VIEWS & VISIONS

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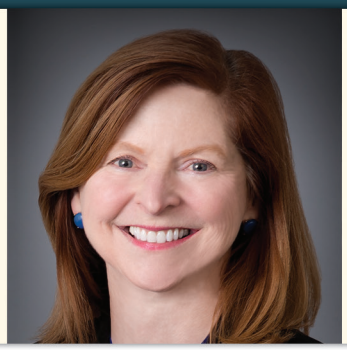

When "One-Size-Fits-All" Doesn't Fit

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Sandra M. Murphy is a Bowles Rice attorney and the leader of the firm's Banking and Financial Services Team. She focuses her practice on acquisition, regulatory, enforcement, corporate governance and securities law matters for West Virginia banks and other financial institutions.

As general counsel to the two leading bank trade associations in the state, the West Virginia Bankers Association and Community Bankers of West Virginia, she has been deeply involved in the passage of significant legislation affecting the financial services industry. Most recently, she advised and advocated for the passage of favorable legislation implementing sweeping changes to West Virginia consumer protection laws and consumer late fee laws.

Ms. Murphy has been engaged in dozens of major bank acquisitions in West Virginia, Virginia and Maryland by West Virginia bank holding companies. Her regulatory practice encompasses the representation of clients before both state and federal regulatory agencies on a wide variety of matters, including regulatory enforcement actions, corporate activity and expansion activities and compliance issues.

She earned a bachelor's degree from Yale University and a law degree from Brooklyn Law School.

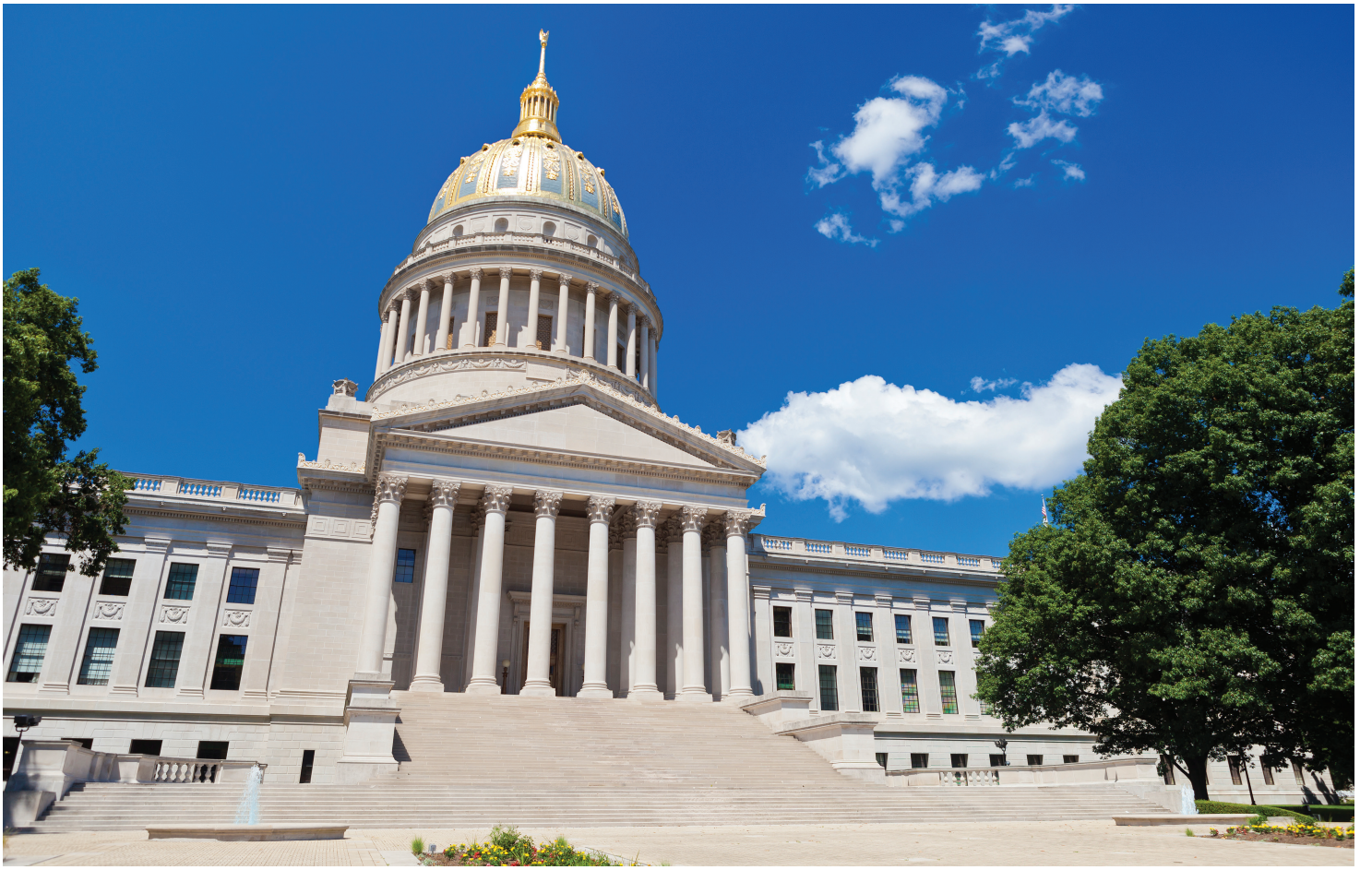
Ms. Murphy holds an AV peer-review rating from Martindale-Hubbell and is consistently recognized by Chambers USA, Best Lawyers in America® and Super Lawyers for banking law.

