



**Oral Testimony Prepared for
Walt McDonald, 2004 NAR President
Before the U.S. Senate Banking Committee
April 7, 2004**

Chairman Shelby, Senator Sarbanes and Members of the Committee, thank you for inviting me here today to share the views of the National Association of REALTORS® on the OCC Federal Preemption Rule. My name is Walt McDonald. I am the Broker/Owner of Walt McDonald Real Estate, a single-office, independent firm, specializing in property sales, leasing, and lending in Riverside, California.

I have been a REALTOR® for 40 years. And, as the President of the National Association of REALTORS®, I represent more than one million REALTORS® – REALTORS® who are involved in all aspects of the residential and commercial real estate industry. NAR's members operate real estate brokerage, leasing and management companies, and many own affiliated businesses, such as title agencies and mortgage lending companies. NAR's members represent roughly 80 percent of consumers who buy and sell homes in America.

Let me be clear from the outset: The OCC's Preemption rule favors big business at the expense of America's consumers; it's bad for consumers, bad for small business and bad for REALTORS. But don't just take our word for it. There are many others who oppose this rule and the improper overstepping by the OCC – including all fifty State Attorneys General, all fifty State Banking Supervisors, all fifty Governors, the National Conference of State Legislatures, state real estate commissioners, AARP, the Consumer Federation of America, the National Association of Homebuilders, and the National Association of Mortgage Brokers, to name just a few.

This rule is the latest in a series of federal regulators' decisions that give special treatment to big corporations without considering the potentially negative impact on consumers. The rule is helping to create an industry that is dominated by a few large mega-banks, leaving consumers with fewer choices and higher rates. And it sends a clear message to consumers that the federal government cares more about corporate America than about America's consumers.

What's more, this rule – and the tremendous potential impact – has been made outside of Congress. NAR believes policy decisions that have such a profound effect on whole industries, states rights, and consumers should only be made by elected officials in Congress. That is why we are urging the Members of this committee and the entire U.S. Congress to reassert its authority in this area and rein in the regulatory agencies.

As recently as last week, at the House Financial Services Committee oversight hearing on the OCC, Comptroller Hawke insisted that real estate brokerage is not affected by this rule. While his response is consistent with correspondence between the OCC and NAR's offices, it fails to recognize the immediate anti-competitive effect this rule has on our members who own affiliated lending operations.

REALTORS® will continue to be subject to all state laws, licensing and registration requirements. These rules protect consumers and are good for our business; **we are happy to comply with them.** Unfortunately, under the OCC's Preemption rule, national banks and their operating subsidiaries no longer need to abide by these same laws and rules. It's simply not fair that local mortgage companies will be required to pay various state fees and comply with numerous state regulations, while the local branch for the mega-bank next door will be exempt.

At a time when the mega banks are becoming even larger and more profitable, why does the OCC think it is necessary to remove state oversight and regulation? State laws, regulation, and consumer protections have **not** kept banks from enjoying the largest profit margins they have earned in decades. If the current regulatory system is not broken, why does the OCC need to fix it?

Moreover, this rule has other potential negative consequences for both consumers and the real estate industry.

Before February 12th mortgage brokers in my home state of California had to be licensed. Now if they work for a national bank or its operating subsidiary mortgage brokers will not need that license. But there is no comparable federal mortgage broker license or regulation. And neither state law enforcement nor real estate officials can investigate and regulate those mortgage brokers.

NAR is disappointed that Comptroller Hawke once again is unwilling to acknowledge that his new rule clearly and unmistakably declares that any state law that **obstructs, impairs or conditions a national bank's ability to fully exercise its powers to conduct activities is pre-empted**. The impact of the new rule goes well beyond the types of laws that are listed in the rule. The Comptroller's rule gives national banks wide latitude to simply ignore any state law that they conclude *conditions* their activities. It is difficult to imagine *any* state law that would not in some way *condition* banking. It is this open-ended nature of the rule that gives REALTORS® so much trouble.

Perhaps this Committee can point to the "conditions" language of the rule and question Mr. Hawke as to his view of the breadth of that term. No one else has been able to gain any specific definition from the OCC.

NAR is concerned that the Comptroller's new rule is yet another link in the chain that will lead to national banks' engaging in new activities, such as real estate brokerage, while remaining unconstrained by state consumer protection safeguards and licensing requirements.

It is clear to NAR that expansion of national bank activities at the expense of state consumer protections is bad for consumers and it's bad for the community-based businesses that serve them best. NAR is firmly committed to ensuring that Congress carefully scrutinizes the implications of the Comptroller's actions and takes the appropriate legislative action to ensure that only Congress makes such profound policy decisions.

Again, thank you for allowing us to testify today; I am happy to answer any questions you may have.