

Yale University

EliScholar – A Digital Platform for Scholarly Publishing at Yale

YPFS Documents (Series 1)

[Browse by Media Type](#)

6-9-2010

John Dugan Follow Up From Wendy Edelberg

Wendy Edelberg

Richard Stearns

John D. Hawke Jr.

Samuel P. Golden

Josh Stein

Follow this and additional works at: <https://elischolar.library.yale.edu/ypfs-documents>

Recommended Citation

Edelberg, Wendy; Stearns, Richard; Hawke, John D. Jr.; Golden, Samuel P.; and Stein, Josh, "John Dugan Follow Up From Wendy Edelberg" (2010). *YPFS Documents (Series 1)*. 6654.
<https://elischolar.library.yale.edu/ypfs-documents/6654>

This Document is brought to you for free and open access by the Browse by Media Type at EliScholar – A Digital Platform for Scholarly Publishing at Yale. It has been accepted for inclusion in YPFS Documents (Series 1) by an authorized administrator of EliScholar – A Digital Platform for Scholarly Publishing at Yale. For more information, please contact elischolar@yale.edu.



June 9, 2010

Via Email and First Class Mail

Mr. John C. Dugan
Comptroller of the Currency
250 E Street SW
Washington, DC 20219
Ann.taylor@occ.treas.gov

**Re: Follow-Up to the Financial Crisis Inquiry Commission Hearing
on April 8, 2010**

Phil Angelides
Chairman

Hon. Bill Thomas
Vice Chairman

Dear Comptroller Dugan:

On April 15, 2010, Chairman Angelides and Vice Chairman Thomas sent you a letter thanking you for testifying at the April 8, 2010 hearing and informing you that the staff of the Financial Crisis Inquiry Commission ("FCIC") would be contacting you or your office to follow-up on certain areas of your testimony and to submit written questions and requests for information related to your testimony, which are listed below. Please provide your answers and any additional information by June 23, 2010.¹

Brooksley Born
Commissioner

Byron S. Georgiou
Commissioner

Senator Bob Graham
Commissioner

1. What were the annual default rates for subprime and Alt-A loans, in absolute terms and relative terms, for national banks as compared to the industry average from January 1, 2004 to December 31, 2009?

Keith Hennessey
Commissioner

2. Please provide detailed information (who, when, and how) and a timeline regarding the following:

Douglas Holtz-Eakin
Commissioner

(a) Any and all instances in which the OCC² requested from state law enforcement officials and consumer groups information or referrals related to incidents of deceptive conduct, unfair lending, predatory

Heather H. Murren, CFA
Commissioner

John W. Thompson
Commissioner

Peter J. Wallison
Commissioner

¹ The answers you provide to the questions in this letter are a continuation of your testimony and under the same oath you took before testifying on April 8, 2010. Further, please be advised that according to section 1001 of Title 18 of the United States Code, "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both."

² "OCC" refers to the Office of the Comptroller of the Currency and any of its members, divisions, and offices, including its national, regional or local offices and all other persons acting or purporting to act on its behalf.

Wendy Edelberg
Executive Director

1717 Pennsylvania Avenue, NW, Suite 800 • Washington, DC 20006-4614
202.292.2799 • 202.632.1604 Fax

lending, mortgage fraud, boiler room-type conduct, or aggressive lending on the part of national banks;

(b) Any related responses received from any such authorities or consumer groups; and

(c) Any further actions taken by the OCC in response to any such related information or referrals.

The FCIC appreciates your cooperation in providing the information requested. Please do not hesitate to contact Jeff Smith at (202) 292-1398 or jsmith@fcic.gov if you have any questions or concerns.

Sincerely,



Wendy Edelberg
Executive Director
Financial Crisis Inquiry Commission

cc: Phil Angelides, Chairman, Financial Crisis Inquiry Commission
Bill Thomas, Vice Chairman, Financial Crisis Inquiry Commission
Jeff Smith, Investigative Counsel, Financial Crisis Inquiry Commission



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

HAND DELIVERED

July 8, 2010

Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW, Suite 800
Washington, DC 20006-4616

Attention: Jeff Smith, Investigative Counsel

Subject: OCC Response to June 9, 2010, Follow-Up Request for Information Related to
Comptroller Dugan's testimony on April 8, 2010

Dear Mr. Smith:

Pursuant to the June 9, 2010, follow-up request of the Financial Crisis Inquiry Commission ("FCIC") to Comptroller John C. Dugan related to his testimony before the FCIC on April 8, 2010 ("Request"), the OCC hereby responds as follows:

Item One

On June 21, 2010, you verbally agreed to accept Appendix B and the chart on page 9 of the Appendix attached to the Comptroller's April 8, 2010, testimony in response to question #1 regarding annual default rates for subprime and Alt-A loans for national banks, as compared to the industry average, from January 1, 2004 to December 31, 2009. The verbal agreement was confirmed via email on June 21, 2010. On July 6, 2010, you emailed the OCC seeking additional information regarding question #1. The OCC is working to respond to this request.

Item Two

Please see the enclosed timeline and attached supporting documentation, bates numbered OCC14-00300838 – OCC14-00300852, describing OCC communication with state law enforcement officials and consumer groups regarding information sharing, complaint referrals and responsive OCC action related to deceptive conduct, unfair or predatory lending, mortgage fraud, boiler room-type conduct, or aggressive lending on the part of national banks. The timeline covers a period of approximately 2003 through Spring 2010. The enclosed timeline and supporting documents provide the information requested in your July 6, 2010, email regarding then-Comptroller of the Currency, John D. Hawke's meeting with certain State Attorneys General.

Pursuant to an Agreement Regarding Confidentiality of Non-Public Information signed January 8, 2010, and January 11, 2010, by the FCIC and OCC, respectively ("Agreement"), the OCC

Jeff Smith
Investigative Counsel
July 8, 2010
Page 2

hereby designates the produced material as “non-public OCC information” protected by the terms of the Agreement. All of the documents provided to you contain confidential, non-public OCC information subject to the Agreement. In addition, and pursuant to 12 U.S.C. § 1821(t), disclosure of the enclosed documents and information to the FCIC does not waive any associated privileges.

