

RESCINDED AL 2004-2



OCC ADVISORY LETTER

Comptroller of the Currency
Administrator of National Banks

Replaced - See OCC 2022-2

Subject: Consumer Complaints Referred to National Banks From State Officials

TO: Chief Executive Officers of all National Banks, Department and Division Heads, and All Examining Personnel

PURPOSE

This advisory letter supplements OCC Advisory Letter 2002-9 by providing general guidance for national banks and their operating subsidiaries¹ on handling consumer complaints referred or sent to the national bank by state officials.

BACKGROUND

OCC Advisory Letter 2002-9 summarizes principles that apply in determining whether a state law is applicable to a national bank. The letter describes the statutory authority of the Office of the Comptroller of the Currency (OCC) to regulate national banks, to examine national banks for compliance with federal and applicable state laws, and to enforce these laws. The letter advises national banks to consult with the OCC if state officials contact them concerning the potential application of a state law, or if these officials seek information concerning a national bank's operations. Finally, the letter describes procedures to address circumstances when state officials raise issues concerning potential violations of laws by national banks, including when state officials may seek information from a national bank about its compliance with any law or for other purposes.

State officials are encouraged in AL 2002-9 to contact the OCC if they have any information to indicate that a national bank may be violating federal or an applicable state law or if they seek information concerning a national bank's operations. Likewise, national banks are urged to contact the OCC if they are contacted by a state official seeking information from the bank that may constitute an attempt to exercise visitorial authority over the bank.

This letter supplements AL 2002-9 to provide clarifying guidance for national banks on the OCC's expectations concerning consumer complaints that are referred directly to the bank by state officials.

¹ This guidance applies equally to national banks and to their operating subsidiaries. References in this guidance to national banks include their operating subsidiaries. See 12 CFR 5.34(e)(3) and 12 CFR 7.4006.

PROCEDURES

State Referrals to National Banks

The OCC expects that national banks will seek to resolve consumer complaints fairly and expeditiously, regardless of the source of the complaint – whether received directly from a consumer, referred from the OCC’s Customer Assistance Group (CAG), or received from a state agency or official, or from any other source. The OCC does not regard referral of complaints for resolution by a bank as a “visitation;” national banks should not assert the OCC’s exclusive visitorial authority as justification for not addressing customer complaints that are referred by state officials.

Thus, in most cases when a national bank receives a consumer complaint from a state official, the bank should deal with the complaining consumer directly and need not involve the OCC. There is no need to notify the OCC about routine consumer complaints referred by the state, and the bank should expeditiously take steps to resolve the complaint including, where appropriate, contacting the consumer. The bank should not delay such steps until after the OCC has received or reviewed the consumer complaint. Rather, national banks should notify the OCC of such state referrals only in appropriate cases, as described below.

If the state contact regarding a consumer complaint is an effort to direct the bank’s conduct, or otherwise to exercise visitorial authority over the national bank, then the bank should bring the matter to the OCC’s attention.² Likewise, if the state-referred complaint deals with the applicability of a state law or issues of preemption, then the OCC should be involved. In such cases, the bank should notify the OCC’s Office of Chief Counsel at the contact listed below.

On occasion, state officials who refer routine consumer complaints directly to national banks will also request the bank to inform them how the particular complaint is resolved. In such cases, the OCC encourages national banks to advise the referring official about the resolution of a referred complaint, provided that can be done without compromising any privacy interests of the customer.³

State Referrals to OCC

The OCC has also 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, so that the OCC may take appropriate action. To the extent that the matter involves an individual customer grievance, state officials should send the complaint to the CAG, at the address indicated below. In the case of broader issues, such as the applicability of a particular state law to national banks generally, or where a state official has information that an individual national bank is engaged in a particular practice affecting multiple customers that is alleged to be predatory, unfair or deceptive, this information should be communicated to the OCC’s Office of Chief Counsel, at the contact listed below.

² The OCC’s Visitorial Powers regulation defines visitorial powers to include: 1) examination of a bank; 2) inspection of a bank’s books and records; 3) regulation and supervision of activities authorized or permitted pursuant to federal law; and 4) enforcing compliance with any applicable federal or state laws concerning those activities. 12 CFR 7.4000(a)(2).

³ In such a case, the bank may wish to provide some form of aggregated data.

The OCC has 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

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

Information and issues of the type appropriate for referral to the OCC's Office of Chief Counsel 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, SW
Washington, DC 20219

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

Consumer Complaints and Compliance Management Programs

Regardless of the source of its consumer complaints, a national bank should have a complaint resolution process that, among other things, tracks complaints and their sources, provides information to management, and that is appropriate to the size of the bank and the nature of its business. This process is subject to OCC review as part of its supervision of a bank's compliance management program.⁴

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⁴ All banks, regardless of size, should have a compliance program that, among other things, ensures that consumer complaints are monitored and analyzed and that appropriate action is taken to address noted deficiencies. OCC Compliance Management System Handbook (1996) at pp. 6-7.