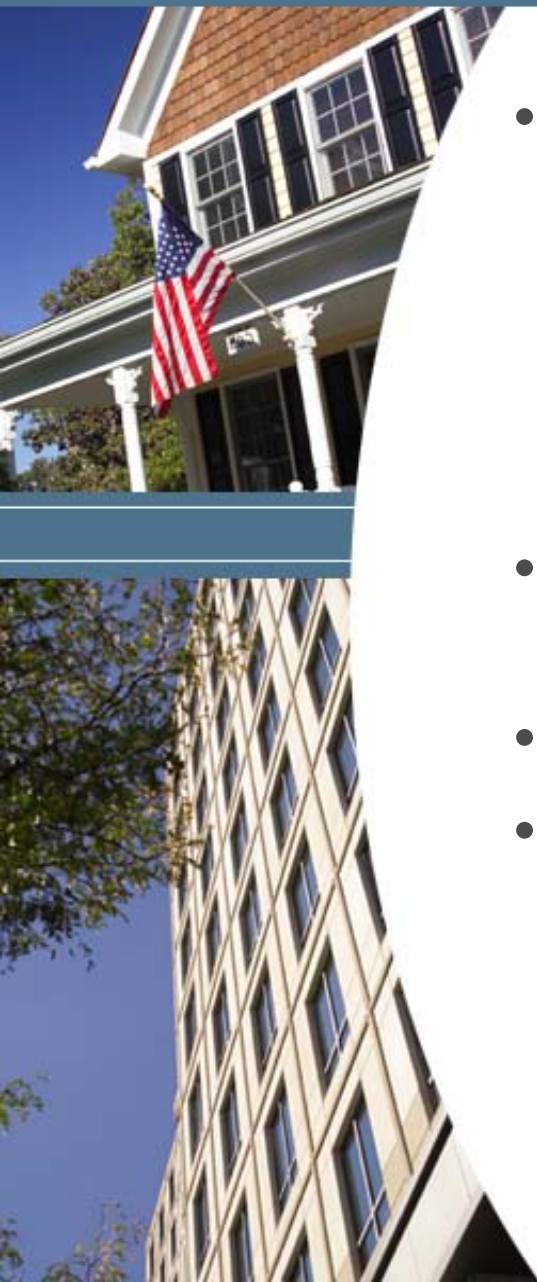




**National Bank Act Preemption:
Change Management Challenges**

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- Changes from current law in the pending bills
 - » Substantive federal law requirement
 - » Case by case preemption determination requirement
 - » Elimination of preemption for operating subsidiaries
 - Effective date issues
 - » 6 months to 2 years from enactment
 - Scope of grandfathering of contracts
 - Consequences of being wrong

- Examples of different state requirements (real and imagined)
 - » Different marketing and disclosure requirements for deposit accounts
 - » Different rules on number and amount of deposit account withdrawals and minimum balance requirements
 - » Different state laws on order of check posting
 - » Different fee restrictions and requirements regarding noncustomer use of ATM machines

- Examples of different state requirements (real and imagined)
 - » Different disclosure or requirements regarding mobile banking or online banking
 - » Different state laws regarding gift cards
 - » Different state licensing requirements for operating subsidiaries
 - » Different state laws regarding consumer lending (numerous)
 - Real Estate versus non-real estate
 - Examples: different draw and repayment periods for HELOCS, different LTV requirements

- Initial thinking about process to bring consumer products and services into compliance
 - » Prepare an inventory of all consumer products and services within scope of the law
 - » Determine which states the products and services are offered in
 - » Determine which state laws may regulate the product or service (by state, by product)
 - » Determine whether state laws may be preempted by laws other than National Bank Act
 - » Decide how to approach the substantive preemption and grandfathered contracts provisions

- Dealing with new substantive preemption rules
 - » Will customers with “grandfathered” products be treated separately from customers with new, non-preempted products?
 - » Can we make preemption decisions on our own without advance determination by a court or the OCC?
 - » How will the OCC deal with preemption requests under the new procedural standards? Can these requests be processed before the effective date? What happens in situations where there is no preemption determination prior to the effective date of the bill?

- Possible business responses to new substantive preemption rules
 - » Some products/services will be homogenized to a “lowest common denominator” approach so as to comply with all state laws, if possible
 - » Some products/services may not be offered in certain states whose laws are too restrictive or where compliance costs outweigh benefits
 - » Some products/services may be eliminated
 - » Product development and product administration costs will be higher as systems will have to support more product versions
- An unexpected (?) consequence: we may want the CFPB to establish some uniformity so there could be a substantive federal standard to point to