

Federal Preemption and Oversight in Banking



The Dual Banking System

The United States has a dual banking system, which means the federal government and the states both have authority to charter banks. Federally-chartered banking institutions are governed by the National Bank Act (NBA) and other federal laws. State-chartered banking institutions are governed by state law and the state regulatory authority, which in Connecticut is the Department of Banking (DOB).

Federal Preemption

In this context, preemption is the concept where by federal law and regulations generally override state laws and regulations as they apply to federally-chartered institutions. Federal law preempts, to some degree, state laws regulating interest rates, account fees, account charges, ATM fees, gift card fees, branching, insurance, deposit account charges, reserve requirements, capital ratios, truth-in-lending, and truth-in-savings.

State laws on the following subjects are generally not preempted: contracts, torts, criminal law; debt collection rights; property acquisition and transfer; and taxing and zoning.

Laws of General Applicability

The U.S. Supreme Court held that “federally chartered banks are subject to state laws of general application in their daily business to the extent such laws do not conflict with the letter or purposes of the NBA” (*Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 6 (2007)). Laws of general applicability are broad laws regulating a practice that do not “prevent or significantly interfere with the national bank’s exercise of its powers” (*Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et. al.* 517 U.S. 25, 33 (1996)).

Key Terms and Concepts

- **National bank** – generally any bank organized and chartered under federal law ([12 U.S.C. § 25b\(a\)\(1\)](#)).
- **State consumer financial law** – a state law that (1) does not discriminate against national banks and (2) directly regulates the manner, content, or terms and conditions of certain consumer financial transaction ([12 U.S.C. § 25b\(a\)\(2\)](#)).
- **Preemption** – under the National Bank Act, a state consumer financial law is preempted if it (1) is explicitly preempted by federal law; (2) has a discriminatory effect on national banks, in comparison with state banks; or (3) prevents or significantly interferes with a national bank’s exercise of its powers ([12 U.S.C. § 25b\(b\)](#)).

Oversight

The Office of the Comptroller of the Currency is the primary regulator for federally-chartered national banks, savings associations, and savings banks. The National Credit Union Administration is the primary regulator for federally-chartered credit unions.

DOB is the primary regulator for Connecticut-chartered bank and trust companies, trust banks, savings banks, banker's banks, credit unions, and uninsured banks.

State-chartered banks may also be members of the Federal Reserve System or be insured by the Federal Deposit Insurance Corporation (FDIC). Member and insured banks may also be regulated by the Federal Reserve Board or FDIC, respectively.

Visitorial Powers

National banks are not subject to a state's visitorial powers unless authorized by federal law. Visitorial powers include activities such as conducting examinations, inspecting a bank's books, or prosecuting enforcement actions, except in limited circumstances.

A state's attorney general may bring action against national banks and certain other state officials may be allowed to inspect shareholder lists or review payroll records, among other things ([12 C.F.R. § 7.4000](#)).

Relevant Laws at a Glance

- **National Bank Act** ([12 U.S.C. §§ 25b, et. seq.](#)) – established a national banking system and the chartering of national banks.
- **Electronic Fund Transfer Act** ([15 U.S.C. §§ 1693, et. seq.](#)) – generally governs electronic funds transfers and preempts inconsistent state laws in certain areas, including (1) electronic fund transfers; (2) dormancy, inactivity, or service fees; or (3) expiration dates ([12 C.F.R. § 1005.12](#)).
- **Expedited Funds Availability Act** ([12 U.S.C. §§ 4001, et. seq.](#)) – generally governs the availability of funds and preempts inconsistent state laws ([12 C.F.R. § 229](#)).
- **Truth-In-Lending Act** ([15 U.S.C. §§ 1601, et. seq.](#)) – generally governs disclosures of terms and costs associated with credit and leases and preempts inconsistent state laws ([12 C.F.R. § 226.28](#)).
- **Truth-In-Savings Act** ([12 U.S.C. §§ 4301, et. seq.](#)) – generally governs bank and account disclosures and preempts inconsistent state laws ([12 C.F.R. § 1030 et. seq.](#)).

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