If there was one thing West Virginia banking regulators, consumer advocates and the banking industry could agree on this past legislative session, it was that West Virginia banks are not the problem. In opposing attempts to modify the provisions of the West Virginia Consumer Credit and Protection Act, representatives for both the Division of Financial Institutions and the trial lawyers emphasized that their opposition was based on abusive practices by large, predominantly out-of-state, non-depository institutions. The West Virginia banking industry watched in frustration as efforts to bring the state's consumer laws into line with neighboring states (and the majority of the United States) failed for reasons that essentially had little to do with them.

On the federal level, lawmakers and bank regulators have understood the need to distinguish between different business models and have created supervisory and regulatory expectations that take into account these differences. While not always successful, Congress and federal regulatory agencies have tried to design statutes and regulations to address risks inherent in large, complex organizations without crippling smaller ones that do not require the same level of regulation. Acknowledging that broad regulatory reform efforts could have unintentional consequences, federal lawmakers and regulators have adjusted legislation and regulation to provide sectors of the banking industry with meaningful relief. Some examples include:

- Designing a two-tiered payment system for interchange fees restrictions (Durbin Amendment).
- Preserving tier 1 capital treatment for trust-preferred securities held by small bank holding companies (Collins Amendment).
- Limiting the Consumer Financial Protection Bureau's (CFPB) examination authority to banks with more than $10 billion in assets.
- Excluding small banks from Basel III provisions designed for global institutions.

While not perfect, this incremental approach suggests a potential state-level strategy – one that would proactively tailor laws and regulations to reflect the differences between the banking industry's risk profile and business model, and the practices and operations of non-bank participants in the financial services industry. Generally, banks operating in West Virginia are relationship-driven, with business models that focus more on customer service and the delivery of



By not focusing on a "one-size-fits-all" statutory model, it might be possible to adopt legislation that acknowledges these differences, while simultaneously upholding the basic principles of fair and responsible lending and consumer protection.

quality products rather than the volume-based lending model engaged in by very large non-bank financial institutions. By not focusing on a "one-size-fits-all" statutory model, it might be possible to adopt legislation that acknowledges these differences, while simultaneously upholding the basic principles of fair and responsible lending and consumer protection.

I am not suggesting that an incremental approach will work in every instance. Some laws should apply to all industry participants and, in some instances, segregating bank lenders from non-bank lenders (or servicers) might not withstand a constitutional challenge under the equal protection clause. But, where banks are not the problem, consideration of more targeted alternatives is not only warranted, but can be accomplished without undermining the goals of protecting consumers, promoting financial stability and enhancing the safety and soundness of banks. V