' use of authority to combat unfair or deceptive financial trade practices; the effectiveness of existing consumer complaint resolution mechanisms; improvements that may be needed in both areas; and the role of state agencies in protecting financial consumers, particularly given recent developments concerning preemption of state laws.

I welcome this opportunity to describe all that the Office of the Comptroller of the Currency (OCC) does in this important area. The OCC takes its consumer protection responsibility very seriously. In recent years, retail banking has become an increasingly important component of national banks' activities and balance sheets; national banks have become much more important providers of consumer credit and other consumer financial services; and consumer financial products have become more diverse and complex. To address these developments, the OCC has increasingly focused on assuring fair treatment of national bank customers, and we have used all the tools at our disposal to do so.

Frankly, I believe our comprehensive approach to consumer protection is not well understood. The fact is, consumer protection is a fundamental part of our mission; we are not simply a safety and soundness regulator, as some have suggested. Accordingly, Part I of my testimony discusses our approach to consumer protection in some detail in order to provide a thorough description of what we do and how we do it. In particular, this part of the testimony describes the critical and unique role that our supervision plays in ensuring compliance with federal consumer protection standards. Our extensive and continual presence in national banks –

from large teams of resident examiners at our largest banks to our frequent on-site examinations of our community banks – allows us to identify and fix consumer compliance issues early and swiftly, before they become major problems.

Thus, ours is not an "enforcement-only" compliance regime – far better to describe our approach as "supervision first, enforcement if necessary," with supervision addressing so many problems early that enforcement often is not necessary. Indeed, given the effectiveness of the supervisory process, the number of formal enforcement actions taken by any bank supervisory agency is a misleading measure of the effectiveness of its consumer compliance regulation. Yet when we have needed to take strong enforcement action, the OCC has not hesitated, as our track record shows. And, as Part I further describes, our enforcement efforts have often been innovative, providing new precedents, standards, and legal theories to protect bank customers.

Finally, Part I concludes with a description of our robust process to address consumer complaints, including the new complaint sharing agreements we have signed with 18 states since November. It also discusses the OCC's planned launch, by the end of this summer, of a new consumer-focused internet site, www.helpwithmybank.gov. Among other things, a consumer having a problem with a financial institution will be able to access the site to obtain succinct and useful information about the institution's regulator and how to contact that regulator.

In short, we believe that the OCC's comprehensive approach to consumer protection regulation – integrating guidance, supervision, enforcement, and complaint resolution – is effective in achieving the objectives established by Congress. Nevertheless, as described in Part II, this approach has three significant, externally imposed limits: statutory limits, in that Congress has generally confined the scope of consumer protection regulation of banking activities to disclosure and the manner in which products and services are provided; rule-writing limits, in that the OCC has no authority to issue regulations to implement most of the important

consumer protection statutes that it is responsible for enforcing; and jurisdictional limits, in that the OCC's authority, obviously, extends only to national banks and their subsidiaries[1] and not to national bank competitors.

Part III addresses our view of the Supreme Court's recent decision concerning preemption of state laws in *Watters v. Wachovia Bank*[2] – what the decision does, and what it does not do. The decision does not mark a shift in the prevailing state of the law, but it does clarify accountability. In particular, it makes clear that federal and state regulators both have important, though different, jobs to do. For the OCC, we recognize the crucial responsibility we have to ensure that customers of national banks and their operating subsidiaries are not subjected to predatory, abusive, unfair, deceptive, or other illegal practices.

To assure appropriate treatment of <u>all</u> financial consumers, however, cooperation is vital between the OCC and the states. We should strive to optimize use of scarce resources – and maximize consumer protection benefits for all bank customers – by avoiding duplication of efforts and seeking to ensure that all market participants are subject to appropriate scrutiny.

The OCC is taking a number of steps to make that cooperation an ongoing reality. In addition to the MOU process already discussed for referring complaints, the OCC and the other federal banking agencies have cooperated with the states to extend the coverage of the nontraditional mortgage guidance and the proposed subprime lending guidance.

In addition, I am very pleased to announce today another cooperative initiative between the OCC and state bank supervisors, including my colleague Commissioner Antonakes: parallel

[1] In this testimony, the term "national bank" includes operating subsidiaries of national banks, because federal consumer protection standards apply to such operating subsidiaries in the same way as they apply to their parent banks, and the OCC regulates operating subsidiaries for these purposes in the same way as it regulates national banks.
[2] 550 U.S. ___, 127 S.Ct. 1559 (2007).

examinations involving national bank use of mortgage brokers, *i.e.*, instances in which national banks regulated exclusively by the OCC use independent mortgage brokers regulated exclusively by the states. This intersection of our regulatory jurisdictions provides a real and useful opportunity to coordinate our examination efforts – especially since there has been much criticism of the role played by mortgage brokers in mortgage markets around the country. Though still in the very early stages, I think both we and the Conference of State Bank Supervisors believe this new initiative shows real promise.

Finally, Part IV provides suggestions for improvement to federal consumer protection regulation, as the Committee requested. In particular, we suggest the need for joint agency authority to write regulations defining "unfair and deceptive practices" applicable to banking organizations. We also request that an agency charged with writing consumer protection regulations applicable to banks be required to consult, before issuing such regulations, with the regulators charged with implementing and enforcing them. In addition, we believe that consumer protection regulations should be revised and updated more regularly than they are now, in order for the regulations to keep pace with innovations and developments in retail banking. Finally, we propose that federal and state banking regulators, acting through the Federal Financial Institutions Examination Council (FFIEC), should jointly develop a centralized website for complaints by consumers of <u>any</u> banking institution, regardless of charter – if successful, such a website would provide real, tangible benefits to consumers.

## I. THE OCC'S ROLE IN FEDERAL CONSUMER PROTECTION REGULATION OF BANKING ACTIVITIES

Banks are among the most extensively regulated commercial institutions in the United States. A key part of that regulation flows from the group of laws established by Congress that govern specific aspects of banks' interactions with consumers. These consumer protection laws apply to particular types of retail activities at all banks, including national banks, and often also

apply to nonbanks engaged in the same activities, such as mortgage lending. In general, the federal consumer protection laws applicable to banks are not intended to regulate product terms, or the rates and fees that are charged – as is the case, for example, with public utilities. Instead, markets are left to govern such activities, and federal consumer protection laws instead focus on the manner in which such products and services are provided in order to help ensure fair treatment of consumers.

When Congress enacted this group of banking consumer protection laws during the last 50 years, banks were already subject to an extensive regulatory and supervisory regime for safety and soundness. Thus, bank regulators were uniquely positioned to implement these new laws in ways that simply were not available with respect to unregulated providers of such financial products as consumer credit. As a result, in addition to providing the normal enforcement tools for implementing consumer protection requirements, Congress also charged the bank regulators with implementing these new laws through their well established supervisory and enforcement regime.

