

# Preemption and Federalism

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# The State Banking System RIP???



It should be remembered, of course, that if the Congress that created the national banking system had its way, Federal dominance would be an accomplished fact and state banking would be a long faded memory

Jerry Hawke, Comptroller of the Currency  
July 24, 2003

As a result of their tenacity and adaptability, the dual banking system survived, eventually attaining a level of theological importance comparable to the family farm

Today the relationship between state and federal banking authorities can perhaps best be described as one of constructive competition...

Jerry Hawke, Comptroller of the Currency  
July 24, 2003

# First...A Little Perspective

## What Does the Industry Look Like?

- 5,809 state commercial banks
- 2,078 national commercial banks
- 915 federal savings institutions
- 651 state savings institutions

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**9,453 institutions**



Source: FDIC Quarterly Banking Profile as of 12-31-02

# First...A Little Perspective

## What Does the Industry Look Like Nationally?

- 74% of commercial banks – state chartered
- 45% commercial bank assets in state chartered banks
- 7.1 trillion in assets
- 1.7 million employees



Source: FDIC Quarterly Banking Profile as of 12-31-02

## First...A Little Perspective

41 of the largest  
100 banks are  
State Chartered



EMPOWERING OUR PARTNERS

Source: FDIC Institution Directory

## Montana Banking Department

- Strong and Progressive Agency that has asked to be Certified by the CSBS Accreditation Program and will receive an on site exam later this year
- Respected Leadership by Commissioner Goodwin and her staff
- Certified Examiner Pool
- Supported by a Healthy State Banking Industry

## The State Banking System is Alive and Well

- It's about regulatory efficiency
- It's about local decision making
- It's about innovation
- It's about community banking (and not community banking like Wells Fargo)
- It's about 9,453 institutions making credit decisions
- It's about the economy/and economic development

## Value of State Banking System

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### Innovation!

- NOW Accounts
- ATM
- Insurance Sales/Underwriting
- Travel Agencies
- Securities Sales
- Real Estate Brokerage/Development
- Interstate Branching

## OCC Regulatory Preemption Proposal

- Visitorial Rights—Essentially prohibiting any and all state authority over nationally chartered banks including oversight by state attorney generals for the national bank AND their operating subsidiaries (state corporations that are often licensed and regulated by the states).

## OCC Regulatory Preemption Proposal

The Final Rule states that except where made applicable by Federal law, state laws that obstruct, impair, or condition a national bank's exercise of powers granted under Federal law do not apply to national banks.

## OCC Regulatory Preemption Proposal

“The arrogance and audacity of the Comptroller’s actions are astounding. Ignoring concerns from the United States Congress, the nation’s governors, state legislatures and attorneys general is an affront to the democratic process” CSBS

## OCC Regulatory Preemption Proposal

- Direct Contradiction of Federal Legislation
  - Riegle/Neal 12 USC 36
  - “In General-The laws of the host regarding...consumer protection...shall apply”
- Supreme Court Preemption Standard expanded beyond recognition
  - Barnett v. Nelson 517 U.S. 25 (1996)
  - “To say this is not to deprive States of the power to regulate national banks, where (unlike here) doing so does not PREVENT OR SIGNIFICANTLY interfere with a national bank’s exercise of its powers”

## OCC Regulatory Preemption Proposal

- No real choice in charters for Large Institutions
- Only a Federal one-size-fits-all solution to specific problems
- More consolidation in the industry—moving us closer to the Canadian model...

## OCC Regulatory Preemption Proposal

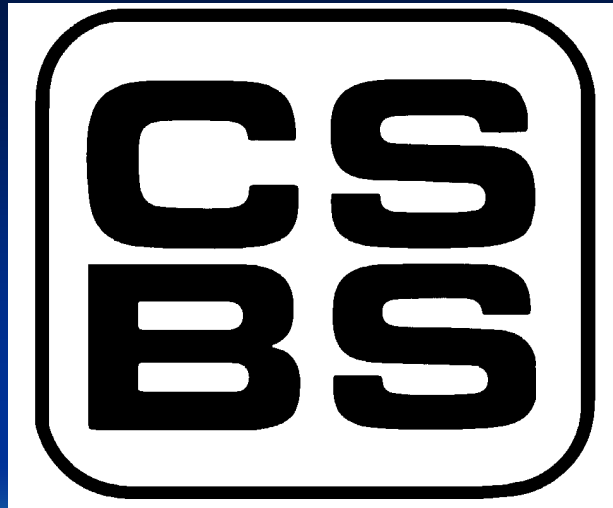
ATTORNEY GENERAL ELIOT SPITZER:

The OCC can not, by administrative fiat, take away protections to which New York consumers have always been entitled, nor can it take away states' powers to enforce those laws.



## How Can the States Respond?

- Express Concern to your Federal Representatives
- Maintain an Attractive State Bank Charter Option
- A Well-Funded State Supervisory System with a Cadre of Qualified Bank Examiners



Conference of State Bank Supervisors