Should you have any questions, please call Linda Bridgman, Erica Onsager, or Alissa Sagri at (202) 874-4800.

Sincerely,



Richard C. Stearns
Director
Enforcement and Compliance

Enclosures (2)

cc: Daniel P. Stipano
OCC Deputy Chief Counsel

Linda Bridgman
Assistant Director of Enforcement and Compliance

Michael Gordon
Counselor to the General Counsel
U.S. Department of the Treasury

BACKGROUND

Communication with Consumer Organizations: The Comptroller, First Senior Deputy Comptroller/Chief Counsel, and Deputy Comptroller for Community Affairs periodically meet with the following consumer organizations to keep abreast of consumer protection concerns with national banks:

- California Reinvestment Coalition
- Center for Responsible Lending
- Chicago CRA Coalition
- Consumer Action
- Consumer Federation of America
- Consumer's Union
- CRA Coalition of North Carolina
- Greenlining Institute
- National Association of Consumer Advocates
- National Community Reinvestment Coalition
- National Consumer Law Center
- National Consumers League
- National People's Action
- Neighborhood Economic Development Advocacy Project (NEDAP)
- US Public Interest Research Group
- Woodstock Institute

The following timeline refers to communications with the foregoing consumer groups that resulted from the periodic meetings.

Complaint Processing Function: The OCC's Customer Assistance Group ("CAG"), with the assistance of other relevant OCC units, processes complaints and inquiries from customers of national banks. In 2009, CAG received over 90,000 inquiries and over 72,000 complaints. Reimbursements to customers achieved through the complaint process totaled \$9,240,043 in 2009.

The OCC routinely communicates with state officials as part of its complaint processing function. As described below, from 2006 to the present, forty-four states and Puerto Rico have entered into Memoranda of Understanding ("MOUs") with the OCC to facilitate information sharing regarding consumer complaints. For thirty-six states, complaints are transferred electronically to the OCC from state agencies. CAG periodically provides information to the referring state agencies regarding disposition of complaints. On occasion, attorneys in the OCC's Law Department communicate with state officials directly regarding issues that arise regarding individual complaints that have been filed with CAG.

During April 1998 to May 31, 2010, the OCC received over 63,000 complaints forwarded from state officials. When the OCC receives a complaint, CAG analysts record information in CAG's database about the type of financial product and claim that are at issue. During 2000 to May 31, 2010, state officials referred 470 complaints that CAG coded as involving claims of predatory lending or unfair or deceptive acts or practices. Cases involving allegations of predatory lending or unfair or deceptive practices generally are reviewed by CAG personnel in close consultation with the Law Department.

Licensing Function: The OCC is charged under various federal statutes with considering applications involving the chartering, structure, activities, and operations of national banks. Some types of applications require that the applicant give public notice of the application, inform the public that comments may be submitted to the OCC concerning the application, and provide the closing date of the public comment period. For a variety of applications, the OCC considers the convenience and needs of the community served. Additionally, for many types of applications the OCC considers the applicants' record of performance under the Community Reinvestment Act. *See* 12 C.F.R. Part 5; 12 U.S.C. §§ 2903(a)(2), 2902((3); 12 C.F.R. § 25.29.

In the course of processing corporate applications, the OCC routinely receives communications from members of the public, including community groups, expressing concerns about proposed transactions. Additionally, the Federal Reserve Board routinely forwards letters from members of the public on holding company applications that are related to applications pending before the OCC. On a number of occasions, the concerns expressed in these letters have involved allegations of predatory, unfair, or deceptive conduct by the applicants or their affiliates. These letters are carefully evaluated in determining the appropriate action on pending applications and are addressed in OCC decisions.

TIMELINE

The following timeline summarizes communications with state officials and community groups involving allegations of deceptive conduct, unfair lending, predatory lending, or mortgage fraud on the part of national banks, from January 1, 2003, to the present.

- On March 5, 2003, then-Comptroller of the Currency, John D. Hawke, Jr., sent a letter to Tom Miller, Attorney General of Iowa, following an in-person meeting the previous week in Washington, D.C of the OCC and States Attorneys General for Iowa, North Carolina, Pennsylvania, Vermont, and Washington. The letter reiterated Hawke's position at the meeting that the OCC and state authorities should explore how to partner to enhance effective and efficient protections for customers of national banks. Copies of the letter were sent to the other Attorneys

General who attended the meeting. *See* OCC11-00211138 and OCC11-00211141.

- In March 2003, the OCC district counsel staff held discussions with Arizona Attorney General's Office ("AG's Office") staff regarding whether the AG's Office would coordinate with the OCC in settling a matter with Household Bank (SB), N.A., regarding the bank's financing of door-to-door sales of heating, ventilation, and air conditioning systems. The AG's Office declined to join in the OCC's Formal Agreement, which was entered on March 25, 2003. Formal Agreement By and Between Household Bank (SB), N.A., and OCC, No. 2003-17. *See* <http://www.occ.treas.gov/FTP/EAs/ea2003-17.pdf>.
- In June 2003, ACORN contacted the OCC to express concerns that Wells Fargo was allegedly engaged in predatory lending. ACORN transmitted factual information about a number of individual consumers who allegedly had been harmed by the subprime lending operations of WFHM, a national bank subsidiary, and Wells Fargo Financial, a non-bank holding company subsidiary. In August 2003, the OCC's First Senior Deputy Comptroller and Chief Counsel met with ACORN staff members to discuss the complaints and ACORN's concerns. A follow up teleconference was held with ACORN staff members and OCC Law Department, Community Affairs, and CAG staff.

In response to ACORN's concerns, the OCC facilitated the filing of complaints regarding individual consumers with CAG. Information regarding the complaints was transmitted to the OCC's Large Bank Supervision staff for review and follow-up. The OCC included Wells Fargo's commitments regarding policies and procedures to address customer referral practices, subprime lending operations, and relationships with mortgage brokers as conditions in a November 6, 2003 decision to approve a corporate application. *See* <http://www.occ.treas.gov/interp/dec03/crad118.pdf>.

