COMMITTEE: Communications, Financial Services & Interstate Commerce

POLICY: Banking Regulation

TYPE OF POLICY: DRAFT – Policy Statement

The National Conference of State Legislatures is committed to the preservation of the dual banking system. Dual banking refers to the unique system of separate state and federal chartering and regulation of banks and thrifts. States and the federal government act independently to charter, supervise and regulate financial institutions for their citizens' benefit. A key feature of the dual banking system is the ability of a bank, whether a commercial or savings bank, to choose between a state or national charter.

THE UNIQUE AMERICAN SYSTEM

The dual banking system is critical to the strength and vitality of the U.S. economy. The dual system enables state governments to apply laws and regulations to banks and thrifts that serve the needs of local economies and that respond to the values and concerns of local citizens. The dual system encourages diversity and innovation.

The nation as a whole is weakened by preemptive federal actions to limit the flexibility of state legislatures to deal with local economic problems, such as the capacity to make choices about the financing of housing, small business lending and community development. In recognition of the advantages of the dual system to the public and to the health of the financial services industry, NCSL opposes any efforts by the federal government to restrict state authority to charter, supervise, or regulate the powers of state chartered banks and thrifts. Nonetheless, NCSL recognizes that the states have a duty to use their powers responsibly and in a way that does not endanger the deposit insurance system and thereby the nation's financial stability.
FEDERAL PREEMPTION
NCSL strongly believes that a high burden of proof must be established before federal preemption of state banking authority is ever justified and that only Congress—and not federal regulatory agencies—can preempt the actions of elected state leaders.

NCSL supports the “prevent or significantly interfere with” standard established by the Supreme Court and reiterated in Subtitle D of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to govern federal preemption of state laws as they apply to national banks.

NCSL strongly opposes any effort by the Office of the Comptroller of the Currency (OCC) to assert its regulatory authority to weaken the standard of preemption or shield national banks and their operating subsidiaries from state consumer protection laws and enforcement. Moreover, NCSL would encourage Congress to eliminate the judicial deference given to the OCC by federal courts in challenges to state financial services laws and to rein-in OCC abuse of its regulatory authority to preempt state laws.

INTERSTATE BANK BRANCHING
The 1994 Riegle-Neal Interstate Banking and Branching Efficiency Act expressly permits state and national banks to open a bank branch in a new state only if the state permits de novo interstate branching. The Riegle-Neal Act also permits states to adopt "age" laws, which allow out-of-state bank holding companies to acquire a bank branch only after it has existed for a certain number of years.

NCSL opposes congressional efforts to preempt state authority to opt out of de novo interstate branching and maintain "age" requirements.

FEDERAL REGULATORY CONSOLIDATION
NCSL recognizes the need for the federal government to reduce federal regulatory burden that can impede the economic vitality of our nation's financial
services industries. In consolidating the federal banking regulators, Congress must ensure that any consolidation does not invalidate the regulatory independence of the dual banking system.

NCSL will oppose any federal regulatory consolidation plan that would:

- Preempt, limit or interfere with the rights of states to regulate state chartered banks;
- Require federal reporting requirements and examinations that duplicate state efforts;
- Place state chartered banks at a competitive disadvantage with national banks or federal thrifts; and
- Give oversight authority for state chartered banks to the OCC, the regulator of national banks.

NCSL supports the continued federal oversight by the FDIC and the Federal Reserve of state chartered banks. It would be detrimental to the well-being of the dual banking system for Congress to tamper with present oversight cooperation between state banking departments, the FDIC and the Federal Reserve.

**CONSUMER PROTECTION**

With the rapidly changing technological advances in the financial services industries, both state legislatures and Congress must periodically consider legislation to ensure consumer access to basic banking services; to protect the privacy of financial consumers and the security of their personal financial information; to provide protection for consumers from abusive lending practices; to ensure disclosure of information about credit terms, interest rates, fees, and balances; to regulate branch closing; and to otherwise protect the consuming public. In recognition that this is an area of overlapping federal and state jurisdiction, NCSL will ordinarily not oppose such federal consumer protection measures, provided that there is no preemption of complementary state consumer protection legislation. Federal legislation should not prohibit state
legislatures and state regulators from providing additional protections for consumers of financial services. Furthermore, as the Consumer Financial Protection Bureau established in Dodd-Frank commences its role as the federal agency responsible for regulating consumer protection and enforcing applicable federal laws NCSL will oppose any action that preempts state consumer protections law or undermines the principles of federalism.

Finally, as online banking continues to grow, clear rules must be established as to which jurisdiction's consumer protections apply to a given transaction. NCSL believes that any such rules should be crafted through a partnership between state and federal regulators and should not place state chartered banks at a disadvantage in their ability to provide services over the Internet.

FINANCIAL SERVICES AND ECONOMIC DEVELOPMENT

Adequate investment by banks and thrifts is crucial to the maintenance and growth of state and local economies. Rural communities with agricultural economic bases, suburban communities, and urban neighborhoods must continue to get the banking services that meet their particular economic development needs.

NCSL recognizes that racial, ethnic, or gender discrimination by financial services institutions may have an impact on the ability of residents in distressed communities to obtain financial assistance. State legislators also recognize the need for financial institutions to make safe, sound and profitable investments. NCSL, recognizing the responsibilities that states have for financial institution regulation and solvency and for providing for fair lending to its constituents, believes that it is the responsibility of each state legislature to address the unique needs of its state. Likewise, the federal government as regulator of national banks must make the same determinations and act accordingly. However, Congress must not mandate federal guidelines that impede the states' abilities to regulate financial services.