



REMARKS OF

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"COOPERATIVE FEDERALISM IN BANK SUPERVISION AND CONSUMER PROTECTION"

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A. Introduction

Thank you for the invitation to speak here today, as well as for that kind introduction. I remember my last visit to the Exchequer Club fondly, and am pleased to be with you again. When I spoke here back in January of 2008, the financial meltdown was in its first phase, before the tumultuous events of that autumn. But it was clear even then that regulatory reform was sorely needed, especially with respect to the mortgage market and consumer protection.

I believe I have had a unique vantage point on the financial crisis as it has developed. I have seen it through the three hats I wear: as Superintendent of Banks for the State of New York, as a member of the Governor's Cabinet leading our state's foreclosure mitigation efforts, and as a Member of the TARP Congressional Oversight Panel. The Banking Department has a wide range of institutions under supervision in New York, from the largest banks such as Bank of New York Mellon and Goldman Sachs to mortgage brokers, non-depository lenders and other financial services providers.

B. The need for reform and a Cooperative Federalism

Now, almost three years later, I am even more convinced that enhanced consumer protection will be the bedrock of our current economic recovery and of future financial stability. What I advocated when I spoke here last was a renewed level of coordination among state and federal financial supervisors, a Cooperative Federalism. By this I

meant an approach that retains what is best in our current dual state-federal framework while incorporating the competitive benefits of more centralized models, through enhanced cooperation.

For instance, states like New York and North Carolina were the first to identify the subprime crisis amidst dangerous lending practices almost 10 years ago. The states were forced to stand down their enforcement efforts by federal regulators who were asserting preemption and calling for exclusive authority at the federal level. We can do better than that. We can achieve appropriate oversight and national standardization while putting to best use the expertise and resources of each level of government.

This may sound to some like an attempt to do the impossible. But I believe it not only can be done, but has been done to a large extent through the Dodd-Frank financial reform legislation. As a starting point, going back to the subprime example, Dodd-Frank has explicitly empowered states. It heightened the standards that must be met before the Office of Comptroller of the Currency can nullify state consumer protection laws with respect to national banks.

I would like to explore Cooperative Federalism further by considering -

1. Three new opportunities created by Dodd-Frank that can further strengthen state-federal cooperation; and,
2. The need for an exponential increase in federal-federal cooperation among regulators as well.

Most importantly, I see Dodd-Frank as a re-affirmation of the dual banking system. Reform could have eliminated a meaningful state oversight and enforcement role. It could have removed supervisory authority from the FDIC and the Federal Reserve, the agencies that partner with the states, and created a single monolithic regulator. It could have undermined state supervision of the vast majority of branches of foreign banks operating in the U.S. But instead, in no small part due to the efforts of the Conference of State Banking Supervisors, Congress confirmed that the state role is critical -- providing checks and balances, more cops on beat in enforcement, and serving as a proving ground for new laws.

C. New opportunities and challenges in regulatory cooperation

So the future of state supervision and consumer protection is stronger today than it was before Dodd-Frank. Even with the advances of Dodd-Frank, however, challenges still exist and the law itself creates new relationships that need to be worked out. The

relationship between the states and the new Consumer Financial Protection Bureau, or CFPB, is a prominent example.

1. CFPB Jurisdiction: Banks

States overlap jurisdiction with the CFPB on multiple levels. The clearest distinction is between banks and non-banks. For smaller banks, those with assets below \$10 billion, the Federal Reserve or the FDIC will remain our federal counterpart. The CFPB will participate in exams on a sampling basis. From an operational perspective, the addition of the CFPB as the secondary federal counterpart for smaller banks, although important, represents the least change in the state-federal dynamic.

However, for larger banks with assets over \$10 billion, the CFPB will be a new federal partner for the states in conducting consumer compliance exams. For those larger banks that are state-chartered, the CFPB is required to “pursue arrangements and agreements with state regulators on joint and coordinated examinations.”

There is an important difference in oversight for larger banks to mention. Those with a federal charter will experience a bifurcation in their supervision, with separate agencies responsible for prudential oversight and consumer protection. Those that are state-chartered, which account for over a third of larger banks, will retain a holistic approach on the part of their chartering supervisor. This does not mean that consumer protection takes a back seat to safety and soundness at state agencies. On the contrary, it recognizes the many touch points between these two disciplines that contribute to effective oversight, such as underwriting standards. The financial crisis has clearly demonstrated that a loan that is unfair to borrowers is not prudent bank business.

2. CFPB Jurisdiction: Non-banks

Regulatory authority over non-banks, however, such as consumer lenders and check cashers, poses different and novel challenges. Unlike with depository institutions, non-banks have typically been supervised exclusively at the state level. Here the addition of the CFPB as a federal counterpart will be breaking entirely new ground.

In fact, the state-CFPB relationship with respect to non-banks could be the true test for Cooperative Federalism. As states, we are committed to making this relationship work for the benefit of consumers. Our hope and expectation is that this coordination will be a two-way street. There are numerous areas where the CFPB and states will need to

be flexible and creative, to ensure we really do work together in implementing our common mission.

I would like to highlight three areas that I believe offer a promising way forward and relate to the CFPB's explicit statutory mandate.