In this context, the OCC's comprehensive approach to consumer protection in the retail banking business of national banks integrates four related elements: 1) setting consumer protection standards, primarily through supervisory guidance; 2) comprehensive on-site supervision, to ensure compliance with federal laws and regulations and agency supervisory guidance; 3) enforcement, not just through formal enforcement actions applicable to all kinds of institutions, but also through informal enforcement actions applicable only to supervised banks; and 4) a state-of-the-art process for addressing consumer complaints. Each of these functions is discussed in more detail below.

## A. Standard-Setting

As it must, consumer protection regulation begins with the generally applicable standards that govern particular activities. Federal consumer protection standards for banking activities have, in their broadest sense, been established by Congress in a wide array of federal statutes. In turn, these standards have been further articulated and refined in a multitude of federal regulations. To provide a concrete sense of the extent of these standards, the OCC's online Consumer Compliance Examination Handbook discusses approximately 30 federal laws and related implementing regulations.[3] For example, in the area of consumer credit alone, such laws include:

- The Home Ownership and Equity Protection Act of 1994 (HOEPA), which provides enhanced consumer protections with respect to certain high-cost mortgages and directs the Federal Reserve Board to issue regulations to address unfair, deceptive, abusive, and other problematic mortgage lending practices;[4]

- The Federal Trade Commission Act (FTC Act), which prohibits unfair or deceptive acts or practices and directs the Federal Reserve Board (with respect to banks), Office of Thrift Supervision (with respect to thrifts), and National Credit Union Administration (with respect to credit unions) to issue regulations defining such unfair or deceptive acts or practices and containing requirements prescribed for the purpose of preventing such acts or practices;[5]

- The Equal Credit Opportunity Act (ECOA), which prohibits discrimination against applicants based on race, color, religion, national origin, sex, marital status, age, the receipt of public assistance income, or the exercise of rights under the Consumer Credit Protection Act in any aspect of a credit transaction, and directs the Federal Reserve Board to prescribe regulations to carry out the purposes of the statute;[6]

- The Fair Housing Act (FHA), which prohibits discrimination based on race, color, religion, sex, handicap, familial status, or national origin in making a residential real estate-related transaction available, and authorizes the Secretary of Housing and Urban Development (HUD) to make rules to carry out the law;[7]

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[3] See http://www.occ.gov/handbook/compliance.htm.
[4] 15 U.S.C. § 1601 *et seq.*; *see also* 12 C.F.R. Part 226.
[5] 15 U.S.C. §§ 45, 57a(f)(1); *see also* 12 C.F.R. Part 227.
[6] 15 U.S.C. § 1691 *et seq.*; *see also* 12 C.F.R. Part 202.
[7] 42 U.S.C. § 3601 *et seq.*; *see also* 24 C.F.R. Part 100.

- The Truth in Lending Act (TILA), which requires creditors to provide disclosures about the terms and costs of credit, and directs the Federal Reserve Board to prescribe regulations to carry out the purposes of the law;[8] and

- The Real Estate Settlement Procedures Act (RESPA), which requires advance disclosure of settlement costs in residential real estate transactions and prohibits kickbacks or unearned fees for settlement services, and authorizes HUD to prescribe such rules as may be necessary to achieve the purposes of the law.[9]

As is indicated by this list, the OCC generally has not been provided the authority to write the regulations necessary to implement many of the most important federal consumer protection statutes, so our standard-setting role is not as broad as it is for other agencies, especially the Federal Reserve Board. There are some notable exceptions, such as in the area of consumer privacy, where the Gramm-Leach-Bliley Act charged all the financial institution regulatory agencies to issue consistent and comparable regulations that would be applicable to the institutions under their respective jurisdictions.

Despite this general lack of rule-writing authority, the OCC is responsible for ensuring that national banks comply with applicable federal consumer protection laws. This is not to say, however, that, with respect to these laws, the agency has no role in establishing or articulating standards that are generally applicable to national banks. To the contrary, like the other federal banking agencies, the OCC has used a supervisory tool to establish the agency's compliance expectations for national banks: supervisory guidance. Indeed, the OCC approach to consumer protection includes a prominent role for supervisory guidance to explain regulatory requirements. Such guidance also advises national banks on emerging and significant risks; on our expectations for bank practices for managing those risks and preventing problems from arising; and on likely areas of focus by bank examiners. The OCC's strategy is to prevent problems before they arise,

[8] 15 U.S.C. § 1601 *et seq.*; *see also* 12 C.F.R. Part 226.
[9] 12 U.S.C. § 2601 *et seq.*; *see also* 24 C.F.R. Part 3500.

and because we can issue supervisory guidance expeditiously, we can address issues quickly as they surface.

In this context, let me emphasize a point that is frequently misunderstood. In its usual form, OCC supervisory guidance is not merely a set of "suggestions" that national banks are free to ignore. Instead, guidance articulates principles with which we expect our banks to comply, and OCC examiners apply these principles in their ongoing bank supervision activities.

The OCC has issued supervisory guidance to national banks on a wide range of consumer protection matters, providing both general guidelines and more targeted directives when necessary to guard against specific practices. For example, a substantial amount of supervisory guidance has been directed toward ensuring that national banks do not engage in unfair or deceptive acts or practices within the meaning of the FTC Act. Perhaps most significantly, in 2002 we issued comprehensive guidance addressing the legal standards applicable to determining whether practices are unfair or deceptive.[10] This advisory letter also identified types of practices that may violate the FTC Act; stated our intention to enforce the law to address unfair and deceptive practices whether or not such practices have been specifically prohibited in rules issued by the Federal Reserve Board; and provided specific recommendations for avoiding unfair or deceptive practices and for mitigating compliance and reputation risks.[11]

Our supervisory guidance has also addressed a range of specific consumer protection issues, including credit card and mortgage lending practices, overdraft protection programs, payroll cards, gift cards, payday lending, and automobile title loans. With respect to credit cards,

[10] OCC Advisory Letter 2002-3 (Guidance on Unfair or Deceptive Acts or Practices), March 22, 2002.
[11] *See* Attachment A for a partial list of significant OCC supervisory guidance documents issued since 2000 focused on consumer protection issues. This list does not include numerous OCC and interagency issuances relating to privacy and information security matters. The OCC also has issued advisories directly to consumers on such subjects as gift cards and check processing (in addition to interagency brochures on a wider range of topics).

for example, we issued an advisory letter in April 2004 addressing secured credit card products, and we described the types of product terms and structures that appeared to raise such heightened compliance and other risks that they should not be offered by national banks.[12] Later, in September 2004, we released supervisory guidance concerning certain credit card marketing practices.[13] This advisory letter focused on ensuring that advertising text is not misleading, that limitations on the availability of a promotional rate offer are fully and prominently disclosed, and that there is full and prominent disclosure of the circumstances under which the interest rate, fees, or other terms of the card may change, including in connection with "universal default" and unilateral change-in-terms provisions.

