

United States Senate

WASHINGTON, DC 20510

July 9, 2020

Brian P. Brooks
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Dear Acting Comptroller Brooks:

We write to express our concern regarding Office of the Comptroller of the Currency (OCC) Bulletin 2020-62 and to request clarification regarding the critical role played by state and local officials—including Governors and Attorneys General—in working with banks to provide relief to homeowners and mortgage holders during this time of crisis.^[1]

Research shows that a stable home can mean a better education, greater financial stability, and a healthier life. At a time when homeownership is already out of reach for too many Americans, the economic crisis created by the coronavirus threatens to displace homeowners across the nation as communities brace for an “explosion” of foreclosures in the month to come.^[2]

For this reason, state and local officials across the nation have worked with local banks and financial institutions to ensure that families have confidence that pandemic-related unemployment or loss of income will not also cause them to lose their home through foreclosure.^[3] A wide range of state and local agreements, negotiated by Governors and Attorneys General across the nation, build on the critical forbearance and foreclosure protections that Congress included in the CARES Act. These state and local agreements often extend foreclosure protections to all homeowners—including those who hold mortgages that are not backed, insured or guaranteed by federal agencies and thus fall outside the scope of the foreclosure moratorium including in the CARES Act.

OCC Bulletin 2020-62, published June 17, 2020, “reminds stakeholders that banks are governed primarily by uniform federal standards and generally are not subject to state law limitations.” While the OCC is correct in asserting that banks are primarily regulated at the federal level and that federal law will preempt state law under certain circumstances, we are concerned that the Bulletin mischaracterizes the extent to which federal law preempts state consumer financial

^[1] <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-62.html>

^[2] <https://www.startribune.com/if-minnesota-emergency-order-lifts-friday-flood-of-evictions-foreclosures-will-likely-follow/571104212/?refresh=true>

^[3] See, e.g., <https://www.gov.ca.gov/2020/03/25/governor-gavin-newsom-announces-major-financial-relief-package-90-day-mortgage-payment-relief-during-covid-19-crisis/> (California)

protection laws and may have a chilling effect on banks' willingness to engage with state and local consumer protection agencies and officials.

Under section 1044 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, a state consumer financial law can be preempted by federal law if the state law “prevents or significantly interferes with’ the exercise of banking powers authorized under federal law,” and you are required to make such a determination on a case-by-case basis by regulation or order.^[4] The voluntary agreements negotiated by Governors and Attorneys General across the nation do not in any way prevent or interfere with the exercise of banking powers authorized under federal law. Moreover, as the Conference of State Bank Supervisors (CSBS) has detailed, the Bulletin issues a categorical, rather than a case-by-case, statement of preemption, in direct contradiction to the procedures the statute prescribes.^[5] The practical effect of this Bulletin may simply be to undercut the efforts of state and local agencies who are working to protect homeowners during this time of crisis.

Accordingly, we request your response to the following questions to better understand your position regarding state and local agency actions:

1. Please confirm that the hundreds of agreements already reached by banks across the nation with state and local agencies regarding treatment of mortgage holders are legal, enforceable, and fully within the powers of state and local regulators.
2. What steps is your agency taking to protect mortgage holders from an “explosion” of foreclosures in the months to come?
3. Please confirm that a bank’s voluntary agreement to limit foreclosures, reached with state and local agencies, does not violate federal law.
4. Please list all instances in which you have made a case-by-case determination about preemption after consultation with the Consumer Financial Protection Bureau (CFPB), as required by section 1044 of the Dodd-Frank Act.
5. Please explain the basis on which you are claiming preemption of state laws in instances where it has not made a case-by-case determination about preemption after consultation with the CFPB, as required by section 1044 of the Dodd-Frank Act or otherwise analyzed whether a state consumer financial protection law prevents or significantly interferes with the exercise of a national bank’s powers.

Thank you for your time and attention to this important matter. We look forward to receiving your response.

^[4]https://www.americanbar.org/groups/business_law/publications/committee_newsletters/banking/2019/201904/fa1/ (quoting 12 U.S.C. § 25(b)).

^[5]<https://www.csbs.org/why-occ-preemption-bulletins-do-not-impact-state-covid-19-relief-measures>

Sincerely,



AMY KLOBUCHAR
United States Senator

/s/
SHERROD BROWN
United States Senator



RON WYDEN
United States Senator



BRIAN SCHATZ
United States Senator



ELIZABETH WARREN
United States Senator



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