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May 16, 2005

VIA ELECTRONIC MAIL
Robert E. Feldman
Executive Secretary
Attention: Comments/ Legal ESS
Room 3060
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Re: Petition for Rulemaking to Preempt Certain State Laws

Dear Mr. Feldman:

I write on behalf of low income consumers. I thank the FDIC for the opportunity to comment on the Petition for FDIC Rulemaking Providing Interstate Banking Parity for Insured State Banks filed by the Financial Services Roundtable (the Roundtable).

Land of Lincoln Legal Assistance Foundation, Inc. is a federally funded legal services provider, serving low income individuals, families, and community groups in 65 counties in southern and central Illinois. I have worked in the East St. Louis office since 1994, primarily representing homeowners threatened with foreclosure. For five years, I also served as corporate counsel for the largest nonprofit provider of affordable homeownership opportunities in East St. Louis. I currently serve as a member of the Consumer Advisory Council of the Board of Governors of the Federal Reserve System.

The petition submitted by the Roundtable poses a threat to consumers, small community state chartered banks, and the survival of the dual banking system. The petition appears designed to destroy the last vestiges of the dual banking system. If the Roundtable's proposals were adopted by the FDIC, the effect would be to federalize virtually all banking regulation in this country and to implicitly federalize the state banking laws of Delaware and South Dakota.

State banking regulators, now the regulators of first resort for state chartered banks, would be replaced in their entirety by the FDIC, without any action by Congress approving this move or any appropriation by Congress funding the increased duties and responsibilities.

The two federal acts relied on by the Roundtable cannot be read to authorize such a sweeping change. The House-Senate conference report on the Riegle-Neal Act reaffirmed the importance of individual state regulation: "States have a legitimate interest in protecting the rights of their consumers, businesses and communities" and "States have a strong interest in the activities and operations of depository institutions doing business within their jurisdictions, regardless of the type of charter an institution holds."[1] Riegle-Neal II, contrary to the assertions of the Roundtable, did not reverse this: rather, it created a narrow exception to permit interstate branching by state chartered banks. The Roundtable seeks to take this narrowly crafted exception and have it swallow the rule.

The Roundtable similarly distorts and overstates the exceptions to the applicability of state law in the Gramm-Leach-Bliley Act. The sections relied on by the Roundtable refer largely to the sale of insurance, not to all banking and financial activities. In the section that refers to activities other than insurance and the issuance of securities, the statute provides that state law is not generally preempted and shall not be generally preempted.[2]

The Roundtable urges sweeping preemption—not simply preemption of state laws that conflict with federal laws but preemption of all individual state laws.[3] This is contrary to the expressed intention of Congress as embodied in the conference report for Riegele-Neal Act.[4] It is also contrary to any obvious necessity or simple common sense. Laws of general applicability—contract law, foreclosure law, licensing acts—need not be federalized in order to preserve the viability of the state charter. OCC preemption, we are told, threatens the existence of large state-chartered banks. Sweeping preemption by the FDIC threatens the survival of small, community based banks that reflect and are subject to the values and regulations of the states they are based in.

There is no reason to completely gut state's abilities to protect their "consumers, businesses and communities."[5] States can choose now to grant parity to their own state banks as opposed to national banks within their own borders. Individual states are in the best position to assess the fine balance in any given state between promoting the competitiveness of the state's banks and protecting consumers. States have a long history and a comparatively large bureaucracy for addressing consumer complaints. States are more likely to know both the needs of their consumers and the needs of their businesses, including lending institutions. FDIC preemption would permit states to compete for banks by lowering their standards but would bar states from competing for residents and consumers—or even responding to the legitimate grievances of citizens—by raising consumer standards.

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[1] H.R. Rep. No. 103-651, at 53 (Conf. Rep.), reprinted in 1994 U.S.C.C.A.N. 2068, 2074.
[2] 15 U.S.C. §6701(d)(4)(D)(i).
[3] See footnote 24 of the Petition, 70 Fed. Reg. 13413, 13423 (Mar. 21, 2005).
[4] H.R. Rep. Conf. Rep. No. 103-651 at 53 (1994), reprinted in 1994 U.S.C.C.A.N. 2074.
[5] H.R. Rep. No. 103-651, at 53 (Conf. Rep.), reprinted in 1994 U.S.C.C.A.N. 2068, 2074.

Gutting the states' ability to determine this balance undermines the dual banking system rather than strengthening it. The existence of the dual banking system depends upon meaningful state regulation. If state regulation is replaced in toto by federal regulation, we no longer have the dual banking system. If the FDIC attempts to exercise field preemption similar to the OCC and the OTS, the dual banking system will devolve into a single system, driven by OCC regulation, largely exempt from state law, aside from the federalized non-regulation of two or three states. This is not a dual banking system, with competing state and federal regulators. This does not respect basic principles of federalism, which requires deference to the legitimate regulation of individual states. The FDIC's extension of preemption would survive only to demolish what is left of the dual banking system, not revive it.

To the extent that FDIC preemption would equal the playing field between national banks and state-chartered banks, it would do so at the expense of federalism and the dual banking system. As Governor Bies has observed, the dual banking system is largely responsible for the strength of our nation's financial institutions and the flexibility of our financial regulation.[6] FDIC preemption for state-chartered banks would promote equality, but an equality of bottom-feeders.

Thank you for this opportunity to submit comments on the petition.

Sincerely,
/s
Diane E. Thompson

[6] Speech by FRB Governor Susan S. Bies before the Conference of State Bank Supervisors, May 30, 2003, at 1, available at www.federalreserve.gov.