- In June 2003, the OCC met with National People's Action to discuss concerns regarding predatory mortgage lending matters. On February 2, 2005, the OCC issued mortgage lending guidelines addressing many concerns about mortgage practices. *See* <http://www.occ.treas.gov/toolkit/newsrelease.aspx?Doc=ERNFCQX9.xml>.
- On July 25, 2003, then-Comptroller of the Currency, John D. Hawke, Jr., sent a letter to Tom Miller, Attorney General of Iowa, reiterating the invitation of his March 5th letter to Attorney General Miller for the OCC and state authorities to partner to address consumer protection issues. Attached was a proposed MOU for the purpose of sharing consumer complaints and other information regarding alleged violations of laws applicable to national banks and their subsidiaries. The letter was cc'd to Sarah Reznick at the National Association of Attorneys General ("NAAG") and State Attorneys General. *See* OCC11-00211141.

- On August 13, 2003, then-Comptroller of the Currency, John D. Hawke, Jr., sent a letter identical in all substantive respects to his July 25, 2003, letter to Neil Milner, President and CEO of the Conference of State Bank Supervisors, with the expectation that it would be provided to state bank supervisors. Comptroller Hawke expressly requested that if state bank supervisors become aware of any illegal, predatory, unfair, or deceptive practices at national banks that they bring those practices to the OCC's attention so appropriate action could be taken. *See Attached OCC14-00300838.*
- On October 7, 2003, Attorney General Miller sent a response letter to then-Comptroller Hawke rejecting the proposed MOU as being "one-sided". *See OCC11-00284324.*
- On October 16, 2003, then-Comptroller of the Currency, John D. Hawke, Jr., sent another letter in response to Attorney General Miller's October 7, 2003, letter. Comptroller Hawke extended to Miller and his States Attorney General colleagues a second invitation to enter into discussions on drafting a MOU satisfactory to all parties. *See AttachedOCC14-00300842.*
- On October 29, 2003, then-Comptroller of the Currency, John D. Hawke, Jr., sent a letter to Roy Cooper, Attorney General of North Carolina. Comptroller Hawke reiterated his request in his July 25, 2003, letter to bring all complaints about national banks to the OCC's attention; and stated that the OCC was open to discussions about drafting a MOU satisfactory to all parties. *See OCC11-00196004.*
- In December 2003, the OCC notified the Illinois and Missouri States Attorneys General of the findings of an investigation the OCC had conducted concerning certain student loans provided by a national bank to students and prospective students of a vocational school. The investigation had been prompted by letters that the OCC received in November 2002 from those Attorneys General offices. The OCC opened an investigation into the matter; carefully reviewed all of the information; and ultimately determined that the bank had not engaged in any unfair or deceptive practices in violation of federal or state law in connection with these loans. Notwithstanding this, the OCC did raise supervisory concerns about the bank's oversight of the program and, in response to those concerns, the bank agreed to take several steps to avoid, minimize, and mitigate the risks to the bank and its customers relating to its vocational school student lending activities.
- On various occasions during early to mid-2004, the OCC had communications with community groups about concerns with bank credit card disclosures of practices such as universal default. The OCC issued an industry advisory letter on credit card practices and undertook a comprehensive review of disclosures

provided by large national bank credit card issuers, which resulted in revised and improved disclosures. See <http://www.occ.treas.gov/ftp/advisory/2004-10.txt>

- In February 2004, the OCC received a communication from Consumer's Union following up on a previous meeting to discuss payroll cards. Consumer's Union identified questions and concerns regarding the product. In May 2004, the OCC issued Advisory Letter 2004-6 on regulatory expectations concerning operation of payroll card programs which addressed many of these issues. See <http://www.occ.treas.gov/ftp/advisory/2004-6.txt>
- On February 26, 2004, the OCC issued an industry advisory letter providing guidance to national banks regarding how to respond to complaints from state officials and on appropriate complaint resolution processes. Additionally, in the advisory letter, the OCC encouraged state officials to bring to its attention any complaints that allege that national banks are engaging in any illegal, predatory, unfair or deceptive practices. The OCC requested that state officials forward individual customer complaints involving such allegations to CAG, while national bank practices affecting multiple customers be brought to the attention of the OCC's Office of Chief Counsel. See <http://www.occ.treas.gov/Advlst04.htm>.
- On February 27, 2004, then-Ombudsman Samuel P. Golden sent letters to Randall S. James, the Texas Commissioner of Banking, and Roy Cooper, North Carolina Attorney General, inviting discussion of ways to improve the process for responding to consumer complaints among state and federal agencies. See *Attached* OCC14-00300843-00300846.
- On March 26, 2004, Senior Deputy Attorney General of North Carolina, Josh Stein, replied to the OCC's February 27, 2004, letter on behalf of Attorney General Cooper noting the Attorney General's objection to the OCC's position on preemption but agreeing to discuss how best to communicate to consumers how various government agencies can assist them. See *Attached* OCC14-00300847.
- On April 2, 2004, then-Ombudsman Samuel P. Golden and North Carolina Senior Deputy Attorney General Josh Stein, had a telephone conversation discussing how to best share CAG complaints.
- On April 9, 2004, then-Ombudsman Samuel P. Golden sent a letter to North Carolina Senior Deputy Attorney General Josh Stein, thanking him for the April 2, 2004, telephone discussion, and inviting a dialogue (1) to improve the process of referrals of consumer complaints among state and federal agencies, (2) to clarify and improve consumers' awareness of where and how to file complaints against banks, (3) to identify steps the states may take if they become aware of an unsafe or unsound, unfair, or deceptive practice by a national bank or its

subsidiaries, and (4) to enhance communication between the OCC and the states on consumer protection more broadly. OCC14-00300849.

