

# Bond Case Briefs

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## **BANKS - NEW YORK**

### **New York Bankers Ass'n, Inc. v. City of New York**

**United States District Court, S.D. New York - August 7, 2015 - F.Supp.3d - 2015 WL 4726880**

Association of commercial banks and federal savings associations brought action against city, alleging that city's Responsible Banking Act (RBA), which, inter alia, ranked and published information about banks with respect to certain criteria, including lending to low-income communities, was preempted by federal and state law. Association moved for summary judgment and city moved to dismiss for failure to state claim.

The District Court held that:

- RBA had regulatory, rather than proprietary, purpose;
- RBA conflicted with federal law; and
- Preempted provisions were not severable.

City's Responsible Banking Act (RBA) had regulatory, rather than proprietary, purpose, as required for RBA to be subject to federal preemption. RBA's stated purpose was to assess credit, financial, and banking services needs throughout city with particular emphasis on low and moderate income individuals and communities, legislators who sponsored RBA spoke about how federal and state laws were ineffectual in terms of both the collection of information and the influence over bank conduct regarding community reinvestment in city, RBA contained express procedures for adjudging, ranking, and publishing banks' efforts to comply with RBA's subjective criteria, RBA did not place conditions on deposits or transactions that city made as bank customer, city would not gain any discernible financial benefits from RBA, and RBA authorized city's Banking Commission to consider its rankings of banks when designating or de-designating banks that could hold city funds.

City's Responsible Banking Act (RBA), which regulated banks, conflicted with federal law, and thus was preempted. National Bank Act (NBA) stated that no national bank could be subject to any visitorial powers except as authorized by federal law, RBA authorized data and information collection from banks, and banks could be subject to de-designation as bank that could hold city funds if it declined to provide information to city or if it did not meet RBA's criteria, including benchmarks for lending to low-income communities that were more burdensome than those under federal Community Reinvestment Act (CRA).

Under New York law, city council would not have enacted Responsible Banking Act (RBA) without provisions that were preempted by federal and state law, and thus preempted provisions were not severable. Provisions were subject of serious legislative debate concerning possibility of preemption, mayor initially vetoed RBA due to preemption concerns, council overrode mayor's veto and passed RBA as originally intended, RBA cost city more than \$500,000 per year, and removal of preempted provisions would eliminate RBA's power to encourage certain behavior on part of banks, including lending to low-income communities.