Mortgage lending is another area in which we have issued detailed supervisory guidance. Two of our advisory letters from 2003 outline our expectations for conducting mortgage lending free from predatory or abusive characteristics. Among other things, these advisory letters provided detailed recommendations for establishing policies and procedures to help ensure that national banks do not become involved in predatory practices in any of their mortgage lending activities, including in loans made through brokers.[14]

In 2004, we also issued regulations (which in this case we had specific authority to do) prohibiting national banks from making loans based on liquidation of a borrower's collateral rather than the borrower's ability to repay.[15] And in 2005 we issued "Guidelines Establishing Standards for Residential Mortgage Lending Practices,"[16] based on the anti-predatory lending principles of our 2003 supervisory guidance. These formal Guidelines may be enforced under

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[12] OCC Advisory Letter 2004-4 (Secured Credit Cards), April 28, 2004.
[13] OCC Advisory Letter 2004-10 (Credit Card Practices), September 14, 2004.
[14] OCC Advisory Letter 2003-2 (Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices), February 21, 2003; and OCC Advisory Letter 2003-3 (Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans), February 21, 2003.
[15] 12 C.F.R. § 34.3. *See also* 12 C.F.R. § 7.4008 (establishing similar limitations on other lending activities by national banks).
[16] 12 C.F.R. Part 30, Appendix C.

provisions of the Federal Deposit Insurance Act (FDI Act). More recently, together with the other federal banking agencies, we have issued joint guidance on safety and soundness and consumer protection concerns presented by nontraditional mortgage products such as interest-only mortgages and payment option ARMs, and we have published proposed guidance relating to subprime mortgage lending.

**B. Supervision**

The primary method that federal banking agencies use to implement consumer protection standards is direct supervision – not formal enforcement actions – of the banks we supervise. As mentioned previously, this is a distinct and additional tool available to bank regulators that is generally not available for the regulation of nonbanks. Indeed, given our extensive presence in and supervision of the banks in our jurisdiction, we believe that supervision is by far the most effective means for achieving compliance with consumer protection standards.

This is not to say, however, that supervision is the only way that we ensure such compliance, or that we never resort to enforcement to achieve that result – quite the contrary, as our discussion of our enforcement program below makes clear. Instead, the fundamental point is that, when it comes to consumer compliance, banking regulators do not have an "enforcement-only" regime; instead, our regime is better described as "supervision first, enforcement if necessary." And supervision is such a powerful and effective tool that enforcement, especially in the form of formal enforcement actions, proves to be much less necessary than it is in "enforcement only" regimes.

Thus, the cornerstone of the OCC's approach to consumer protection compliance is comprehensive, ongoing supervision of national banks and their operating subsidiaries. The OCC extensively examines national banks to ensure that they are operating in a safe and sound manner and in accordance with applicable laws, regulations, and supervisory guidance –

including those relating to consumer protection. We supervise national banks by business line, so the standards applied in the course of our supervision are the same for national banks and their operating subsidiaries.

The scope and depth of our consumer protection supervision of national banks' operations is not well understood. This lack of understanding may result from the fact that the bank regulatory regime is different from other consumer protection regimes in which government actors must resort to publicized formal litigation or enforcement proceedings to effect desired changes. The critical point, often forgotten, is that, "behind the scenes" and without much public fanfare, bank supervision can result in significant reforms to bank practices and keep banks on a proper course – and it can do so much more quickly than litigation, formal enforcement actions, or other publicized events. As the Supreme Court recognized some years ago, "recommendations by the [federal bank supervisory] agencies concerning banking practices tend to be followed by bankers without the necessity of formal compliance proceedings." *United States v. Philadelphia Nat'l Bank,* 374 U.S. 321, 330 (1963). Of course, our broad range of potent enforcement tools, as well as the fact that we will not hesitate to use them if necessary, plainly helps make bank supervision a powerful and effective process for consumer protection.

So what exactly is this process? To begin with, retail banking supervision, including its consumer protection component, is a complex enterprise. We are long past the time when a "check the box" approach was adequate for consumer compliance supervision. Rather, effective supervision of retail banking activities today requires a sophisticated assessment of the bank's policies, operations, and controls, and of the long-term effect of those policies, operations, and controls on the bank's reputation, customer relationships, legal exposure, and earnings.

The OCC is unique among U.S. banking supervisors in placing large teams of resident examiners on the premises of each of the largest banking organizations we supervise. At some

of the largest institutions, the OCC has well over 50 examiners onsite on a continuous basis. This extensive on-site presence provides us with a heightened awareness of and insight into bank plans, practices, and potential problems with respect to consumer banking. Similarly, in our more than 1700 community banks, our regular exam cycle of 12 to 18 months, complemented by more frequent communications with bank management, always includes examination of the consumer compliance function – even though, as national bankers point out to us, our frequency of compliance review is not similarly required by a number of states with respect to their state-chartered banks.

The OCC also has networks of mortgage banking, retail credit, credit card, and compliance specialists located throughout the United States. The number of specialists has increased in the past ten years due to the significant growth and increased complexity of the retail banking business of national banks. The agency taps into this expertise for examinations in all parts of the country.

The time and attention devoted to the consumer lending and compliance activities of a national bank, large or small, is directly related to the nature and complexity of the bank's operations and associated risks. In the course of our ongoing supervision, OCC examiners review the adequacy of the bank's policies, systems, and controls relative to the character and complexity of the bank's business, and they evaluate whether the bank's activities comply with applicable consumer protection laws and regulations. Examiners typically sample individual loans or other transactions to validate their assessment of the bank's systems, controls, and legal compliance, and, depending on the circumstances, may target their reviews to a particular loan product, business line, or operating unit. If consumer protection issues surface in the course of these examinations, examiners assess whether the practices in question violate applicable

consumer protection laws or regulations, including the FTC Act, and whether they are consistent with OCC guidance and standards.

Throughout this process, examiners have access to nearly all types of management documents and reports, including policy and process changes, tracking reports, management self-assessments, and internal and external audit reports. Examiners independently review and evaluate performance, looking for potential compliance issues and other emerging risks. In the largest banks, compliance and consumer lending specialists meet frequently with key line-of-business, risk management, compliance, and audit personnel from the bank. Examiners discuss strategic initiatives, new product development, risk profiles, the status of major projects, and progress in addressing corrective actions for issues identified by bank management itself, auditors, or OCC examiners. Similar meetings occur with multiple levels of bank management, from business line managers to the most senior executives. OCC consumer lending and compliance specialists remain vigilant for potential consumer protection issues during these meetings and while reviewing reports. And the agency also uses so-called "target reviews" for more in-depth evaluations of an area of a bank's operations.

OCC examiners are often able to address potential consumer protection and safety and soundness issues proactively with management through this ongoing supervision process. As an example, bank management often will consult with examiners if they have questions about regulatory issues as they consider new processes or products. Similarly, management may identify potential problems in existing products or practices and consult with examiners about appropriate corrective actions that the bank should undertake. In addition, as described in more detail below, consumer complaints are used by examiners to address emerging consumer protection issues. And examiners also hold discussions with bank management to discuss significant litigation against the bank that may involve consumer protection matters. In all these

ways, examiners can identify and deal with many issues in a timely manner and address them before they develop into major problems.