- During winter and spring of 2004, the MOUs were revised to address concerns voiced by state AGs.
- During the late summer of 2004, copies of the revised MOUs were provided to the Conference of State Bank Supervisors, the New York State Banking Superintendent, and the North Carolina Commissioner of Banks.
- On October 27, 2004, then-Ombudsman Samuel P. Golden sent a letter to Roy Cooper, North Carolina Attorney General, following the OCC's letters and subsequent telephone discussions with North Carolina Senior Deputy Attorney General Josh Stein. The letter requested an in-person meeting to an open dialogue regarding, inter alia, consumer complaint referrals. *See Attached* OCC14-00300848.
- On November 18, 2004, the OCC provided a copy of a revised MOU to the Consumer Protection Division of the North Carolina Department of Justice. At that time, the North Carolina Attorney General was the Chair of the National Association of Attorneys General Consumer Protection Committee. No response was ever received. *See Attached* OCC14-00300851.
- In 2006, the OCC met with a number of consumer groups to discuss an interagency Non-Traditional Mortgage Lending Guidance under consideration by federal banking agencies. *See* <http://www.occ.treas.gov/fr/fedregister/70fr77249.pdf>. Those groups had recommended that the non-traditional mortgage lending guidance be expanded to include 2/28 and 3/27 adjustable rate mortgages. Guidance including the requested products was issued in June 2007. *See* <http://www.occ.treas.gov/fr/fedregister/72fr37569.pdf>
- In July 2006, Comptroller Dugan met with a number of community groups to discuss continuing concerns with credit card lending practices and disclosures. The OCC continued to review credit card solicitations and disclosures for compliance with applicable laws, regulations, and guidance. Additionally, OCC officials voiced their support on a number of occasions for the Federal Reserve Board's rulemaking to review and revise the Regulation Z provisions relating to credit cards. *See, e.g.,* Testimony of John C. Dugan before the Subcommittee on Financial Institutions and Consumer Credit, H.R. Committee on Financial Services (June 7, 2007), <http://www.occ.treas.gov/ftp/release/2007-54b.pdf>
- In July 2006, the OCC received correspondence from US Public Interest Research Group following up on a meeting with Comptroller Dugan. The US Public Interest Research Group identified a problem one of their constituents was

having with a Citibank credit card. CAG was able to resolve the matter to the satisfaction of the customer.

- On November 20, 2006, the OCC announced an agreement on procedures for the exchange of consumer complaint information between state banking departments and the OCC. *See* <http://www.occ.treas.gov/toolkit/newsrelease.aspx?JNR=1&Doc=D39TFJ65.xml>

- Starting on November 30, 2006, the OCC entered into MOUs with the following states:

New York	11/30/06
North Dakota	12/04/06
Arizona	12/15/06
Mississippi	12/31/06
Georgia	02/02/07
Missouri	02/08/07
Wyoming	02/08/07
North Carolina	02/20/07
Colorado	02/28/07
Kentucky	03/02/07
Louisiana	03/29/07
New Hampshire	04/09/07
Nebraska	04/17/07
Florida	04/26/07
South Dakota	05/01/07
Utah	05/10/07
Maine	05/14/07
Wisconsin	05/18/07
Pennsylvania	05/30/07
Puerto Rico	06/29/07
Alaska	07/18/07
Vermont	07/20/07
Ohio	07/23/07
Illinois	07/30/07
Indiana	08/06/07
Washington	08/20/07
Montana	08/28/07
Texas	10/02/07
Delaware	10/05/07
Alabama	10/31/07
California	10/31/07
Arkansas	11/27/07
Rhode Island	12/18/07

Iowa	12/21/07
Massachusetts	01/18/08
Minnesota	02/14/08
Connecticut	03/31/08
Idaho	04/28/08
New Jersey	06/01/08
West Virginia	06/04/08
Oregon	06/05/08
Oklahoma	07/01/08
Michigan	08/01/08
Tennessee	08/01/08
Kansas	10/07/08

- On April 17, 2007, the Deputy Attorney General of California, Howard Wayne, made a referral to CAG on behalf of two former students of MicroSkills, a failed computer training school, who had borrowed student loans from a national bank. The OCC contacted Wayne by phone on May 3, 2007, to inform him that the OCC was looking into the matter and to seek any additional information his office had in connection with the bank and MicroSkills. In response, Wayne submitted materials identifying twelve additional students who claimed to have borrowed from the bank to finance their attendance at MicroSkills. Wayne complained that the bank was refusing to honor the holder in due course provision in the loan contracts.

After the OCC contacted the bank, it reversed its earlier position and agreed to honor the holder in due course clause in all of the disputed contracts, if contacted by the student/borrowers. The OCC disagreed with the bank's approach and on June 15, 2007, the OCC informed the bank of its expectation that it should reach out to all potentially affected MicroSkills students to alert them that they might have a claim and to solicit facts to determine the amount, if any, of such claim. The bank did so by letters dated June 21, 2007, to all affected borrowers. The OCC periodically monitored the bank's follow-up on the affected borrowers and ultimately the bank satisfactorily addressed all the issues raised by the complaint.

- Following Capital One's conversion to a national bank charter on March 1, 2008, the OCC reached out to State Attorneys General in California and West Virginia concerning matters that were under investigation by those offices. The OCC made various requests during the summer of 2008 to the offices of the California and West Virginia Attorneys General for information pertaining to consumer complaints against Capital One. The California Attorney General produced approximately three boxes of documents, including consumer complaints filed with Capital One, meritorious consumer complaints filed with the California Attorney General's Office, and documents produced by Capital One in response to the California Attorney General's requests. The West Virginia Attorney

General's Office produced 356 consumer complaints filed with their office, almost all of which the OCC determined, following careful review, were not actionable. In addition, based upon the information obtained from the California and West Virginia Attorney Generals, the OCC performed a targeted review of credit card practices focused on their areas of concern. After finalizing examination conclusions, the OCC imposed a Formal Agreement against Capital One on February 18, 2010, requiring the bank to pay \$750,000 to affected customers. The OCC continues to investigate certain additional allegations made by the West Virginia Attorney General's Office in a January 1, 2010, complaint filed against the bank in the Circuit Court of Mason County, West Virginia.

