

TO: INTERESTED PARTIES
FROM: ANDRE PINEDA
SUBJECT: NATIONAL LENDING STANDARDS, LOCAL ENFORCEMENT
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Newspaper headlines about predatory lending, ATM fraud and identity theft have left consumers wondering whether anyone is watching out for them in the financial marketplace. On May 5, when lawyers from the California Department of Corporations and Wells Fargo appear again before a federal judge in Sacramento, one very interested party will not be sitting on either side: the Office of the Comptroller of the Currency, the federal regulator of national banks. Yet this case is as much the OCC's as it is Wells Fargo's or the DoC's. The core issue is whether it is the federal or the state regulator who rightly has oversight over the operating subsidiary of Wells Fargo that offers home mortgages in California.

This is not an arcane governmental debate of no consequence to individual consumers. Since Governor Gray Davis' election in 1998, the California Department of Corporations has compelled finance lenders and mortgage bankers to make nearly \$22 million in refunds because of overcharges found by the Department, an accomplishment proudly displayed on the Department's website. If the Office of the Comptroller of the Currency has ever secured a refund from a national bank on behalf of an individual consumer, you would never know it from its website.

The point of the comparison is not to disparage the OCC. The OCC plays a critical role in the regulation of financial services in the United States. Banks are for-profit institutions that are entrusted with billions of dollars by Americans both rich and poor. There is a natural temptation on the part of banks to take ever-increasing risks with other people's money in order to maximize non-interest income for the bank. If the OCC was not placing limits on the risks allowed by national banks, the newspapers would be replete with stories about banks losing on a big bet and going under, taking their customers' deposits with them. Consumers depend on the OCC in ways they do not even know.

The role of the state regulator is much smaller in scale, but equally as valuable. State regulators aren't concerned about the safety and soundness of the entire banking enterprise. Instead, state regulators conduct routine examinations of all their licensees to ensure that the numbers on every consumer's loan add up in a manner that is fair and consistent with applicable laws.

The OCC presumably has no interest in going to branch offices in Eureka and Chula Vista to calculate interest charges on individual loan files. State regulators have no business assessing risk portfolios in the gleaming high-rise headquarters of national banks. The laws governing national banks should be determined by the federal government – there is no need for a patchwork quilt of banking standards across the country. But the state regulators should be allowed to help the OCC determine whether those laws are being followed. After all, fraud is fraud, no matter who finds it.

In the recent disagreement between Wells Fargo and the California Department of Corporations, the OCC filed a brief in court asserting that the Department had did not have the right to subject an

operating subsidiary of a national bank to an examination. Pending the decision of the federal judge, the Department turned over the evidence of consumers being overcharged hundreds of dollars each in mortgage transactions to the OCC. The burden is now on the OCC to secure refunds for those consumers.

Wouldn't it have been better if the OCC and the state regulator were working together? Systemic risk analysis and preventing extra charges in residential mortgages are very different yet very important government roles. Taxpayers don't care who watches out for them as long as it gets done.