Of course, communication plays an essential role throughout the supervisory process, whether through formal and informal meetings or examination reports and other written documents. The written materials detail findings from our ongoing supervision and target reviews. Violations of law or regulation, non-conformity with supervisory guidance, and other significant problems can be addressed in a variety of ways, including as findings and conclusions in written reports of examination, especially "Matters Requiring Attention" (MRAs) directed to the bank's Board of Directors. OCC examiners expect prompt corrective measures to be taken with respect to consumer protection matters when they are identified. Failure by bank management to do so will contribute to a conclusion that additional steps, including formal enforcement action, are required.

In sum, the OCC's supervision of the retail banking operations of national banks, including the consumer protection issues raised by those operations, is rigorous and comprehensive. We devote substantial resources to this area, and we are proud of the quality of the work that we do to oversee the retail banking business conducted by national banks and their interactions with their customers. Because we are not an "enforcement-only" regime, we expect most problems to be resolved through the supervisory process – and they are. Nevertheless, those who assert that the OCC is not committed to this area, or lacks the resources to handle it, or cares only about safety and soundness, are quite simply wrong.

**C. Enforcement**

When the normal supervisory process is not sufficient to result in bank compliance with consumer protection standards, the OCC, like the other bank regulatory agencies, has a spectrum of potent enforcement tools to address violations of law or regulation, non-conformity with

supervisory guidance, and other significant compliance problems. For the less serious of these problems, the OCC begins at one end of this enforcement spectrum – not with the type of formal and public enforcement actions that are widely reported, but instead with informal enforcement actions. In ascending order of severity, informal enforcement actions can take the form of a supervisory letter, memorandum of understanding, or a so-called "Part 30 compliance plan." Banks take these informal enforcement actions very seriously, because they are rightly perceived as a serious indication that there is a problem that needs the bank's immediate attention to fix – with formal action to follow if they do not. Such actions frequently involve specific and detailed steps that the bank must take before "the document" is removed. And the imposition of such documents can sometimes impair the bank's ability to expand through acquisitions until the underlying problem is addressed – a condition that always obtains management's full attention. In the OCC's experience, national banks go to great lengths to take the corrective steps necessary to address informal enforcement actions involving consumer protection issues.

But that is not always true, and in other circumstances, the underlying problem is so severe that informal enforcement action is inadequate. In such cases, the OCC can and will take formal enforcement action, as our track record clearly demonstrates.

Congress has provided the federal banking agencies with broad authority to take such formal actions. Section 8 of the FDI Act gives the agencies power to compel compliance with any law, rule, or regulation applicable to banks, including TILA, HOEPA, FHA, ECOA, RESPA, and the FTC Act – the principal federal statutes that provide protections for consumer credit applicants and borrowers. For example, this authority allows the OCC to require national banks to: (1) enter formal written agreements not to engage in particular activities that violate consumer protection laws; (2) cease and desist from engaging in such activities; (3) provide

restitution for affected consumers in appropriate cases; and/or (4) pay civil money penalties.[17] Since 2002, the OCC has taken over 100 formal enforcement actions relating to consumer protection issues. These include actions to address RESPA violations, TILA violations, violations of flood insurance requirements, and deficiencies in information security programs. In connection with these actions, we required national banks to, among other things, cease making payday loans and improve internal controls regarding consumer compliance and information security.

In addition to cases based on the specific requirements of applicable consumer protection laws and regulations, the OCC also has the authority to bring enforcement actions when it determines that a national bank has engaged in unfair or deceptive practices within the meaning of the FTC Act. Indeed, the OCC was the first federal banking agency to take enforcement action based on this authority. In a groundbreaking case in 2000, the OCC asserted section 5 of the FTC Act – together with our general enforcement authority under the FDI Act – as a basis for seeking a cease and desist order, as well as affirmative remedies, against a national bank. Use of this authority led to a consent order that required the bank to provide at least $300 million to consumers in restitution for deceptive marketing of credit cards and ancillary products; to cease engaging in misleading and deceptive marketing practices; and to take appropriate measures to prevent such practices in the future, including the modification of its policies and telemarketing scripts to ensure the accurate disclosure of all fees, charges, and product limitations before a consumer purchases a product. This use of the FTC Act was initially greeted with substantial skepticism – even by our fellow regulators – but the OCC believed it was both necessary and

[17] 12 U.S.C. § 1818. This statute also permits the OCC to pursue remedies based on unsafe or unsound banking practices.

lawful to address practices that the agency concluded were unfair or deceptive to consumers. This enforcement position has since been adopted by all the federal banking agencies.

Since that time, the OCC has taken nine additional formal enforcement actions against national banks or their operating subsidiaries based on the FTC Act's prohibition against unfair or deceptive practices.[18] These actions have involved issues ranging from misleading subprime credit card practices, to unfair product terms, to abusive mortgage practices. Contrary to some reports, these cases were focused on violation of this important consumer protection law, not on safety and soundness concerns, and the actions have been crafted to redress harm to consumers.

The OCC also was the first federal banking agency to use its enforcement authority to apply the FTC Act's prohibition against unfair or deceptive practices to predatory mortgage lending. While there is scant evidence of predatory lending in the national banking system, we will not hesitate to use our enforcement tools to combat abusive mortgage lending. To date, the OCC has brought two FTC Act cases against abusive mortgage lending practices. In a 2003 consent order, we required a bank to provide restitution to borrowers who were affected by unfair practices in connection with "tax lien" mortgage loans. In 2005, the OCC entered into a formal agreement requiring another bank to establish a $14 million fund to reimburse various categories of consumers harmed through their dealings with the bank's mortgage lending operating subsidiary.

In sum, the OCC has broad enforcement authority to achieve corrective action to ensure compliance with consumer protection laws, and we have not been hesitant to use it where required. As described above, however, it is misleading to focus only on enforcement actions – especially just formal and public enforcement actions – as the sole measure of bank regulators' effectiveness in achieving corrective actions at banks. Indeed, the type of corrective action that

[18] *See* Attachment B for a summary description of the OCC's enforcement actions based on the FTC Act.

can be achieved in the supervisory and informal enforcement process is often far broader than the corrective action that can be achieved in the formal enforcement process.

At the OCC, we employ all of the tools available to us – supervisory communication, informal enforcement actions, and formal enforcement actions – to address compliance violations; to combat abusive, predatory, unfair, or deceptive lending practices; and to require appropriate corrective action.

**D. Complaints**

In its letter of invitation, the Committee specifically requested information on consumer complaint processing. The OCC's Customer Assistance Group, or CAG, provides assistance to customers of national banks and their subsidiaries by fielding inquiries and complaints from or on behalf of consumers. CAG's complaint processing and analysis helps to redress individual problems and to educate consumers about their financial relationships. In addition, it frequently leads to compensation or other relief for customers who may not have a more convenient means for having their grievances addressed. CAG also supports our supervision of national banks' retail banking operations in several respects, as described below.

