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Transmittal – See OCC 2020-11

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Preemption and Visitorial Powers: Two Final Rules

The Office of the Comptroller of the Currency published the attached final rules in the *Federal Register* on January 13, 2004. The final rules amend 12 CFR parts 7 and 34. The final rules will become effective on February 12, 2004.

Preemption Rule. This final rule amends both 12 CFR parts 7 and 34 to add provisions clarifying the applicability of state law to national banks. Generally, the rule provides that state laws do not apply to national banks if they obstruct, impair, or condition a national bank's exercise of its federally authorized lending, deposit-taking, and other powers. The rule lists the types of state laws that are preempted, as well as the types of state laws that generally are not preempted, and thus do not apply to national banks, because they are not inconsistent with the exercise of federal powers. This final rule also adopts an anti-predatory lending standard governing national banks' consumer lending. The standard prohibits national banks from making any type of consumer loan based predominantly on the bank's realization of the foreclosure value of the borrower's collateral, without regard to the borrower's ability to repay the loan according to its terms. The rule also prohibits national banks from engaging in practices that are unfair and deceptive under the Federal Trade Commission Act and regulations issued thereunder, in connection with all types of lending.

Visitorial Powers Rule. The second final rule also amends 12 CFR 7. The revisions provide clarification of the OCC's current regulation concerning the scope of the agency's "visitorial powers" over national banks. Addressing questions that have arisen concerning the scope of this exclusive authority, the final rule provides that the OCC's visitorial powers over national banks are exclusive with respect to the content and conduct of activities that are authorized under federal law as part of, or incidental to, the business of banking. The final rule clarifies that state authorities may not exercise, indirectly, through the courts, rights of visitation that the statute precludes them from exercising directly. Thus, state authorities may not inspect, superintend, direct, regulate, or compel compliance by a national bank with respect to any law regarding the content or conduct of activities authorized for national banks, except as permitted under federal law.

Both final rules also apply to national bank operating subsidiaries by virtue of the OCC's existing regulations.

Additional information about both rules is available on the OCC's Website. For further information regarding the preemption final rule, contact the Chief National Bank Examiner's Office at (202) 649-6550.

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To

Chief Executive Officers of All
National Banks, Federal
Branches and Agencies,
Department and Division Heads,
and All Examining Personnel

Related Links

- [69 FR 1904](#)
- [69 FR 1895](#)

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