A. Mortgage servicing

The first area is in oversight of the mortgage servicing industry. The foreclosure crisis and disappointing results with loan modifications has thrown industry loss mitigation practices into the spotlight. Mortgage servicing would be a logical early focal point for the CFPB. Servicers have been largely unregulated in the past, but states like New York have taken steps to bring greater accountability.

In 2009, we passed legislation in New York that required servicers to register with the state, and in 2010 we followed up with detailed business conduct regulations. In these ways states that have been first movers can offer a template for national standards. Our new rules in New York provide critical consumer protections in mortgage servicing, such as:

- Establishing an explicit duty of care and fair dealing that is now legally enforceable;
- Requiring consideration of modification prior to foreclosure, with specific time frames for responding to borrowers; and,
- Reporting vital mortgage performance data on delinquencies to the Banking Department.

Performance data, in particular, is a perfect example of what should be required to be reported at the federal level and in a standardized format. That is why I have long called for a national reporting requirement on mortgage performance. This would bring transparency and accountability to the servicing industry, much as the reporting of new mortgages under HMDA has done for originations.

B. Payday loans

Payday loans are a second important area. Payday loans can be a debt trap for unwary or financially distressed borrowers. While I realize that payday lending is legal in some states, but in many others it is prohibited. In New York, payday loans

would violate usury laws. It's especially important that the CFPB quickly define a payday loan under Dodd-Frank, as the term is not defined in the laws. The check cashing industry is lobbying Congress and state legislatures to create new powers that would exempt them from state usury laws in offering payday loans cloaked as "small dollar loans."

The CFPB will need to be vigilant in setting definitions, disclosures, and rules for payday lending. It must ensure that payday loans, however they are characterized, are not misused to open a Pandora's Box and eviscerate this most fundamental state consumer protection.

C. Registration of non-bank lenders

Finally, in increasing oversight of non-banks, the CFPB should also build on state registration and licensing efforts, which have been especially effective for mortgages. The states have already developed a nationwide licensing system for mortgage loan originators -- the National Mortgage Licensing System, or NMLS, which is recognized under federal law. The federal SAFE Act mandated a registration system for mortgage loan originators, but it was careful to utilize existing state resources. Federal registration functions as a back-up, in case a state opts out of the NMLS or otherwise does not have state rules that conform to SAFE Act minimums. Using this model of state-federal cooperation, consideration should be given to expanding the NMLS to intelligently include other non-depository lenders and providers of financial services. This will enhance oversight and accountability for a wider range of institutions.

3. Enforcement of consumer protection laws

Another area that presents a real opportunity to inaugurate a new era of cooperation lies in the enforcement of consumer protection laws. Dodd-Frank codifies the Supreme Court's recent decision in Cuomo vs. Clearinghouse, re-affirming the right of state Attorneys General to bring actions against national banks under non-preempted state laws such as UDAP. It also authorizes state Attorneys General to bring actions under federal consumer financial protection laws in state or federal court. By doing so, Dodd-Frank recognizes the crucial role states play in consumer protection. However, the success of this shared enforcement model depends on a new degree of state-federal cooperation. The CFPB and the states must work together, as the states and the Federal Trade Commission have long done, to coordinate enforcement where appropriate to achieve the most effective results.

4. Implications for cooperation between federal agencies

I have been speaking so far about the opportunities and challenges inherent in the vertical cooperation between states and the federal government in the form of the CFPB. I would like to spend my final few minutes on the horizontal component to Cooperative Federalism, namely the collaboration between various agencies at the federal level.

The OCC, Federal Reserve and FDIC all retain various forms of responsibility for consumer compliance. For banks with assets of \$10 billion and under, this responsibility is primary. But for the largest banks that primary duty has shifted to the CFPB. There are two points to acknowledge about this bifurcated approach to determining oversight responsibility.

The first is that it is artificial. By that I simply mean that there is nothing in a bank's size that makes a given product or practice unfair or even predatory. If consumers are harmed, they are harmed regardless of the size of entity offering that product or service. As a result, there will need to be close cooperation among federal agencies to ensure a consistent approach in treatment across banks of various asset sizes.

The second point is that federal prudential regulators will need to maintain consumer compliance expertise. They will continue to conduct regular exams for smaller banks. And even at the larger national banks, where safety and soundness is being separated from consumer protection, I believe strongly that prudential supervisors cannot turn a blind eye to consumer issues or rely passively on the CFPB. For example, a proper assessment of the strength of an institution's management, the "M" in the CAMELS rating which is a core element of a prudential review, cannot ignore consumer issues. In fact, it is my hope that the CFPB's existence will create healthy competition among regulators in setting a high bar with respect to consumer protection.

All regulators need to remain vigilant. Inappropriate or unsuitable products that cannot be repaid or that drive consumers deeper into debt are destabilizing to institutions as well as to families. Product design standards and simpler disclosures are only part of the solution. While nontraditional products are right for some, these products may be aggressively sold to consumers for whom they are not appropriate, given their financial circumstances. That is why a duty of care is a necessary complement to other reforms. While issues around liability and safe harbors would have to be addressed, that is no reason to avoid the discussion.

D. Conclusion

What I am describing here, whether it is with the states, or among federal agencies, is the importance of strengthening cooperation and mutual accountability between regulators. While I have long said that there is no one optimal regulatory structure, the changes that we are undertaking will succeed only if we truly embrace Cooperative Federalism at all levels of government. Thank you again for the opportunity to speak today.