Our CAG function today integrates skilled professionals and effective use of up-to-date technology to address bank customer concerns, and our significant investment in the success of this operation has resulted in its becoming a recognized – and effective – leader among government complaint analysis and resolution functions.[19] CAG is staffed by customer assistance professionals who have backgrounds in consumer law, compliance, and bank supervision, and who can process written complaints and telephone calls in both English

[19] *See* "Remarks by John C. Dugan before the Exchequer Club and Women in Housing and Finance," (January 17, 2007) (discussing the sophisticated systems used by CAG in connection with the complaint resolution process).

and Spanish. Additionally, other OCC personnel, including attorneys in the Law Department, regularly assist CAG staff with more complex issues or problems to help ensure that complaints are resolved appropriately and, where applicable, that any identified violations of law are fully addressed.[20]

CAG receives approximately 70,000 inquiries and complaints each year on a multitude of consumer issues that are received through a variety of channels. Many of the inquiries and complaints are received directly from consumers, but there are numerous other sources as well, including Congress, other federal government agencies, state attorneys general, state banking departments, or other state agencies. For instance, CAG receives thousands of complaints each year referred from state entities.

When CAG receives a written complaint involving a national bank or national bank operating subsidiary, CAG contacts the national bank involved and requests a response regarding the consumer's complaint and, if relevant, supporting documentation. CAG evaluates the bank's response, consults with other OCC personnel in appropriate cases, requests additional information from the bank or consumer as necessary, reaches a final conclusion regarding the matter, and notifies the consumer or other complainant of its findings.

CAG staff is dedicated to its mission of satisfactorily addressing inquiries and resolving consumer complaints, and is persistent in its efforts to obtain fair treatment of national bank customers. This commitment is reflected in the results they have achieved. Over the last five years, CAG has generated almost $32 million in compensation for national bank customers, as well as other relief such as suspended foreclosure proceedings, corrected credit bureau reports, and reduced interest rates.

[20] Complaints that allege or raise issues of predatory lending or unfair or deceptive practices, for example, are generally reviewed by CAG personnel in close consultation with the OCC's Law Department.

In response to one issue in which the Committee has expressed a particular interest – and consistent with a recommendation by the Government Accountability Office – CAG conducted its first customer satisfaction survey last year. Although we are still carefully reviewing the comments and suggestions made by consumers, several results are evident. First, the public rated the initial point of contact at CAG higher than the government average. Second, as one would expect, those consumers who received the relief they requested reported high overall satisfaction with their CAG experience, while those who did not obtain their requested relief were less satisfied – and of course, CAG cannot always provide the relief requested by the consumer. In some instances, for example, the consumer may simply be dissatisfied with a provision in his or her contract with the bank in question. CAG will conduct follow-up surveys on a regular basis to identify trends and patterns in responses, and to assess the progress we are making in addressing consumer concerns.

Another issue in which the Committee expressed particular interest is how consumer complaints are taken into account as part of the examination process for any given institution. In fact, data derived from the CAG process plays an important role in identifying problems – at a particular bank or in a particular segment of the industry – that may warrant further investigation by examination teams, supervisory guidance to address emerging problems, or enforcement action. Indeed, OCC supervisory guidance requires examiners to consider consumer complaint information when assessing a bank's overall compliance risk and ratings, and when scoping and conducting examinations.

The CAG process thus has a direct impact on our bank supervision. The complaint data collected by CAG are summarized and distributed to OCC examiners to help them identify issues that warrant further review. Examiners have real-time access to an electronic database that stores consumer complaints and other relevant data for use in bank examinations. Examiners use

this information in assessing risks at the banks they examine, as well as in the process of planning, timing, and scoping examinations to target areas of potential concern. CAG specifically alerts examiners if the volume, patterns, or types of complaints concerning a particular bank appear to warrant immediate attention. Moreover, as discussed above, an important component of OCC supervision is the guidance we issue to alert national banks to emerging risk areas. CAG information has informed OCC policy personnel on the need for additional supervisory guidance, such as our guidance on credit card marketing practices and on gift cards.

OCC guidance also directs national banks themselves to monitor and address consumer complaints that they receive, whether from consumers directly or through CAG or other sources. To assist banks in addressing the underlying factors that may be contributing to consumer complaints, and to encourage them to do so, CAG provides aggregate feedback to banks on practices that, based on complaint volumes and trends, may need improvement. CAG regularly contacts banks that have large complaint volumes, both through informal telephone and e-mail exchanges and through annual meetings with bank management.

Finally, let me briefly mention three recent initiatives involving CAG that we believe will significantly improve the consumer complaint resolution process, not just for national banks, but for consumers at other banks as well.

First, as described in more detail below in the section of the testimony on OCC/State Cooperation, late last year the OCC executed a model Memorandum of Understanding with the Conference of State Bank Supervisors (CSBS) that is intended to facilitate the referral of complaints between the OCC and individual states, and to share information about the disposition of these complaints. We believe this process will result in much more timely handling of consumer complaints that are mistakenly filed with another agency.

Second, we have work underway to establish a secure, web-based technology platform to expedite complaint information sharing. The Complaint Referral Express will be a new application to facilitate the transfer of misdirected complaints and referrals between the OCC and other federal and state banking agencies. This project is currently in development, with testing anticipated early next year and full implementation planned by mid-year 2008. When this system is fully implemented, the end user agency – the one that will be handling the complaint – will be able to "pick up" the consumer's complaint information in a digital format and incorporate that information into the agency's own case management system. In addition, consistent with the information sharing agreements we have entered into with many state banking agencies, Complaint Referral Express will include a feature that provides the status and disposition of complaints referred to the OCC by the states.

Last but not least, I am very pleased to announce that the OCC will soon launch a new internet site called www.helpwithmybank.gov. As the Committee's letter of invitation implicitly recognizes, customers of financial institutions may not know which federal or state agency regulates their banks, or how to file a complaint or otherwise obtain assistance when they have a problem. We believe the new website – initiated, developed, and funded by the OCC – will be an important step to help address those issues. The site will include a wide variety of frequently-asked questions and answers; a reference tool that will assist consumers in determining which agency regulates their institution; and information on how to contact the various federal and state bank regulatory agencies. The English language version of this site should be operational this summer, and we plan to implement a Spanish language version next year.

We will continue to seek ways to use our CAG operations as a base from which to improve coordination on consumer complaints with our federal and state counterparts. In fact, we are hosting a meeting that will take place later today with the other banking agencies, the

CSBS, and the FTC to discuss development of a uniform consumer complaint form that would be used by consumers to file complaints with federal and state authorities. We also will be exploring these issues with those counterparts later this year, at an interagency forum on consumer complaint processing organized by the OCC.

## II. LIMITS ON OCC'S ROLE IN CONSUMER PROTECTION

We believe that the OCC's integrated approach – incorporating standard-setting, supervision, enforcement, and the consumer complaint function – has proven to be an effective way to implement the consumer protection responsibilities that Congress has assigned to us. Nevertheless, there are three externally imposed limits on the OCC's consumer protection role that are important to understand as the Committee weighs additional actions in this area: statutory limits; rule-writing limits; and jurisdictional limits.

