REMARKS OF JOSEPH A. SMITH, JR. NORTH CAROLINA COMMISSIONER OF BANKS TO THE CONFERENCE OF STATE BANK SUPERVISORS LEGAL SEMINAR

Raleigh, North Carolina
August 24, 2011

It is a pleasure to be with you today. I am a lawyer myself, but have taken to heart the old chestnut that if I took my own cases I'd have a fool for a client. Given the complexity of financial regulation, my fellow commissioners and I need competent and effective counsel. Conferences like this are essential to that end. I applaud CSBS for organizing this Legal Seminar and you for attending.

Your agenda is filled with highly qualified experts speaking on a number of important topics. I would like to supplement the program by discussing a single overarching issue that affects much of what we do: the role of state financial services supervision and regulation after the SAFE and Dodd-Frank acts. I believe this role needs to change if states are to remain relevant.

My office has proposed and our General Assembly has agreed to study revisions to our state's banking law and our laws relating to mortgage lending. While these efforts are different, they have a common theme: adapting our state laws and regulatory structure to our current realities.

North Carolina's banking law was originally enacted in 1921 and has been revised over time to reflect changes in the economic and regulatory landscape. These changes have included: the Great Depression of the Twentieth Century; the New Deal (including creation of the FDIC); and interstate banking and branching from the Southeastern Compact through Riegle-Neal. Our banking law does not reflect changes in the modern corporation law, Dodd-Frank or the Basel Capital Accords. It has served us well, but could use an update.

North Carolina's laws relating to mortgage lending are more modern than our banking law. They were pioneering efforts to address abuses in the subprime market, the consequences of which are all too obvious even today. These laws were enacted because our General Assembly determined that the federal regulatory scheme was not adequate to address serious problems in the marketplace that were inflicting real harm on real people. That is not the case today: SAFE, Dodd-Frank and recent federal regulatory actions -- such as the recently issued loan originator compensation rules -- have substantially increased federal requirements with regard to mortgage lending and the federal regulatory infrastructure to enforce them. In our review of North Carolina's mortgage laws, we are asking whether a separate and distinct state standard is required where the federal standard is adequate and, if not, how to revise our laws to prevent unnecessary duplication and costs.

Both of the reform efforts I have just mentioned are intended to provide a state regulatory framework for banking and mortgage lending that is effective and promotes economic recovery. In my view, this work should address the needs of a financial services marketplace that is concentrated, fragile and very risk averse. There are ongoing efforts at the federal level to address the abuses and excesses that led to the financial crisis and related economic contraction. I applaud these efforts and am proud of the role that state regulators are playing in one of the most important of them: the Financial Stability Oversight Council. Bill Haraf, California Superintendent of Financial Institutions and Chairman-Elect of CSBS, is the state banking representative on FSOC. Bill's the man for the job and he is doing great work. States may also take pardonable pride in the creation and growth of the Nationwide Mortgage Licensing System that is incorporated in the SAFE Act. In addition, state regulators are forming valuable and effective relationships with the Consumer Financial Protection Bureau, due in no small part to the CSBS / AARMR "alums" who are helping to organize and lead it.

All of this is to the good; but, I think it fair to say that the scope, complexity and reach of federal regulatory activity is at a saturation point: for affected industries and for state and federal regulators. In this environment, I believe the appropriate role for states is to simplify, clarify and focus financial services regulations to achieve their important policy goals in an effective and common sense way. Let me give some examples.

In bank supervision and regulation, state oversight that is flexible and responsive can complement a more restrictive federal scheme. Bank business models generally, and the community bank model in particular, must be adapted to our current circumstances if those very important institutions are to survive. State law can and should allow for experimentation if we are to keep such institutions vibrant and, more important, serve our communities effectively. In addition, state agencies should take a greater role in consumer compliance regulation, not to compete with federal regulators, but to compliment them. My colleagues and I view consumer compliance today in much the same way we view Bank Secrecy Act compliance: an important area of supervisory concern that is also a potential source of regulatory and reputation risk for our banks.

In mortgage regulation, I submit that our job is to work with our federal colleagues to create a flexible and adaptable regulatory system that does what it needs to do to protect consumers efficiently and effectively. Our goal should be a diverse and competitive mortgage origination system, with channels of delivery through both depository institutions and capital markets. To do this, we should interpret and enforce applicable law in a way that achieves its essential purpose – offering of appropriate products by qualified originators in a fair and comprehensible way – without encumbering the operations of lenders with restrictions that provide little or no benefit for the amount of cost they involve.

A case in point is the SAFE Act. This important statute has established a uniform nationwide system of licensing for mortgage originators. This is a huge step forward and lays the foundation for the effective regulation of this important activity for the foreseeable future. That said, the SAFE Act can be read restrictively with regard to activities and persons (in the legal sense) not previously covered under state law and practice. The comments on HUD's SAFE Act rule include a number of such activities and persons: modification personnel of servicers, non-profit housing organizations, lawyers, underwriting and processing firms. I commend HUD for getting its interpretive rule out before the transfer date under Dodd-Frank both as to timing and substance. I am particularly grateful that HUD left open some room for interpretation of the statute by state regulators. This will allow for the implementation of the SAFE Act in a way that is less burdensome than it could be and that takes into account local and regional differences in real estate practices. In addition, with regard to matters of national application that are still open, the HUD final rule allows states to continue to operate as "laboratories of democracy."

The common theme of my proposals is that state action should compliment federal regulation. This does not imply subservience; states are separate sovereigns with separate grounds of authority. I am proposing that in an era of active and expanding federal action, states should not, as a rule, try to exceed federal standards in an arms race of severity; rather, states should facilitate compliance, provide practical and local balance to centralized regulation, and experiment with interpretations of law that ease regulatory burden without sacrificing important policy goals.

Rationalizing the impact of the new federal schemes of regulation is crucial. Our economy, nationally and in many regions of the country, is stressed. Growth has materially slowed, the housing market is weak or dead and unemployment remains high. The industries we supervise and regulate are also stressed and regulatory compliance increases their burden. As one who has been involved in the struggle to adequately regulate our financial markets for almost a decade, I am concerned that overly burdensome regulation will be made the scapegoat for our economic troubles and weakened as a result. This would be a tragedy and could lead to further economic and social damage. We who know the value of regulation need to protect it through the prudent exercise of our discretion.

Richard Neiman, former New York Superintendent of Banks, coined the concept of "cooperative federalism," where governments work together to achieve ends that could not be achieved separately. That concept is more important now than ever. It is made easier by the incorporation of state authority in federal statutes and the foundation of much that is new federally in prior practices of the states. There will, of course, be differences between us from time to time, but that is evidence of the health of our relationships. Through discussion and debate, we can make the new regulatory structure for financial services efficient, effective and fair. Let us all work together to that end.

Thank you for your attention.