

OCC Reiterates Preemption Principles In Light Of Coronavirus Relief Measures

In response to the COVID-19 pandemic, state and local lawmakers have implemented measures requiring financial institutions to provide relief to consumers, such as forbearance on loan payments or waiving fees. The OCC has released a bulletin reminding stakeholders that federally-chartered institutions generally are governed primarily by uniform federal standards and are not subject to state-law limitations.

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State and local lawmakers are seeking to apply pandemic-related relief measures to federally-chartered financial institutions.

In response to the COVID-19 pandemic, state and local lawmakers have implemented measures requiring financial institutions to provide relief to consumers, such as forbearance on loan payments or waiving fees, and by imposing reporting obligations. Many of these measures purport to apply to federally chartered institutions, and some state regulators have contacted these institutions, which are regulated by the Office of the Comptroller of the Currency (“OCC”), with requests for information to determine their compliance.

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The OCC’s bulletin “reminds stakeholders that banks are governed primarily by uniform federal standards and are not subject to state law limitations.”

On June 18, 2020, the OCC issued a [bulletin](#) observing that that while these state and local actions are “well-intended,” the proliferation of competing requirements may conflict with OCC-regulated institutions’ ability to operate effectively and efficiently, potentially increasing the risk to their safety and soundness and ultimately harming consumers. It also notes that forbearance requirements of the CARES Act “strike a careful balance” between helping affected borrowers in the short term and preserving credit availability and affordability for other borrowers that would be curtailed by indefinite measures that impair banks’ security interests.

The bulletin therefore reiterates several key principles regarding federal preemption, including that:

- state law limitations on terms of credit provided by OCC-regulated institutions, such as the schedule for repayment and interest, amortization of loans, balance, payments due, minimum payments, and term to maturity; disbursements and repayments; and processing, origination, and servicing mortgages, are preempted by federal law;

- state laws that conflict with the real estate lending powers of OCC-regulated institutions, and specifically those that interfere with OCC-regulated institutions' ability to make mortgage loans secured by real estate—such as “[s]tate action that limits banks’ ability to foreclose on a defaulted loan and take possession of collateral, beyond what is provided for in the CARES Act” —are preempted by federal law; and
- the OCC has exclusive visitorial authority with respect to banks, and requirements to report to state and local officials generally run afoul of this exclusive authority.

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The OCC’s bulletin signals that the OCC is monitoring state and local measures that affect OCC-regulated institutions.

The OCC’s bulletin does not break new ground. But it does signal that the OCC is monitoring developments in these areas. The OCC’s bulletin also “encourages states and localities to expressly exempt federally chartered banks from their laws.”

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Some state and local measures may not be preempted.

The OCC directed institutions to its longstanding preemption regulations for a list of laws that may be preempted, but recent court decisions have called into question the validity of some of those regulations. The OCC also noted that “each state or local action presents unique considerations.” The OCC’s bulletin encourages OCC-regulated institutions to consult counsel to determine the applicability of any particular state or local law. It also notes that OCC-regulated institutions and their counsel may contact the OCC with questions.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Financial Services practice:

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