### A. Statutory Limits

As discussed at the outset, Congress has generally not attempted to address consumer protection by regulating product terms or rates and fees – or indeed, by going beyond disclosure regulation in most instances. Thus, while some may argue that "penalty" credit card interest rates are excessive, or that so-called "2/28" subprime adjustable-rate mortgages should not be permissible, federal law does not impose a cap on permissible interest rates, and it does not generally prohibit particular mortgage features. As a result, the authority of the OCC and the other federal banking agencies to take action in such areas is circumscribed.

### B. Rule-writing Limits

As described above, few consumer protection statutes authorize the OCC to issue implementing regulations, and that in turn limits our authority to establish prescriptive standards in interpreting such statutes. In many cases the apparent logic for this regime is to vest a single regulatory agency – often the Federal Reserve – with the authority to establish a single set of

rules applicable to all market participants, regardless of regulator. While that logic plainly has merit, it can also create anomalies. For example, the OCC supervises 75 percent of the credit card market, yet had no input into the recently proposed revision to Regulation Z covering credit card disclosures (other than a formal comment letter on the Advance Notice of Proposed Rulemaking that we submitted to the Federal Reserve in 2005). This is not a criticism of the content of that proposed revision, which the OCC generally supports, but rather an observation about the rulemaking process. Likewise, neither the OCC nor the FDIC has rule-writing authority to define unfair and deceptive practices under the FTC Act even though so much of the expansion in retail banking activities has occurred in the banks we supervise.

As described above, the OCC does have, and uses, its authority to issue supervisory guidance as a means to set some consumer protection standards for national banks – but such guidance does not (and should not) have the same force of law as a regulation. Guidance is simply not a vehicle for establishing *new* prohibitions or *new* legally binding constraints across an industry. OCC supervisory guidance in the consumer protection arena, for example, has alerted national banks to existing legal standards and emerging risks, and provided disclosure and other recommendations designed to address those risks. But it has not created new legally enforceable standards. Enforcement actions, similarly, do not – and cannot – create new legal standards that apply across-the-board to all national banks operating throughout the country with the force and effect of law.

The OCC has been successful in effecting changes in national bank policies and practices through supervisory actions where we believed such policies and practices were inconsistent with prudential or consumer protection standards or requirements that the OCC has been charged with implementing, including the FTC Act's prohibition on unfair or deceptive practices. However, when practices have not been restricted by Congress or existing rules – and in some

cases may even appear to be countenanced or endorsed by applicable federal laws and regulations, such as certain credit card billing practices – our ability to effect such changes is constrained.

## C. Jurisdictional Limits

Obviously, the OCC's authority extends only to national banks. That fact can act as a practical constraint on what can be done in the area of consumer protection regulation, especially in the area of standard setting. For example, the OCC's recent effort to curtail prolonged negative amortization practices in the credit card market met strong resistance from national bankers who complained that non-national bank competitors may not be subject to the same stringent standards. We ultimately insisted on compliance notwithstanding this potential problem, but the differential regulation made the process more difficult and time-consuming, and similar issues have arisen in other areas.

We recognize that such potential regulatory differences can often be reduced through cooperation among federal regulators, and the agencies have worked together on a number of different regulatory projects to do just that. But it is not always possible to achieve consensus in a short period, and agencies that seek to "go it alone" will nearly always confront the "competitive unfairness" objection. Put another way, relying on OCC supervisory activities alone to effect needed changes across an industry confronts both practical limits and important fairness considerations.

A related limit arises from the increased participation of nonbank providers in markets for credit products and other traditional banking services. In such instances, the agreement of the federal banking agencies to pursue a unified position is not likely to be adequate to establish a uniform standard that is fair to all competitors, because such a standard would apply only to banking organizations and not to other providers of the same products. A standard with limited

applicability also would not provide comprehensive consumer protection. As described below, we confronted this issue both with the guidance for nontraditional mortgages and the proposed guidance for subprime mortgages. In both cases, huge parts of the market have been dominated by nonbank providers subject exclusively to state regulation. Federal regulators have attempted to address this issue by urging adoption of similar standards by each of the 50 states. While the states have made progress with this approach in both instances, it remains to be seen whether this will prove to be an effective way to establish and apply a national standard. These realities make plain the importance of coordinated interagency action – at the federal and state levels – to resolve appropriately the many consumer protection issues that cut across particular charter choices and the jurisdictions of particular agencies.

## III. FEDERAL/STATE COORDINATION ON CONSUMER PROTECTION ISSUES

### A. Preemption and the Impact of *Watters v. Wachovia Bank*

The Committee has also expressed an interest in the consumer protection role of the states, the impact of federal preemption of state laws on consumer protection, and the role that can be played by states working with federal regulators. We believe that there is much promise for enhanced federal/state cooperation and corresponding improvements in consumer protection, and that the recent decision of the Supreme Court in *Watters v. Wachovia Bank* does not undermine those opportunities.

In our view, the *Watters* decision does not mark a shift in the state of the law. Citing a number of its previous decisions, the Supreme Court in *Watters* reaffirmed that state law may not significantly burden, curtail, or hinder a national bank's efficient exercise of any of its banking powers established by Congress under the National Bank Act. The decision also recognized, again citing multiple Supreme Court precedents, that national banks are subject to state laws of

general application to their daily business, if they do not conflict with the provisions or purposes of the National Bank Act.

What the decision does do is provide certainty and a definitive confirmation that the banking business conducted by national banks under powers granted to them by federal law, whether conducted by the bank itself or through the bank's operating subsidiary, is, with limited exception, subject to the OCC's exclusive supervisory authority, and not to state supervisory regimes.

Thus, the *Watters* decision clarifies accountability. Both federal and state agencies have jobs to do. At the OCC, we are committed to ensuring strong protections for national bank consumers under federal standards, and have devoted substantial resources toward that goal. The standards that we apply, and the initiatives that we have taken, belie the notion of a "regulatory gap" in assuring fair treatment of national bank customers. Because of these standards, and the OCC's comprehensive supervisory approach, neither national banks nor their subsidiaries have been, or will become, a "haven" for abusive or predatory practices.

The subprime mortgage situation illustrates this point well. The abuses in the subprime lending business – loan flipping, equity stripping, and making subprime loans that borrowers have no realistic prospect of repaying – simply have not seeped into the national banking system. Hard data show that the quality of the subprime loans that are made by national banks is markedly better than those of other lenders – the delinquency rate has run about half the national average. This is not an accident – it is a reflection of the quality of our supervision and our supervisory standards. Further, hard data also show that most subprime lending is done by non-bank entities regulated exclusively by state authorities. These lenders clearly are – and always have been – subject to the oversight and enforcement jurisdiction of state officials. The *Watters*

decision does nothing to handcuff their ability to prevent these lenders from engaging in abusive practices or making loans that borrowers have no reasonable prospect of repaying.

This leads to a second important point about *Watters*. Critics of the decision contend that state officials should be able to enforce their state laws against national banks, arguing that there can never be "too many cops on the beat." Respectfully, this assertion is simply not true in a world that has only a limited number of "cops." It is counterproductive for state officials to focus their finite supervisory and enforcement resources on national banks and their subsidiaries when those institutions are already extensively supervised by the OCC, and when there are other entities – many of which answer only to state authorities – that are demonstrably the source of problems. Returning to the metaphor, you can indeed have too many cops on the same beat if it means leaving other, more dangerous parts of the neighborhood unprotected.

