



American  
Bankers  
Association

# Banking Regulation and State Sovereignty in Financial Services

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American Bankers Association

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# The Dual Banking System

- State Constitutions and Statutes (NY 1851)
- Interstate Commerce Clause
- State Banks Dominant (no national banks)
- The National Bank Act (1864)
- Federal Reserve Act (1913)
- Glass-Steagall Act (1933)
- Riegle-Neal Act (1994)
- Gramm-Leach-Bliley Act (1999)
- FCRA/FACT Act (2003)
- Dodd-Frank Act (2010)



# State Bank Regulation

- Two-thirds of banks are state charters.
- Independent and co-operative exam teams
- Exam fees support the Banking Dept.
  - Generally lower than OCC fees
- In-state branching rules bind national banks
- Better knowledge of local bank industry conditions, individuals and legislators.



# Game Changers for the States - - Preemption

- National Bank Act and Federal Reserve Act
  - BHCs, branching and barrier to interstate
- Marquette Nat. Bank decision - - US Sups 1977
  - Exporting card rates to customers in other states OK
- Riegle-Neal Act
  - Purchase, Consolidation, De Novo Branching
- FCRA/FACT
  - Expanded list of per se preemptions
- Credit CARD Act (2009)
  - State rules superseded
- Dodd-Frank Act (2010)
  - OCC preemption reg undone
  - Barnett standard codified (prevent or significantly interfere with)



# Current Issues

- Bank lending limits to one customer
  - Higher in some states than for National Banks
  - Dodd-Frank preserves higher state limits
- De Novo Interstate Branching
  - Riegle-Neal 103 Repealed
- Mortgage Underwriting
  - Federal control largely limited till now (regs on repay ability)
  - New Dodd-Frank rules on repayment ability and net new benefit in refis
- Mortgage Appraisals
  - HERA/SAFE Act 2008 mandated registration and licensure of mortgage brokers



# Current Issues (Cont'd)

- Mortgage Enforcement by Foreclosure  
Remains within state law; EXCEPT for S. 896,  
May 20, 2009

The act mandates 90-day notice to holdover tenants in foreclosed properties, despite what prior statute or case law held.

It represents the first breach in the wall between federal mortgage lending law and state mortgage foreclosure law.



# Dodd-Frank Enforcement

- The Dodd-Frank bill (signed July 21, 2010) expands the enforcement powers of state AGs.
- U.S. Supreme Court Cuomo decision in 2009 permitted AG to gain access to national bank docs and records if AG has initiated an action in a court.
- Dodd-Frank authorizes AGs to enforce federal banking laws generally.