Commercial banks, by far the oldest form of depository institutions, significantly predate the founding of the United States. For example, the Bank of England, itself preceded by major Italian and Dutch international banking enterprises, was founded in 1694.

In the United States, banks were first chartered and regulated, to the extent that they were regulated at all, by state law. The system was chaotic; the federal government held the power of coinage, but any state bank could issue paper notes, and numerous kinds of paper notes were simultaneously in circulation. After a few abortive attempts and much political ado, the National Bank Act established a permanent federal banking system in 1864. Upon application, qualifying institutions were granted federal banking charters and special lending rights. In return, they agreed to maintain specified reserves and to comply with other federal regulations. As a result, a dual state and federal banking system was established, with state banks regulated by state law and national banks regulated by federal law.

The federal banking system has been significantly modified since its inception. In 1913, a true central banking system was created with the establishment of the Federal Reserve System. Then, in 1933 the Federal Deposit Insurance Corporation was created, and all federal banks were required to participate in the FDIC’s insurance program. Qualifying state banks have the option of joining the FDIC insurance program. By the 1980s, virtually all state and federal banks were insured by the FDIC.

Because of their FDIC insurance, even state banks are subject to some federal regulation on issues such as reserve requirements and the percentage of funds which may be issued to any one borrower. Although consumer protection regulation of state banks, including usury and other substantive consumer credit restrictions, nominally remains a matter of state law, the extent of federal preemption under interstate banking and deregulation legislation has undermined the ability of states to regulate state banks and threatened the existence of the dual banking system.

The laws of some states authorize the charter of more than one kind of state bank. The mutual savings banks, organized in many eastern states in the nineteenth century under existing banking laws to provide banking service to small depositors, may technically be “banks,” but the applicable state regulations may be distinct from those governing regular commercial banks. Similarly, “industrial banks,” which were first organized in the early twentieth century under state banking laws, soon obtained separate regulation in most states and may most accurately be viewed as variants of consumer finance companies.

Banks as a whole were slow to enter the field of consumer credit, becoming significantly involved only after the depression. Modern banks frequently issue mortgage loans or other well-secured consumer installment credit such as automobile loans. Banks also have been leaders in promoting high-priced, unsecured consumer credit in the form of open-end credit card accounts and overdraft protection. Banks, in particular, are well-positioned to profit from credit card lending, since they can afford major marketing campaigns. In addition, national banks and federally insured state banks can avoid the consumer’s home state restrictions on interest rates, late charges, and other fees through rate exportation—the bank’s ability to use its home state interest rate instead of that of the consumer’s. The profitability of the credit card business has led to the formation of specialized banks concentrating in that business.

Footnotes


158 [138] See generally Ch. 3 [1], infra.

160. See generally Sherman, Modern Story of Mutual Savings Banks (1934); Welfling, Mutual Savings Banks (1968).

161. See generally Curran, Trends in Consumer Credit Legislation 52 (1966); Saulnier, Industrial Banking Companies and Their Banking Practices (1940); § 3.1.2.4 [2], infra.


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