There is, of course, the possibility that federal standards of consumer protection will differ from state standards. But that does not represent a "gap" in consumer protection for customers of national banks. Rather, the difference reflects the essence of our dual banking system and federalism, where individual states can take different approaches to a particular issue affecting state banks, and any one state's approach may be different from the uniform federal approach for national banks. Again, this is not an unintended regulatory gap, but the inherent and essential result of the different approaches possible – and encouraged – in our dual system of national and state banks. And when Congress wants to ensure the same treatment on any particular issue for all or certain types of lenders or depository institutions, it can do so, and has done so. For example, national banks, state-chartered banks, and thrifts are equally able, under federal law, to charge interest rates permissible under their home state usury laws, even in credit transactions with consumers located in other states.[21]

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[21] *See* 12 U.S.C. §§ 85, 1463(g)(1), and 1831d(a).

In short, the OCC keenly recognizes its consumer protection responsibility, and we expect to be held accountable for how well we do that job. The same should hold true for states. We believe that consumers benefit most when the OCC and the states focus on our respective areas of responsibility, rather than duplicating each other's efforts, and where we find ways to collaborate and share information where that makes the most sense.

**B. OCC/State Cooperation**

Despite past differences, the OCC and state banking regulators are moving on the right track, we believe, toward the type of cooperation and collaboration that optimizes use of our respective resources and maximizes consumer protection benefits for bank customers. For example, as previously mentioned, we have made significant progress working with our state counterparts to improve consumer complaint information sharing. The model Memorandum of Understanding agreed to by the OCC and the CSBS provides that we and state regulators will refer misdirected complaints to the appropriate agency. It also establishes a mechanism for state agencies to obtain – without compromising consumer privacy – periodic reports from the OCC on the disposition of complaints they have referred to the OCC's Customer Assistance Group. With the assistance of the CSBS, we are in the process of entering into complaint information sharing agreements with individual states, and the process is moving along very well – we have executed 18 such agreements since November, and others are on the horizon. Likewise, the Complaint Referral Express, also previously referred to, is a new technology platform in development that we hope will provide, in 2008, a more automated application to facilitate the transfer of misdirected complaints and referrals between the OCC and other federal and state banking agencies.

In the area of supervisory guidance, the OCC and state regulators have worked constructively in connection with implementation of the nontraditional mortgage guidance issued

by the federal banking agencies, and are following a similar process on the subprime mortgage guidance that the federal banking agencies expect to finalize soon. As the Committee is aware, the guidance issued by the federal banking agencies extends only to the institutions that are supervised by federal regulators. Yet, as noted above, most subprime lending is done by non-bank lenders regulated exclusively by the states. So, it is critical that all states adopt and apply standards comparable to those adopted and applied by the federal banking agencies.

We are encouraged that 35 states have adopted or endorsed similar nontraditional mortgage policies and regulations applicable to those they regulate, and we believe a similar effort will be made with respect to the federal banking agencies' subprime mortgage guidance once it is finalized. We applaud these efforts, led by the CSBS. It bears repeating, however, that neither type of guidance can be fully effective until it is adopted and actually applied by all states, not as a suggestion, but as an expectation. (In this context, we note that several large states are among the 15 that have yet to adopt the nontraditional mortgage guidance, most notably California and Florida.) Uneven implementation and application creates an unlevel playing field where market participants can avoid the new and higher standards by concentrating their activities in those states that have either not adopted or not actually applied such standards – a result we all hope to avoid.

Finally, I am very pleased to announce today an important new cooperative initiative between the OCC and state bank supervisors involving instances in which national banks regulated exclusively by the OCC use independent mortgage brokers regulated exclusively by the states. This intersection of regulatory jurisdiction strikes us, as it did Commissioner Antonakes in a recent Congressional hearing, as fertile ground to coordinate our examination efforts with respect to the nontraditional mortgage guidance already issued and the subprime mortgage guidance about to be issued – especially since there has been much criticism of the role

played by mortgage brokers in these markets. Through parallel examinations of a sample of national banks by the OCC, and examinations of a sample of state-licensed mortgage brokers by the state, we hope to develop a baseline of useful compliance information resulting from this unique congruence of state and federal jurisdictional interests.

## IV. SUGGESTIONS FOR IMPROVEMENTS TO CONSUMER PROTECTION REGULATION OF BANKING ACTIVITIES

Finally, the Committee's letter of invitation requested suggestions for improvements to specific aspects of consumer protection regulation applicable to banking activities. In general, we believe the current tools provided to the OCC – in particular, strong supervisory and enforcement authority – are sufficient to address the specific areas of consumer protection regulation that Congress has delegated to the agency. In addition, we are not suggesting the need for additional areas of substantive consumer protection regulation, such as product, rate, or fee regulation, which have traditionally been left to the marketplace – though of course, if Congress chooses to take such a path, the OCC will work closely with this body to implement such change.

Nevertheless, as discussed in more detail below, the OCC does believe that there are several targeted areas in which changes to the status quo would be helpful.

### A. Joint Rulemaking Authority to Define Unfair and Deceptive Practices

As previously noted, Congress has not given the OCC a rulemaking role with respect to most of the important federal consumer protection legislation affecting the rights of national bank customers. Vesting such authority in a single regulator such as the Federal Reserve can make sense as a way to establish a single standard applicable to all market participants. But one such area of federal law constitutes a particular anomaly. The FTC Act vests exclusive authority with the Federal Reserve Board, with respect to banks, to promulgate regulations that define unfair or deceptive acts or practices and prescribe restrictions for the purpose of preventing such

acts or practices. Comparable authority is vested in the Office of Thrift Supervision for thrifts, and in the National Credit Union Administration for credit unions. Thus, Congress has already allocated to multiple agencies the task of writing unfair or deceptive practice rules for financial institutions. Yet, left out of this allocation are the FDIC, which supervises over 60 percent of the banks in the United States, and the OCC, which supervises banks holding nearly 70 percent of the country's banking assets.

Accordingly, the OCC would support the extension of FTC Act rulemaking authority to all of the federal banking agencies, so that we could, as necessary, write joint rules that define unfair or deceptive practices and establish requirements that are designed to prevent such acts or practices. Such authority would be helpful to establish across-the-board rules to prohibit especially egregious practices.

I want to emphasize, however, that what we would support is joint rulemaking authority for the federal banking agencies. Because of the potential commonality of the issues across different financial institutions, joint rulemaking would limit the ability of market participants to "forum shop" an aggressive practice to a less stringent regulatory standard adopted by a single regulator. In addition, the vesting of rulemaking authority in one agency, with respect to standards of conduct for entities subject to the jurisdictions of many, may not always produce a result that reflects the views and concerns of other relevant agencies. By giving each regulator a "seat at the table," a joint interagency process would allow a single regulator to prompt discussion of the need for an across-the-board rule – with more weight and credibility than either the OCC or the FDIC has today without any regulatory authority at all.

