REMARKS OF JOSEPH A. SMITH, JR.
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It is a pleasure to be with you today. As regulatory experts, you are aware of the multi-layered and constantly expanding body of state and federal legislation and regulation on mortgage finance – a quick look at this conference's agenda makes that clear. Conferences like this are essential to educate all of the stakeholders in mortgage finance and to discuss important policy issues. I applaud MBA for organizing this Regulatory Compliance Conference and you for attending.

You have just heard from my two colleagues about many of the issues and initiatives that state mortgage regulators are focusing on, and more importantly, how the departments are working together to use their resources to greatest effect. I would like to expand on Anne's and David's remarks 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 evolve if states are to remain relevant.

At my agency's request, 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 North Carolina's banking law was originally enacted in 1921 and has been revised over time to reflect changes in the economic and regulatory landscape, including the Great Depression, the New Deal and interstate banking and branching. However, it does not reflect recent developments in the modern corporation law, Dodd-Frank or the Basel Capital Accords. Our banking law 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 have substantially increased federal requirements with regard to mortgage lending and the federal regulatory infrastructure to enforce them. So, what should states do now?

I would submit that our job is to work with our federal colleagues and with you to create a flexible and adaptable regulatory system that protects 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 lenders with restrictions that provide little or no benefit for the amount of cost they involve.

In our review of North Carolina's mortgage laws, for example, 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.

Another aspect of this work is implementation of the SAFE Act. This important statute is a huge step forward that lays the foundation for effective regulation of the mortgage market 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 refer to 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 that are still open to interpretation, the HUD final rule allows states to continue to operate as "laboratories of democracy." I see that there is a panel later today on implementation of the SAFE Act, and will leave the details to them.

In general, I hope that state action in the future will 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.

I would be remiss if I didn't say that the mortgage industry has been an integral part of this process of adjustment in the past and should continue to be a part in the future. While we have disagreed on policies and processes and will, no doubt, continue to do so, our discussion and debate has been useful – frankly, essential – both to state agencies and to industry.

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. As one who has been involved in the struggle to adequately regulate the mortgage market for almost a decade, I am concerned that 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, including damage to the recovery of the mortgage market. We who know the value of regulation – and I hope that includes all of you -- need to protect it through the prudent exercise of our discretion, in the case of regulators, and effective compliance by industry.

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 – between federal and state regulators and between regulators and industry -- 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. I invite you to work with your regulators on both the state and federal level to that end.

Thank you for your attention.