- In September 2009, the OCC received a communication from Consumer Federation of America concerning allegedly abusive overdraft protection program practices at Old National Bank. The OCC reviewed Old National Bank's practices and the bank to adjust its practices to conform to the 2005 Interagency Guidance on Overdraft Protection programs.
- In 2009 and early 2010, consumer groups communicated concerns with national banks' refund anticipation loan programs. The OCC issued Bulletin 2010-7 on February 18, 2010, addressing supervisory expectations regarding the operation of Refund Anticipation Programs offered by national banks. *See <http://www.occ.treas.gov/ftp/bulletin/2010-7a.pdf>*. In February 2010, the OCC also issued a consumer advisory on ways consumers can receive their tax refunds, along with a public service announcement. *See <http://www.occ.treas.gov/ftp/ADVISORY/2010-1.html>*.
- In December 2009, the OCC Law Department staff held a telephone discussion with staff attorneys at the California Department of Justice to obtain information on civil litigation brought by the state against a tax preparer that offered refund anticipation loans extended by a national bank. The California attorneys provided the OCC staff background information on the litigation. In January 2010, the state attorneys also forwarded state court pleadings. The national bank in question is no longer involved in refund anticipation loan lending.
- In the spring of 2010, OCC received communications from consumer groups identifying concerns with the way a national bank was planning to operate its overdraft program under the new Federal Reserve Board overdraft protection regulations. Some of these issues had been the subject of earlier press accounts. In April 2010, OCC issued Bulletin 2010-15 addressing the concern by clarifying regulatory expectations as to how banks should be implementing the Federal Reserve Board's regulatory changes on overdraft protection programs. *See <http://occ.gov/ftp/bulletin/2010-15.html>*.



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

August 13, 2003

Mr. Neil Milner
President & CEO
Conference of State Bank Supervisors
1155 Connecticut Avenue, N.W.
Washington, D.C. 20036

Subject: Handling of Consumer Complaints

Dear Neil:

I am writing to make you and your CSBS colleagues aware of new arrangements that the OCC has put in place to improve communication and coordination in connection with referrals of customer complaints regarding national banks or their subsidiaries made by State agencies to the OCC. I know we all share the goal of providing effective and efficient protection for customers of national banks, and I firmly believe that the States and the OCC can partner in this effort, entirely within the parameters set out in federal law for supervision and regulation of national banks by the OCC. I wanted to make you aware of the specifics are what we are doing in this regard. We also have been in touch with the State Attorneys General to convey similar information about our new arrangements.

By way of brief background, as you know, our supervisory processes are tailored to each bank's size – large, mid-size, and community – and to the bank's particular business operations, when these operations affect the risk profile of the bank (such as credit card banks). In our largest national banks, this process entails continuous supervision by a staff of OCC examiners onsite at the bank. Examinations for compliance with consumer protection laws is an important component of our supervisory responsibilities, and, as with safety and soundness examinations, we try to tailor our consumer compliance exams and other supervisory activities to the risk profile of a particular bank or type of banks. Customer complaint information, including information that we may receive from State agencies or departments, can play an important role in that regard.

The OCC's Customer Assistance Group (CAG), based in Houston, Texas, has an important role in processing and resolving individual customer complaints and analyzing and channeling complaint information to our bank examiners to enable examiners to intensify their supervisory

activities for particular problematic institutions. The CAG is comprised of teams of consumer complaint specialists, analysts, and bank examiners, and is overseen by the OCC's Ombudsman.

In addition to handling a large volume of questions and general comments about national banks or banking laws and regulations, CAG teams process thousands of individual customer complaints each year. Complaints range from alleged violations of law or regulation to contractual disputes and customer service issues. The CAG receives these complaints via telephones to its toll-free number, electronic mail through 24-hour access to the CAG website, as well as written correspondence.¹

With respect to all of the written and Email complaints, and roughly half of the telephone complaints that cannot be resolved during the course of the initial call, the complaint will be sent to a special processing unit for research and bank contact. In certain instances, the CAG specialist will consult, as appropriate, with OCC legal staff for guidance. The CAG will respond to the consumer after it concludes its research into the matter and has evaluated the information it has obtained from the consumer and the bank (or subsidiary) that is the subject of the complaint.

This complaint resolution and informal mediation process enables the CAG not only to assist consumers, but also to develop a large and flexible base of consumer complaint information that can be analyzed by bank, by product, and by subject matter of the complaint. The CAG uses this database to prepare internal reports for bank supervision staff on complaint volumes and trends. Bank examiners also may access the CAG database directly to assist them in identifying risk management issues, potential violations of law and appropriate supervisory strategies for individual banks. We take pride in the fact that the CAG has been -- deservedly -- recognized as a unique and valuable component of the OCC's supervision of the national banking system.

I know you and I agree that Federal and State bank supervisors share a common goal of ensuring that consumers are protected from illegal, predatory, unfair, or deceptive practices.² In our

¹ For your information, the contact information is as follows:

- 1) Letter - Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, Texas 77010;
- 2) Telephone - 1-800-613-6743; and
- 3) Email - customer.assistance@occ.treas.gov.

² I have made clear on a number of occasions that predatory and abusive practices have absolutely no place in the national banking system. I also must note that in my meetings with consumers who have been the victims of predatory lending practices, I have been told, consistently, that the lender at issue was a finance company or a loan broker, not an insured bank or its subsidiary. Notably, nearly two dozen State Attorneys General filed a brief in litigation earlier this year that reaches the same conclusion. The case, *National Home Equity Mortgage Association v. Office of Thrift Supervision*, No. 1:02CV02506 (D.D.C. 2003), involves a revised regulation issued by the Office of Thrift Supervision (OTS) to implement the Alternative Mortgage Transaction Parity Act (AMPTA). The revised regulation seeks to distinguish between federally-supervised thrift institutions and non-bank mortgage lenders and makes non-bank mortgage lenders subject to state laws restrictions on prepayment penalties and late fees. In supporting the OTS's decision to distinguish between supervised depository institutions and unsupervised housing creditors and to retain preemption of state laws with respect to the former, but not for the latter, the brief for the State Attorneys General stated:

Based on consumer complaints received, as well as investigations and enforcement actions undertaken by the Attorneys General, predatory lending abuses are largely confined to the subprime mortgage lending

supervision of the national banking system, we have an extensive array of tools with which to address unsafe or unsound or unfair and deceptive practices or violations of law by national banks. We have the ability to issue administrative cease and desist orders, safety and soundness directives, require restitution, remove officers and directors and impose civil money penalties. Through our supervisory processes, we also have immediate access to bank information and bank personnel, without the need for issuance of subpoenas. All these tools enable us to respond with speed and focus and achieve appropriate compliance and remedial measures from the national banks we supervise.