Of course, coordinated interagency action carries the potential for real frustrations – principally, the delays in implementation that are usually generated by legitimate difficulties in achieving consensus – and we recognize that if that sometimes slow process is not allowed to run

its course, the final results may not be desirable. But coordinated action also may bring countervailing benefits: different perspectives, supervisory experiences, and policy priorities, and the ensuing marketplace of ideas may produce solutions preferable to those resulting from any one agency acting on its own.

Indeed, collaborative interagency action has proven effective in the past, such as in the banking agencies' recent work on nontraditional mortgage guidance and the proposed statement on subprime mortgage products, and in situations where Congress has directed it. For example, in the privacy provisions of the Gramm-Leach-Bliley Act, Congress recognized that the sharing of customer information was a practice of national scope and concern cutting across different types of financial institutions, and that those entities are subject to the jurisdictions of different federal and state regulators. Congress then designed federal standards uniformly applicable to all types of financial services providers, and prescribed that those standards were to be consistently administered by the relevant functional regulators.

While the OCC supports this proposed change in rulemaking authority, let me emphasize that it would by no means be a panacea. Practices that rise to the level of "unfairness" or "deception" under the standards of the FTC Act generally combine both an inordinate degree of risk or harm to the consumer and deficiencies in the information provided that disable the consumer from appreciating the risk or harm in question. They present relatively extreme situations. As a result, recent banking practices that some have criticized as "unfair" in layman's terms – such as ATM fees or the high level of "penalty" credit card interest rates – are not likely to be treated as unfair or deceptive under existing FTC Act precedents if adequately disclosed. It would be difficult for the agencies to prohibit such a practice using the proposed joint rulemaking authority – a more specific directive from Congress would be required.

**B. Rulewriting: Required Consultation with Implementing Regulators**

As previously discussed, there is logic in vesting a single regulator with rulemaking authority governing all market participants, as is the case with the Federal Reserve for the Truth in Lending Act. Nevertheless, we believe that the regulators who are responsible for implementing and enforcing such rules should be consulted as an integral part of the rulemaking process. Accordingly, we would support statutory changes that require such consultation.

**C. More Frequent Revisions to Consumer Protection Regulations**

The OCC believes that it would be beneficial to have more frequent reviews and updating of existing consumer protection regulations to help ensure that they better keep pace with developments in consumer financial products and industry practices. Statutory timetables of some sort would help achieve this objective.

**D. Centralized Consumer Complaint Function**

Finally, the Committee's letter of invitation raised questions about the need for a centralized consumer complaint function that would be available to consumers of any banking organization. As mentioned above, the website that the OCC is about to launch, www.helpwithmybank.gov, is a good step in this direction. But it is not enough. Accordingly, the OCC supports the development of a true "one stop" approach for consumer assistance with banks and their affiliates, including mechanisms for consumers who do not have access to, or do not want to use, the Internet. The federal and state banking regulators should jointly develop such a proposal through the auspices of the FFIEC.

## CONCLUSION

At the OCC, we recognize our responsibility with regard to consumer protection. We take that responsibility seriously, and will continue to do so. We are committed to using, and adapting and improving as needed, each of the key elements of our supervisory approach to the

retail banking operations of national banks. And, we are committed to continuing to seek ways to act collaboratively with other federal regulators and our state colleagues to enhance protections available to, and fair treatment of, bank customers.

I appreciate the opportunity to present the OCC's views on the important issues that are the subject of this hearing, and will be pleased to answer any questions that you might have.

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Attachment A

List of OCC Supervisory Guidance Documents on Consumer Protection Issues

- Advisory Letter 2000-7, "Abusive Lending Practices" (July 25, 2000)
- Advisory Letter 2000-10, "Payday Lending" (Nov. 27, 2000)
- Advisory Letter 2000-11, "Title Loan Programs" (Nov. 27, 2000)
- Advisory Letter 2001-9, "Electronic Fund Transfer Act --Investigations of Unauthorized Transactions" (Sept. 7, 2001)
- Advisory Letter 2002-3, "Guidance on Unfair or Deceptive Acts or Practices" (Mar. 22, 2002)
- Advisory Letter 2003-2, "Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices" (Feb. 21, 2003)
- Advisory Letter 2003-3, "Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans" (Feb. 21, 2003)
- Advisory Letter 2004-4, "Secured Credit Cards" (Apr. 28, 2004)
- Advisory Letter 2004-6, "Payroll Card Systems" (May 6, 2004)
- Advisory Letter 2004-10, "Credit Card Practices"(Sept. 14, 2004)
- Joint Guidance on Overdraft Protection Programs (Feb. 18, 2005)
- OCC Bulletin 2006-34, "Gift Card Disclosures" (Aug. 14, 2006)
- Interagency Guidance on Nontraditional Mortgage Product Risks (Sept. 29, 2006)

Attachment B

List of OCC Enforcement Actions under the FTC Act

- Providian National Bank, Tilton, New Hampshire (consent order – June 28, 2000). We required the bank to set aside not less than $300 million for restitution to affected consumers and to change its credit card marketing program, policies, and procedures.

- Direct Merchants Credit Card Bank, N.A., Scottsdale, Arizona (consent order – May 3, 2001). We required the bank to provide restitution of approximately $3.2 million and to change its credit card marketing practices.

- First National Bank of Marin, Las Vegas, Nevada (consent order – December 3, 2001). We required the bank to set aside at least $4 million for restitution to affected consumers and to change its marketing practices.

- First National Bank, Ft. Pierre, South Dakota (formal agreement – July 18, 2002). We required the bank to change its marketing practices.

- First National Bank in Brookings, Brookings, South Dakota (consent order – January 17, 2003). We required the bank to set aside at least $6 million for restitution to affected consumers, to obtain prior OCC approval for marketing subprime credit cards to non-customers, to cease engaging in misleading and deceptive advertising, and to take other actions.

- Household Bank (SB), National Association, Las Vegas, Nevada (formal agreement – March 25, 2003). We required the bank to provide restitution in connection with private label credit card lending and to make appropriate improvements in its compliance program.

- First Consumers National Bank, Beaverton, Oregon (formal agreement – July 31, 2003). We required the bank to provide refunds of approximately $1.9 million to affected consumers in connection with credit card practices.

- Clear Lake National Bank, San Antonio, Texas (consent order – November 7, 2003). We required the bank to set aside at least $100,000 to provide restitution for borrowers who received tax lien mortgage loans, review a portfolio of mortgage loans to determine if similar violations existed, and take steps to prevent future violations.

- First National Bank of Marin, Las Vegas, Nevada (consent order – May 24, 2004). In a second case involving this bank, we required the bank to set aside at least $10 million for restitution to affected consumers and prohibited the bank from offering secured credit cards in which the security deposit is charged to the consumer's credit card account.

- The Laredo National Bank, Laredo, Texas, and its subsidiary, Homeowners Loan Corporation (formal agreement – November 1, 2005). We required the bank to set aside at least $14 million for restitution to affected customers and to strengthen internal controls to improve compliance with applicable consumer laws and regulations.