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OCC Sends Letter on Dodd-Frank Preemption to Senator Carper

The OCC sent a letter to Senator Thomas R. Carper concerning its interpretation of the federal preemption standard in Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The OCC was writing in response to a letter from Senators Carper and Mark Warner, the authors of Dodd-Frank's preemption standard, asking the OCC to articulate its interpretation of the standard.

Dodd-Frank provides that a "state consumer financial law" is preempted if, "in accordance with the legal standard for preemption provided by the U.S. Supreme Court in *Barnett Bank of Marion County, N. A. v. Nelson*, 517 U.S. 25 (1996)," the law "prevents or significantly interferes" with a national bank's execution of its powers.

In response to the portion of the preemption standard in Dodd-Frank that requires preemption to be in accordance with the legal standard for preemption in *Barnett*, the OCC expressed its view that this language is a directive to apply the conflict preemption standard articulated in *Barnett*. According to the OCC, this means that the "prevent or significantly interfere" provision in the Dodd-Frank preemption standard is only the starting point in the analysis and that any determination must go on to consider the whole of the conflict preemption analysis in *Barnett*.

In its letter, the OCC concludes that precedents that are consistent with the principles of the *Barnett* conflict preemption analysis are preserved, including judicial decisions, interpretations and OCC rules, where preemption was premised on *Barnett*-based principles of conflict preemption.

[Click here](#) for the OCC letter.