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OPPOSE CARPER #3949 GIVING NATIONAL BANKS IMMUNITY FROM COMPLIANCE WITH FEDERAL AND STATE CONSUMER PROTECTION LAWS

Don't Take States and Attorneys General Off the Predatory Lending Beat

Senator
United States Senate
Washington, DC 20510

May 13, 2010

Dear Senator:

On behalf of our low income clients, I write to urge you to oppose Senator Carper's Amendment #3949 to the Restoring American Financial Stability Act, S. 3217. **The Amendment copies the Wall Street playbook on how to weaken the Consumer Financial Protection Bureau and deprive states of their role in addressing bank abuses. The bill's enforcement and preemption provisions are already a compromise and must not be weakened further. If you care more about protecting consumers from bank abuses than you care about protecting banks that are violating the law--you should oppose this amendment.**

1. Attorney General Enforcement of CFPB Rules:

The amendment would prevent state attorneys general from taking action when national banks or federal thrifts violate CFPB rules in their states. The CFPB has no enforcement authority over 98% of banks, and the Carper amendment would leave enforcement for those banks solely in the hands of the bank regulators who failed us in the past.

- Anyone who violates the law should be accountable. Most banks will comply with the CFPB rules. Do not give national banks that don't a special pass against vigilant enforcement
- Under another provision of the bill, the CFPB will have *no enforcement authority against 98% of banks*, and individuals won't have a right to enforce the CFPB rules themselves, making it critical that AGs be able to protect their states' residents.
- For the largest 2% of banks, the CFPB cannot be everywhere, protecting consumers in all 50 states. AGs need to be able to protect residents in their states and the CFPB needs the AG's resources.
- Many existing federal laws permit enforcement by state AGs, with no ill effects.
- Before bringing an enforcement action, the bill already requires AGs to consult with the CFPB and bank regulators, and the CFPB may intervene or clarify its rules, ensuring consistency in enforcement standards.
- More law enforcement helps everyone, including honest competitors who follow the rules, have nothing to fear, and might lose business to others who break the rules.

2. Immunity from State Law:

The bill already gives the OCC too much power to preempt state law. The amendment makes it easier for national banks to ignore state laws that address new bank abuses not yet covered by federal protection – the state laws we need the most. Preemption prevents states from stopping those abuses before they spread nationally.

- The Senate compromise provision in the bill *already* gives the OCC, an agency with a history of hostility to consumer protection, far *too much power* to wipe out state consumer protection laws. The provision should not be weakened further.
- States are first responders who act first and stop local abuses from spreading to become a national problem. They started acting in 2006 to pass laws against unaffordable mortgages, but those laws only applied to part of the market. Their laws are *most important* when there is a gap in federal law.
- States that adopted tough anti-predatory lending laws before the OCC preempted those laws had lower foreclosure rates than states without those laws.
- National banks made riskier loans after the OCC issued a broad preemption rule. In 2006, from 32% to 50% of toxic loans, depending on the type, were made by banks and subsidiaries that states could not touch, and that share was growing.
- Wal-Mart can operate in 50 states without preemption, banks operate in countries around the globe, and they can and do adapt to differences in state laws. States tend to copy each other, not adopt 50 different standards.
- Preemption favors large national banks and weakens our dual banking system.

Banks – which have opposed stronger consumer protections all along -- have identified attorney general enforcement and preemption of state laws as their key weakening amendments. The banks want to be able to ignore <u>both</u> state and federal law with impunity. **A vote for Carper #3949 is a vote against consumer protection.**

Sincerely,

Lauren K. Saunders
Managing Attorney