Massachusetts Bankers Association

December 13, 2005

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Email: comments@fdic.gov

RE: RIN 3064–AC95 (Pre-emption of Certain State Laws for State-Chartered Banks and the Implementation of Federal Interest Rate Authority)

Dear Mr. Feldman:

On behalf of our 210 commercial, savings, cooperative, and savings and loan members throughout Massachusetts and New England, we appreciate the opportunity to comment on the Notice of Proposed Rulemaking (NPR) issued by the Board of the Federal Deposit Insurance Corporation regarding the pre-emption of certain state laws and the implementation of interest rate authority contained in the Federal Deposit Insurance (FDI) Act. While we strongly agree and welcome a public dialog regarding efforts to strengthen the dual banking system, the approach put forward in the NPR raises a number of concerns that could have the unintended consequence of actually weakening the state bank charter.

Overview

The FDIC is asserting authority under its interpretation of section 24(j) and section 27 of the FDI Act which state that a host state law applies to a branch of an out-of-state, state bank only to the extent that it applies to a branch of an out-of-state national bank and that insured state banks must have interest rate parity with national banks, respectively. The original petition for rulemaking filed by the Financial Services Roundtable references the recent Office of the Comptroller of the Currency (OCC) order that pre-empts state laws for national banks as the catalyst for this proposal.

The FDIC claims that the authority to issue rules under these sections comes from section 9(a) of the FDI Act, which allows the Corporation to act unless the authority to issue rules for a state bank is expressly granted to another regulatory agency. As stated in the NPR, there is little mention of this issue either in statute or in Congressional report language. The FDIC is relying primarily on the record of witness testimony and the public statements of Members of Congress during the debate on Riegle-Neal and Riegle-Neal II to support Congressional intent for this authority. As a result of the paucity of legislative history and Congressional intent, we feel that moving forward with the FDIC's proposal would lead to years of litigation for the FDIC and regulatory confusion for state-chartered banks.

Competitive Impact: Non-bank Lenders and ILCs

Under the NPR, state-chartered banks operating out-of-state branches will be governed by only one set of rules – that of their home state regulator. This will inherently create competitive advantages and disadvantages for state-chartered institutions depending on the regulatory environment of their home state. Our member banks in Massachusetts operate primarily in a state with a long history of consumer

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protection and prudent regulations for safety and soundness. If non-bank lenders that operate through state-chartered institutions such as payday lenders or Industrial Loan Companies (ILCs) branched into Massachusetts, banks in our state would be at a significant competitive disadvantage. This is particularly important given the fact that the Corporation is currently considering Wal-Mart Stores, Inc.'s application to obtain deposit insurance for an ILC charter.

While state banks in more heavily regulated banking environments already face competition from national banks and federal savings institutions that operate under the OCC's and Office of Thrift Supervision's pre-emption authority, those state-chartered institutions have a choice: to remain a state bank or convert to a federal charter. Massachusetts banks, however, would not have the same option to convert to a different state charter. Rather than strengthening the state bank charter, adoption of this rule could have the opposite effect of weakening the charter in some states while greatly strengthening it in others. This will be particularly true if some states adopt extremely lax regulatory regimes in order to attract state bank charters and assets under their supervision.

Impact on Consumers

The proposed rule will also create uncertainty for consumers. There could be situations where state banks operating across the street from each other will be subject to vastly different consumer protection regulations. In areas where a number of state chartered banks operate out-of-state branches, there could conceivably be institutions adhering to several regulatory regimes in the same city or town. While this has worked well under a state versus federal regulatory paradigm, it is less apparent how it would function with multiple and disparate state regulatory schemes.

State regulators are adept at responding to the needs of consumers and institutions in their particular jurisdictions, and issues can differ substantially from one part of the country to another. Some regulators and state legislators have prohibited or restricted particular bank activities because of market conditions at the local or regional level. Allowing institutions from other states to ignore these state-specific regulations could potentially pose a risk to local, state, and regional economies.

Consumers could no longer be certain what laws and regulations governed their transactions. Disclosure requirements and licensing laws could vary between neighboring institutions, while new powers such as payday lending authority or activities like predatory lending could occur at one institution yet not at another. While the goal of the federal pre-emption rule was to ensure that national banks and federal savings institutions operate under a uniform set of laws and regulations, the proposed rule will bring far less uniformity to the regulatory system for both consumers and bankers.

Other Issues

State laws governing state banks have been pre-empted in very limited circumstances and only by Congressional action. If the proposed rule is approved, host State regulatory authority over out-of-state state banks will almost completely vanish and the FDIC will become the de facto primary regulator of state banks' out-of-state branches. Because the Corporation has not historically taken positions on interpretations of state laws and has not traditionally been involved in ensuring bank compliance with state laws and regulations, the impact of this regulatory change is unclear. At an extreme, it could result in the "nationalization" of the state charter system.

The proposed rule could also lead to legislative and regulatory ramifications for all institutions, regardless of charter. There has been considerable debate among Members of Congress, state and federal bank regulators, and other interested parties regarding the scope of the federal pre-emption, even though it has been upheld consistently by the courts. There is a danger that the distinction between national and state pre-emption might be blurred such that all powers are curtailed. This would be to the detriment of consumers as well as both federal and state chartered institutions.

Conclusion

There are far simpler methods by which the FDIC could act to relieve the regulatory burden on state-chartered institutions. For example, the FDIC could work more closely with state examiners by accepting state exams and better coordinating safety and soundness compliance as well as Community Reinvestment Act exams. In addition, enactment of the regulatory relief legislation now before the Congress would greatly benefit state-chartered institutions in all 50 states. Finally, the Corporation should carefully consider all of the burden reduction recommendations received under the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

The Massachusetts Bankers Association and our member banks strongly believe that there must be a constructive dialog with all affected parties regarding the future of the dual banking system. In some ways, the balance has shifted in recent years toward federally regulated institutions. However, we do not believe that a unilateral pre-emption action on the part of the FDIC alone can correct these disparities. While the proposed rule is well intentioned, we believe it will have the unintended consequence of weakening the state charter by exacerbating competitive inequities between institutions.

Thank you again for the opportunity to comment on the proposed rule. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Jon K. Skarin
Director, Federal Regulatory & Legislative Policy

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