While the CSBS has raised some question about the scope of our exclusive visitorial powers with respect to national banks and their subsidiaries, I believe our authority in this regard is quite clearcut, as provided under Federal law, 12 U.S.C. § 484. Moreover, I think it is quite clear that our authority extends not only to safety and soundness matters, but to consumer protection and other matters as well. Putting our difference on this legal issue aside, however, I think there a way to proceed, that we will agree is constructive, as follows:

If State bank supervisors become aware of complaints that allege that national banks or their subsidiaries are engaged in any illegal, predatory, unfair or deceptive practices, I strongly urge State supervisors to bring those to our attention so that we may take appropriate action. To the extent that the matter involves an individual customer grievance, the complaint would appropriately be sent to the CAG. Where the issue is broader, such as the applicability of a particular State law to national banks generally, or if there is information that a specific national bank is engaged in a particular practice affecting multiple customers that is predatory, unfair or deceptive, this information should be communicated to the OCC's Office of Chief Counsel for coordination.

We have established special procedures to handle both types of referrals. With respect to referrals to the CAG, information should be directed as follows and will be flagged and specially tracked:

Comptroller of the Currency
Customer Assistance Group
Attention: Craig D. Stone, Deputy Ombudsman/State Referral
1301 McKinney Street, Suite 3450
Houston, Texas 77010

Mr. Stone may also be reached at 713-336-4350 and at Craig.Stone@occ.treas.gov.

market and to non-depository institutions. Almost all of the leading subprime lenders are mortgage companies and finance companies, not banks or direct bank subsidiaries. (emphasis added)

Information and issues of the type appropriate for referral to the OCC's Law Department should be directed as follows, and will also be specially tracked:

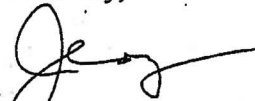
Comptroller of the Currency
Chief Counsel's Office
Attention: James F. E. Gillespie, Jr., Assistant Chief Counsel/State Referral
250 E Street, S.W.
Washington, D.C. 20219

Mr. Gillespie may also be reached at 202-874-5200 and at James.Gillespie@occ.treas.gov.

We also recognize your interest in how these matters are resolved, and we have prepared, and I enclose herewith, a draft of a model Memorandum of Understanding between the OCC and a State department or agency. Execution of such an agreement will greatly facilitate our ability to provide information to apprise State officials of status and resolution of matters that have been referred to the OCC.

We would welcome this opportunity to work together with you and your CSBS colleagues, to promote fair treatment of customers.

Sincerely,



John D. Hawke, Jr.
Comptroller of the Currency



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

October 16, 2003

Mr. Thomas J. Miller
Attorney General
State of Iowa
Department of Justice
Hoover Building
Des Moines, Iowa 50319

Dear Tom:

I'm sorry that you are unhappy with my remarks to the Women in Housing and Finance, but when one of your number publicly denounces this office by charging that we are engaged in "unrelenting efforts...to undermine the states' ability to protect their citizens from fraudulent and deceptive corporate practices" -- a highly political and inflammatory charge that is, in my view, sheer nonsense -- I believe it calls for a strong response. I recognize that you cannot control the public utterances of all State Attorneys General, but I have heard nothing in the way of a repudiation of this kind of extreme rhetoric from more moderate and better informed voices.

As to the proper interpretation of our visitorial powers, I don't think the issue is even close. You and your colleagues are asserting an authority that is categorically denied to you by federal law. I'm afraid we will have to agree to disagree on this question, at least until it is settled by some other authority.

Finally, it puzzles me that you are so emphatic in rejecting an MOU that has neither been drafted nor discussed. We extended an invitation to you and your colleagues many months ago to enter into discussions as to how we might define a cooperative arrangement, and to date we have not heard any constructive suggestions from you. I don't know whether it will in fact be possible to reach such an agreement, given your insistence on asserting a desire to be able to take direct enforcement actions against national banks, but I continue to believe that a shared interest in protecting consumers should, at least, lead us to pursue some discussion of the matter. We remain ready and willing to have such discussions.

Sincerely,

John D. Hawke, Jr.
Comptroller of the Currency



Comptroller of the Currency
Administrator of National Banks

Office of the Ombudsman
1301 McKinney Street
Suite 3400
Houston, TX 77010

February 27, 2004

Mr. Randall S. James
Commissioner of Banking
The State of Texas
2601 North Lamar Blvd.
Austin, TX 78705-4294


Dear Mr. James:

As you may know, in my capacity as the Ombudsman for the Office of the Comptroller of the Currency (OCC), I am responsible for supervision of the agency's Customer Assistance Group. As also you may be aware, the Customer Assistance Group provides direct assistance to customers of national banks and their subsidiaries, and also analyzes complaint data and provides that analysis to OCC examiners to assist them in their examinations of national banks and their subsidiaries. In the latter capacity, the Group's activities supplement our examination, compliance and enforcement staff. (We have nearly 1700 examiners in the field; a significant number are compliance specialists, and over 300 of our examiners are resident, full-time at our largest national banks, conducting continuous supervision. The examination staff also is supplemented by dozens of attorneys who handle enforcement and compliance matters.)

