

Interstate Branching Walls Tumble Down

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When the Dodd-Frank Act was passed little attention was paid to a short but important section that significantly affects banks' branching capabilities.

The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 first allowed interstate de novo bank branching. Previously, commercial banks were only permitted to establish branches in states in which they were headquartered.

With the enactment of Riegle-Neal, the National Bank Act and Federal Deposit Insurance Act were amended to allow banks to establish branches in states that elected to "opt in" to the new laws permitting de novo interstate branching. About 30 states opted in while the remainder continued to restrict de novo interstate branching.

Section 613 of Dodd-Frank opened up the states that had previously not opted in under Riegle-Neal to allow interstate branching. Section 613 provides that state and national commercial banks may establish interstate branches anywhere the law of the state in which the branch is to be located would permit a state-chartered bank to establish a branch.

In addition to creating uniformity among the states with respect to de novo branching, Dodd-Frank will close the book on the numerous ways banks have established branches without doing a whole-bank acquisition or merger in states that opted out of the relevant provisions of Riegle-Neal. This is of particular importance to community banks that have desired to expand across state lines, but have been restricted to more costly methods of gaining entry into those neighboring state markets. Likewise, shell charter banks will no longer be able to cash in by selling themselves at a premium to out-of-state banks looking to enter a new market area.

There are a number of reasons many commentators believe this legislation was long overdue. First, one of the effects of Section 613 will be to level the playing field between commercial banks and thrifts, the latter of which had been able to establish interstate branches nationwide since 1992. Furthermore, with the Office of Thrift Supervision merging with the Office of the Comptroller of the Currency, it would only be logical that the regulated entities of a common regulator play by the same rules. Second, the amendment of the National Bank Act and the Federal Deposit Insurance Act will give smaller community banks access to markets that may have previously been cost-prohibitive to enter in to, thereby increasing competition in the banking markets. Before Dodd-Frank, banks operating near state borders may have found it difficult

to market services and collect deposits across state lines because they lacked a branch office in the neighboring state. Now these banks will be able to establish interstate branches to gain access to and compete within new markets. Through increased competition, stronger local banks will likely prevail and move underperformers out of the marketplace.

Because of the passage of Dodd-Frank, the states that did not previously opt in to allow interstate branching under Riegle-Neal are scrambling to push legislation through their legislatures in order to conform their respective state banking laws to the requirements imposed by Dodd-Frank. For example, the Florida Legislature passed a bill that would require a bank to: provide notice to the Office of Financial Regulation before opening a branch in Florida; meet the state law requirements to do business as a foreign business entity in Florida; and provide the state with contact information and the name and address of the agent for the service of process in Florida. Currently, only two banks have filed a notice to open a de novo branch in Florida, but more will follow due to the growth opportunities provided by the state.

Although branching will be simplified after the passage of Dodd-Frank, commercial banks must still be aware of the intricacies of the state banking laws that will apply to bank-related activities in the jurisdictions into which they branch. In Florida, for example, things like documentary stamp taxes, usury laws and state-specific lending requirements may be something foreign to out-of-state banks.

While the changes as a result of Dodd-Frank will give banks greater access to new markets nationwide, it remains to be seen whether banks will take advantage of the new laws and increase branching activity. Although the precise effect of the new banking laws in Dodd-Frank is not certain, the likely result will be increased competition and industry consolidation as expansion is now much easier.

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