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Dodd-Frank Rekindles Old Debate

By LOUISE STORY

One of the most classic American political debates — state versus federal law — is surfacing again in the banking sector, as regulators work to put in place the financial reforms passed a year ago in Washington.

At issue is whether state banking regulators will be undercut by their federal counterparts when it comes to consumer financial protection laws. Banks, state regulators and consumer advocates have been sparring in legalese-filled comment letters over the last month in response to rules proposed by the [Office of the Comptroller of the Currency](#), which regulates national banks.

Even the [Treasury Department has criticized the comptroller's rules](#) and sided with state officials, saying the rules do not hew closely enough to the Dodd-Frank legislation intended to rein in Wall Street.

A portion of the Dodd-Frank legislation is dedicated to pre-emption, the ability of federal law to trump state laws. Banks, consumer groups and states are now arguing over what the intent of the legislation was.

The comptroller, meanwhile, said that for the most part, the Dodd-Frank bill did not change the office's power to pre-empt state laws when it comes to regulating national banks. The states contend that the bill gives them new power to avoid pre-emption in some cases.

The issue is a hot one because some consumer advocates say that financial companies were able to get away with lax lending standards and predatory behavior during the surge in home sales before 2008 in part because the lenders could claim that more restrictive state rules did not apply to them.

Banks, on the other hand, say it is more efficient for them to follow national rules as the industry has consolidated and added customers in many states.

The comptroller [has been criticized since the financial crisis](#) for often siding with bank-friendly policies, and the office's critics point to the recently proposed rules on pre-emption as a sign that the regulator has not changed.

"There is extreme consternation in the consumer community that the O.C.C. is continuing to side with banks over consumers to a considerable extent," said [Paul Bland, a senior staff lawyer who works on consumer banking cases at the law firm Public Justice](#), referring to the Office of the Comptroller of the Currency.

"A clear message of the Dodd-Frank law," he said, "was that Congress felt that federal regulators, especially the O.C.C., had not been sufficiently aggressive in dealing with advertising by banks. And, because state banks and state regulators were so much more favorable to consumers, Congress wanted to free state regulators from the O.C.C.'s grasp. In these proposals the O.C.C. is very close to trying to pretend that the Dodd-Frank act never passed."

The comptroller gained expanded oversight responsibilities in the Dodd-Frank law last year, when the Office of

Thrift Supervision was shut down, and some of [its rules proposed in May](#) applied to merging parts of those two regulators. The regulator is working under an acting director and [awaiting the nomination of a permanent leader](#).

The [comments on its proposed rules were due on Monday](#), and at least 24 were received, including some from Wells Fargo, JPMorgan Chase & Company and Citigroup.

A spokesman for the comptroller's office, Bryan Hubbard, declined to discuss the comments and said there was no timeline for the comptroller to finish evaluating them. "We will be carefully reviewing all comments we've received as we move toward a final rule," he said.

New York State's new Financial Services Department was one of the strongest critics of the proposed rules, [arguing in its comment letter](#) that the rules would "narrow and hamper the application of state consumer protection laws."

Created this year, the New York department could prove to be a thorn in the side of federal regulators because so many financial companies are based in the state. The department, an amalgam of the state's old insurance and banking divisions, is being led by one of Gov. Andrew M. Cuomo's most trusted advisers, Benjamin M. Lawsky. He helped manage many of the cases against banks filed by Mr. Cuomo when he was New York's attorney general.

In an interview, Mr. Lawsky said that the comptroller was trying to "hinder the intent of Dodd-Frank."

Mr. Lawsky added: "We think it's important for consumers and for the financial service industry writ large for the states to continue their vital role. The importance of the states as regulators has been on display the last several years."

In particular, Mr. Lawsky wrote, the comptroller is trying to use an overly broad definition to determine whether it can overrule a state law and ignoring a mandate to review state consumer laws on a case-by-case basis. He also says that the comptroller is trying to ignore a provision of Dodd-Frank that would allow state attorneys general to enforce federal laws as well as state laws.

Several banks, however, wrote letters supporting the comptroller's proposals. [Citibank wrote](#), "It would be extremely difficult for these banks to stay current on all state and local laws that could possibly apply to them across the United States, to be certain which ones would cover their activities, and to attempt to comply with such a multiplicity of different — and potentially inconsistent — requirements."

[Wells Fargo wrote that](#) the comptroller's confirmation of a 1996 Supreme Court ruling on pre-emption helped support a "robust national banking system." The implications of that case, though, remain in dispute, and the [National Association of Attorneys General wrote in a comment letter](#) that the comptroller's office was basing its proposed rules too heavily on that case and not enough on the intent of Dodd-Frank.

Beyond supporting the comptroller's proposed rules, [JPMorgan made suggestions](#) to try to protect itself from state laws that might hinder the bank's ability to lend money or demand collateral. JPMorgan also said that it supported the positive comments by the Clearing House, a bank-owned company that handles payments within the financial system. [The Clearing House asserted that](#) "any suggestion that federal pre-emption has encouraged predatory lending practices or somehow led to the subprime crisis is baseless and incorrect."