The purpose of this letter is twofold; first, my Deputy Ombudsman, Craig D. Stone, and I are very interested in exploring whether there is a group of state banking commissioners with which it would be appropriate to discuss improving the process for referrals of consumer complaints among state and federal agencies. Currently, many state agencies refer to us complaints that they have received that pertain to national banks and their subsidiaries. In turn, the OCC gets literally thousands of customer complaints that pertain to entities that we do not regulate, and we endeavor to refer those to the appropriate federal or state supervisor of the entity. We would be interested in discussing how this process is working, and thoughts on how to improve it. It may also be useful to discuss if there is any uniform information that could be made available to consumers via agencies' websites that would explain where to file complaints and what agency to contact with

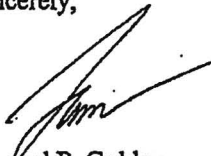
respect to particular entities. We would be happy to pursue these issues in any forum that would be appropriate.

Additionally, we would like to extend an invitation to you and/or others that may be appropriate, to visit our offices in Houston, Texas. We welcome the opportunity to provide you with a comprehensive overview of our operations, a presentation of our consumer complaint management system and associated supervisory tools, as well as a tour of our facility.

Lastly, I extend a personal invitation for you to visit our offices during your attendance at the 2004 Texas Bankers Association (TBA) convention in late April. The Hilton Americas Hotel and the George Brown Convention Center, the TBA convention site, are located just a couple of blocks from our office.

I look forward to hearing from you soon. Please feel free to contact me at 713-336-4350 (office) or (281) 433-4181 (cell).

Sincerely,



Samuel P. Golden
Ombudsman



Comptroller of the Currency
Administrator of National Banks

Office of the Ombudsman
1301 McKinney Street
Suite 3400
Houston, TX 77010

February 27, 2004

The Honorable Roy Cooper
Attorney General
North Carolina Department of Justice
P. O. Box 629
Raleigh, NC 27602-0629

Dear Attorney General Cooper:

I am writing to you in your capacity as Chair of the National Association of Attorneys General Consumer protection Committee. I am the Ombudsman for the Office of the Comptroller of the Currency (OCC) and have supervision of the agency's Customer Assistance Group. As you may be aware, the Customer Assistance Group provides direct assistance to customers of national banks and their subsidiaries, and also analyzes complaint data and provides that analysis to OCC examiners to assist them in their examinations of national banks and their subsidiaries. In the latter capacity, the Group's activities supplement our examination, compliance and enforcement staff. (We have nearly 1700 examiners in the field; a significant number are compliance specialists, and over 300 of our examiners are resident, full-time at our largest national banks, conducting continuous supervision. The examination staff also is supplemented by dozens of attorneys who handle enforcement and compliance matters.)

The purpose of this letter is twofold; first, my Deputy Ombudsman, Craig D. Stone, and I are very interested in opening a dialogue with the Committee, (or whatever group would be appropriate) to discuss improving the process for referrals of consumer complaints among state and federal agencies. Currently, many state agencies refer to us complaints that they have received that pertain to national banks and their subsidiaries. In turn, the OCC gets literally thousands of customer complaints that pertain to entities that we do not regulate, and we endeavor to refer those to the appropriate federal or state supervisor of the entity. We would be interested in discussing how this process is working, and thoughts on how to improve it. It may also be useful to discuss if there is any uniform information that could be made available to consumers via agencies' websites or otherwise that would explain where to file complaints and what agency to contact with

respect to particular regulated entities. We would be happy to pursue these issues in any forum that would be appropriate.

Additionally, we would like to extend an invitation to you and/or others that may be appropriate, to visit our offices in Houston, Texas. We welcome the opportunity to provide you with a comprehensive overview of our operations, a presentation of our consumer complaint management system and associated supervisory tools, as well as a tour of our facility.

If you need any information or have questions, please feel free to contact me at 713-336-4350. I will give you a call in the near future to explore how we can jointly pursue these initiatives.

Sincerely,



Samuel P. Golden
Ombudsman



State of North Carolina

ROY COOPER
ATTORNEY GENERAL

Department of Justice
P. O. Box 629
RALEIGH
27602-0629

XC: CDS
3/31/04
CA
CONSUMER PROTECTION
(919) 716-6000
Fax: (919) 716-6050

March 26, 2004

Samuel P. Golden, Ombudsman
Office of the Ombudsman
Office of the Comptroller of the Currency
1301 McKinney Street
Suite 3400
Houston, TX 77010

Dear Mr. Golden:

Attorney General Cooper forwarded your letter to me and asked that I, as his Consumer Protection chief, reply on his behalf.

Protecting consumers is one of the Attorney General's top priorities. Accordingly, he agrees that consumers should experience as little confusion as possible when filing complaints with, or seeking assistance from, government agencies. He has asked me, therefore, to discuss with you how the OCC refers complaints to state agencies and how state agencies can effectively refer complaints to the OCC. If consumers are contacting your Consumer Assistance Group (CAG) with problems beyond your authority, it makes a great deal of sense for the CAG to know to which agency the problem should be referred. It may also be advisable to discuss how best to communicate to consumers how various government agencies can assist them with their problems.

As you know, Attorney General Cooper opposes the OCC's efforts to preempt state consumer protection laws and to restrict state enforcement of those laws because he believes those efforts will diminish the protections afforded to consumers. When it comes to clearly communicating to consumers about how their state and federal governments can serve them, however, our agencies can set our policy and legal disagreements aside. Please feel free to call me at (919) 716-6006 to identify a mutually convenient time to talk about these issues. At that point, I can gauge the availability and interest of my colleagues in other states to join us in this discussion.

We appreciate your interest in cooperating on this matter.

Sincerely,

Josh Stein
Senior Deputy Attorney General

-> NAAG



Comptroller of the Currency
Administrator of National Banks

Office of the Ombudsman
1301 McKinney Street
Suite 3400
Houston, TX 77010

October 27, 2004

Mr. Roy Cooper
Attorney General
North Carolina Department of Justice
P. O. Box 629
Raleigh, NC 27602-0629

Dear Mr. Cooper:

I wanted to follow-up on our previous correspondence and telephone conversations with Senior Deputy Attorney General Stein. Craig Stone and I will be in Charlotte on November 15th and 16th attending scheduled meetings at one of the large national banks. We wanted to extend an invitation to you and your staff to set-up a time to discuss the OCC's consumer complaint process. We have open time on for a breakfast meeting in the morning of November 15th or could arrange our schedule to have a meeting in the early afternoon that same day. Should your schedule permit travel to Charlotte, we can arrange a meeting in one of our local offices.

