

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date November 8, 1938

To Chairman Eccles

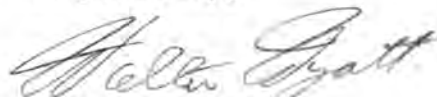
Subject: Legislative discrimination

From Mr. Wyatt, General Counsel

against member banks.

In view of the recent discussion of the manner in which section 8 of the Clayton Act discriminates against member banks, it occurred to me that you might be interested in the attached memorandum on the above subject which I prepared for my own satisfaction sometime last winter.

Respectfully,

Walter Wyatt,
General Counsel.

Attachment

DISCRIMINATION IN FEDERAL BANKING LAWS

In addition to laws peculiarly applicable to the National Banking System, the Federal Reserve System or the Deposit Insurance System as such, Congress has enacted many laws for the general purpose of preventing unsound banking practices and requiring banks to operate in a manner conducive to the public interest.

It would seem that laws of the latter class should apply uniformly to all banks subject to the jurisdiction of Congress; but they do not do so. Some of them apply only to national banks, most of them apply to all member banks of the Federal Reserve System, but only a few apply to nonmember insured banks.

This is not the result of deliberate policy or design but of fortuitous circumstances incident to the gradual development of Federal supervision of banking.

From 1863 to 1913 Congress assumed jurisdiction over no banks except national banks; and the Federal banking laws enacted during this period naturally were made applicable only to national banks.

In 1913 Congress extended its jurisdiction to those State banks which chose to join the Federal Reserve System and extended some, but not all, of the general regulatory provisions of the National Bank Act to them.

Practically all remedial or regulatory banking laws enacted from 1914 to 1933, inclusive, were made applicable to all member banks, State and national alike.

In 1933 Congress extended its jurisdiction to all State banks which chose to have their deposits insured by the Federal Deposit Insurance Corporation; but it was not until 1935 that it started extending its regulatory provisions to them; and so far only a few of the general regulatory provisions of the Federal banking laws have been extended to them.

The result is shown in the attached table, which disregards laws peculiar to the organization of national banks, membership in the Federal Reserve System, or the insurance of bank deposits and relates only to general regulatory provisions which could properly be made applicable to all banks subject to the jurisdiction of Congress.

A glance over the table will disclose that these laws leave State member banks more freedom than national banks and leave non-member insured banks much more freedom than member banks.

Stated differently, it discloses that although the Federal Government has assumed the responsibility for insuring the deposits of all insured banks, it has not thrown the same safeguards around the transaction of the banking business by non-member insured banks as it has with reference to member banks.

In view of the facts that all national banks are required to be member banks, all member banks are required to have their deposits insured, and member banks pay approximately 85 per cent of the assessments to support the deposit insurance system, the result seems not only nonsensical but unjust.

In order to remedy this situation it is not necessary to require that all insured banks be national banks or to require that they all be member banks. It would be sufficient to extend to all insured banks those general regulatory provisions of law which Congress deems necessary or desirable for the purpose of preventing unsound banking practices and requiring the banking business to be conducted in a manner conducive to the public interest. To do so would reduce the risks of deposit insurance, eliminate unfair discrimination between different classes of insured banks, and require all insured banks to operate in the public interest.

On the other hand, if any of these general regulatory laws are too strict or are not necessary or desirable in the public interest, they should be modified or repealed and should not be left on the statute books to hamper member banks alone.

COMPARISON OF FEDERAL STATUTORY PROVISIONS
REGULATING AND RESTRICTING THE BUSINESS OF
DIFFERENT CLASSES OF BANKS

Type of Statute	Applicable to		
	National Banks	State Member Banks	Nonmember Insured Banks
Restrictions on real estate loans,	Yes	No	No
Regulations governing exercise of trust powers.	Yes	No	No
Restrictions on acting as insurance agent.	Yes	No	No
Restriction on acting as real estate loan broker.	Yes	No	No
Prohibition against holding "other real estate" for more than five years.	Yes	No	No
Limitation on indebtedness which bank may incur.	Yes	No	No
Restriction on loans to executive officers.	Yes	Yes	No
Restrictions on dealings with directors.	Yes	Yes	No
Prohibition against paying preferential rate of interest on deposits of directors, officers, etc.	Yes	Yes	No
Restrictions on interlocking directorates between bank and other banks.	Yes	Yes	No
Restriction on interlocking directorate between bank and securities companies.	Yes	Yes	No
Prohibition against securities affiliates.	Yes	Yes	No
Prohibition against acting as medium or agent in connection with loans to dealers in securities.	Yes	Yes	No
Prohibition against affiliation with other corporations.	Yes	Yes	No
Limitations on loans to affiliates.	Yes	Yes	No
Limitations on investment in bank premises.	Yes	Yes	No

Type of Statute	Applicable to		
	National Banks	State Member Banks	Nonmember Insured Banks
Minimum capital requirements.	Yes	Yes	No
Prohibition against loaning on or purchasing own stock.	Yes	Yes	No
Restrictions on withdrawal of capital and payment of unearned dividends.	Yes	Yes	No
Prohibition against impairment of capital.	Yes	Yes	No
Requirement that reserves specified in Federal Reserve Act be maintained.	Yes	Yes	No
Prohibition against making loans or paying dividends while reserves deficient.	Yes	Yes	No
Restrictions on purchase of investment securities and stock.	Yes	Yes	No
Limitations on acceptance powers.	Yes	Yes	No
Limitations on loans to one borrower.	Yes	Yes	No
Limitations on loans secured by stocks or bonds.	Yes	Yes	No
Minimum capital for branches.	Yes	Yes	No
Restrictions on establishment of branches.	Yes	Yes	Yes
Restrictions on payment of interest on deposits.	Yes	Yes	Yes
Prohibition against loans or gratuities to bank examiners.	Yes	Yes	Yes
Mar 16, 1938.			
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