

Hawke: Get Set for Preemption of Ga. Loan Law

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By Todd Davenport and Doug Cantor

WASHINGTON - Comptroller of the Currency John D. Hawke Jr. dropped strong hints Thursday that his agency is on the verge of overriding the Georgia Fair Lending Act.

Speaking here at a predatory-lending conference sponsored by the Federalist Society, Mr. Hawke said to expect a decision in response to a preemption request from National City Corp. of Cleveland "in the very near future," and that a decision to preempt should not upset anybody.

"I think it can be understood why we believe that national bank preemption of the Georgia Fair Lending Act should not be viewed with alarm," Mr. Hawke said. "The interests of those this law intends to protect are effectively protected - at least as far as national banks are concerned - through our supervisory process."

Those words are likely to mollify neither states that have passed laws with rigorous consumer protections nor consumer groups that have supported them.

"Georgia's legislature went through a lengthy, careful process - put a lot of thought and a lot of hard work into protecting their homeowners because the federal government wasn't doing so," said David Swanson, a spokesman for the Association of Community Organizations for Reform Now. "So for the federal government to preempt that law, partially or entirely, gets things backwards."

But Mr. Hawke said that "in preemption situations, the only relevant issue is whether the state law would impair or interfere with the national bank's exercise of powers granted to it under federal law," he said. "If such an impact is found to exist, federal law must prevail - just as it has prevailed for two centuries."

He said that state and municipal efforts to rein in predatory lending "while well-intentioned ... may have the unintended effect of also making nonpredatory subprime credit harder to come by for those who may most need and deserve it."

As evidence, he pointed to an OCC study of a North Carolina law that was intended to discourage predatory lending. He said the agency found that mortgage loan originations for subprime borrowers - defined as those with FICO scores between 580 and 660 - fell 30% in the 18 months after the law was passed. He said similar loans in neighboring states without the laws fell 3% in the same period.

Mr. Hawke said, as he has on other occasions, that predatory lending does exist, but largely outside of the banking system. The appropriate way to guard against predatory lending, he said, is to require that loans not be disguised attempts to grab borrowers' equity.

"Each national bank must make the kind of basic underwriting decision we would expect in the case of any loan, namely, that the borrower has the capacity to service and repay the loan without resort to the collateral."

In discussions before Mr. Hawke's remarks, panelists debated the issue of predatory lending and its potential solutions.

Jonathan Brown of Essential Information, a consumer group founded by Ralph Nader, called for an increase in public information on high-cost mortgage loans and for better public access to automated underwriting systems.

Wright H. Andrews Jr., the executive director of a banking industry group called the Coalition for Fair and Affordable Lending, said that the solution to predatory lending is for Congress to adopt consumer protections that would apply across the country.

"Both compliance and enforcement would be much easier, much better, and much more efficient if you have one clear set of standards," he said.

But Margot Saunders, a lawyer from the National Consumer Law Center, said states are in a unique position to protect borrowers who have little money and are unfamiliar with lending procedures.

"We don't really see adequate regulation on the horizon, so we see preemption as a threat," she said.