As previously discussed, we are very interested in opening a dialogue with your office to discuss several topics, including methods to improve the process of referrals of consumer complaints among state and federal agencies. We also want to focus on improvements to clarify and improve consumers' awareness of where and how to file complaints against a national bank or a subsidiary of a national bank.

I look forward to hearing from you soon and if you need any information, please feel free to call me at 713-336-4350.

Sincerely,

Samuel P. Golden
Ombudsman

cc: Josh Stein



Comptroller of the Currency
Administrator of National Banks

Office of the Ombudsman
1301 McKinney Street
Suite 3400
Houston, TX 77010

April 9, 2004

Mr. Josh Stein
Senior Deputy Attorney General
North Carolina Department of Justice
P. O. Box 629
Raleigh, NC 27602-0629

Dear Mr. Stein:

It was a pleasure visiting with you via telephone last Friday, and I appreciate your March 26, 2004 letter on behalf of Attorney General Roy Cooper. As you are aware, I am the Ombudsman for the Office of the Comptroller of the Currency (OCC), and have responsibility for the agency's Customer Assistance Group. The Customer Assistance Group provides direct assistance to customers of national banks and their subsidiaries, and also analyzes complaint data and provides that analysis to OCC examiners to assist them in their examinations of national banks and their subsidiaries.

Currently, many state agencies routinely refer consumer complaints that they receive against National Banks and their subsidiaries to the OCC. Similarly, the OCC receives thousands of customer complaints that pertain to entities that we do not regulate, and we endeavor to refer those to the appropriate federal or state supervisor of the entity.

As I mentioned in my initial letter to Attorney General Cooper, Deputy Ombudsman, Craig D. Stone, and I are very interested in opening a dialogue with your office to discuss several topics including:

- (1) Methods to improve the process of referrals of consumer complaints among state and federal agencies.
- (2) Improvements to clarify and improve consumers' awareness of where and how to file complaints against banks.

- (3) Alternatives that the states could take should they become aware of an unsafe and unsound, unfair or deceptive, or any other banking practice by a national bank or one of its subsidiaries that spawns concern.
- (4) Enhanced communication between the states and the OCC on consumer protection related issues including regular interaction by the OCC with state agencies (Attorney Generals and Banking Commissioners) through attendance at regularly scheduled meetings.

Additionally, we would like to extend an invitation to you, and others that may be appropriate, to visit our offices in Houston, Texas. We welcome the opportunity to provide you with a comprehensive overview of our operations, a presentation of our consumer complaint management system and associated supervisory tools, as well as a tour of our facility.

I look forward to visiting with you during our call scheduled next Wednesday, April 14, 2004 at 10:30 a.m., EDT. Please do not hesitate to contact me whenever I can be of assistance at 713-336-4350 or via email at Samuel.Golden@occ.treas.gov.

Sincerely,

Samuel P. Golden
Ombudsman



Comptroller of the Currency
Administrator of National Banks

Office of the Ombudsman
1301 McKinney St. Suite 3400
Houston, TX 77010

November 18, 2004

Mr. Philip Lehman
Assistant Attorney General
Consumer Protection Division
North Carolina Department of Justice
P. O. Box 629
Raleigh, NC 27602-0629


Dear Mr. Lehman:

Thank you for taking the time to meet with us on Tuesday morning. I believe that we have identified several areas of common interest and I look forward to future meetings.

As a follow-up to our meeting, we would welcome any reactions, comments, or suggestions you might wish to provide on the revised model MOU on Information Exchanges Regarding Consumer Complaints. As we noted, the new version is intended to avoid any concession by one party to jurisdictional views of the other party. Instead, the referring agency remains free to make referrals based upon its views of the jurisdiction of the receiving agency. We hope that this approach will be acceptable to you and other Attorneys General.

We would also welcome any suggestions you might have on how OCC might improve its consumer assistance process based on your experience in North Carolina. Please feel free to contact Craig directly if you have any questions, comments or suggestions related to the processing of consumer complaints.

Finally, we would welcome the opportunity for additional meetings with your office or a broader group of Attorneys General. We think there are a range of issues that we might usefully explore including:

1) *Methods to improve the process of referrals of routine consumer complaints among state and federal agencies.* For example, OCC would like to discuss the OCC's referral of complaints to state agencies and, specifically, when we should refer complaints to Attorneys General as opposed to the State Banking Departments.

2) *Methods to improve consumer awareness of how to file complaints against national banks.* For example, we would like to discuss the information available to consumers on government web sites. As we noted during our discussion, the North Carolina web site is a model in terms of providing on its web site specific information on how consumers with complaints against national banks can contact the OCC CAG. Unfortunately, not all states do this and we would like to explore whether we can establish model language and practices. Likewise, the OCC site does not presently provide contact information for state agencies even though some consumers with complaints about state banks or entities come to the OCC site; we would like to discuss what type of information we should post on our web site to help those consumers.

3) *Use of technology to enhance efficiency in our cross referral of complaints.* For example, we would like to discuss whether we might be able to adopt systems that would allow our agencies to use secure e-mail to send each other referred complaints and supporting documents.

4) *Establishment of regular meetings between OCC and State Attorneys General to address issues of common concern and general trends.* For example, these periodic meetings might:

- Share information about patterns of abuses, including emerging trends and ongoing problems at financial institutions.
- Discuss how participating agencies might better coordinate enforcement actions on different types of institutions to ensure effective remedies.
- Review how consumer complaints are handled, including how the process works currently and suggestions on how to improve the process.
- Collect and distribute information about best practices used by financial institutions to avoid abusive practices.
- Support public education efforts to help consumers recognize and avoid abusive practices in financial services.

Again, I appreciate you meeting with us so early in the morning, and look forward to following-up on these areas of common interest. Please give my best regards to Roy and Josh and have a wonderful Thanksgiving holiday and weekend.

Yours truly,



Samuel P. Golden
Ombudsman

xc: Roy Cooper
Attorney General

Josh Stein
Deputy Attorney General