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## THE RISE OF STATE REGULATION OF FINANCIAL SERVICES

*The Dodd-Frank Act appears to mark the end of a long expansion of federal preemption of state consumer financial laws as applied to national banks and federal savings associations. The Act establishes a new standard for preemption and new procedures for preemption determinations. The authors review the changes and discuss examples of current actions by states to expand their role in the regulation of financial services in the post-Dodd-Frank era.*

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The wave of federal preemption of state regulation of financial services in the United States has crested, and, as it recedes, there will be significant impacts for both providers and consumers of financial services. This Article examines the over 30-year trend of ever-increasing federal preemption of state regulation of financial services, the recent reversal of that trend, and the potential winners and losers as the states reestablish their regulatory role over the provision of financial services in the United States.

### THE MODERN TREND OF FEDERAL PREEMPTION

The modern trend of federal preemption of state regulation of financial services can be traced back to the 1978 Supreme Court's decision in *Marquette National Bank*, where the Court held that a national bank may lend interstate at the rates permitted under its home state

usury law.<sup>1</sup> From the *Marquette* case to quite recently, a largely uninterrupted expansion of federal preemption of state regulation has taken place, courtesy of Congress, the federal banking regulators, and the courts.

Congress provided a major milestone in federal preemption of state regulation when it enacted the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal").<sup>2</sup> Although Riegle-Neal provided that the interstate branches of national banks authorized in that Act generally were subject to state consumer laws as if they were branches of a state bank, the Act provided important exceptions where federal law preempts the application of such state law to the national bank or if the primary national bank

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<sup>1</sup> *Marquette Nat'l Bank v. First Omaha Serv. Corp.*, 439 U.S. 299 (1978).

<sup>2</sup> Pub. L. No. 103-328, 108 Stat. 2338 (1994).

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