

1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES AND**
2 **INTERSTATE COMMERCE**

3
4 **POLICY: BANKING & FINANCIAL SERVICES**

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6 **TYPE: EXISTING POLICY DIRECTIVE**

7 **STATE SOVEREIGNTY IN FINANCIAL SERVICES**

8 The National Conference of State Legislatures (NCSL) is concerned that Congress, the
9 federal financial services regulators, and the federal courts have sought to nationalize
10 control of financial services in Washington, D.C. NCSL has consistently and strongly
11 advocated for state sovereignty in financial services regulation. NCSL has opposed any
12 federal preemption of state legislative or regulatory authority in financial services. A high
13 burden of proof that federal action is necessary, such as a national financial crisis,
14 should be met before any preemption of state financial services laws and regulations is
15 warranted.

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17 **Preservation of Dual Banking System**

18 NCSL is committed to the preservation of the dual banking system. The dual system
19 enables state governments to apply laws and regulations to banks and thrifts that serve
20 the needs of local economies and that respond to the values and concerns of local
21 citizens. In recognition of the advantages of the dual system to the public and to the
22 health of the financial services industry, NCSL opposes any efforts by the federal
23 government to restrict state authority to charter, supervise, or regulate the powers of
24 state chartered banks and thrifts. NCSL opposes any federal attempts to tax state
25 banks for federal oversight services already performed by the appropriate state banking
26 agencies and departments. Nonetheless, NCSL recognizes that the states have a duty
27 to use their powers responsibly and in a way that does not endanger the deposit
28 insurance system and thereby the nation's financial stability. NCSL acknowledges
29 congressional efforts in the Dodd-Frank Wall Street Reform and Consumer Protection
30 Act (Dodd-Frank) to limit the unchecked preemption efforts by the Office of the
31 Comptroller of the Currency (OCC) of state financial consumer protections. NCSL urges

32 continued congressional vigilance of the OCC and asks the secretary of the Treasury to
33 ensure that the spirit of the Dodd-Frank Act in ensuring the states' role in protecting
34 consumers is not diminished in regulations establishing the new Consumer Financial
35 Protection Bureau.

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37 **Federal Regulatory Consolidation**

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

43 NCSL opposes any federal regulatory consolidation plan that would:

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- 45 • Preempt, limit or interfere with the rights of states to regulate state chartered banks;
- 46 • Require federal reporting requirements and examinations that duplicate state
47 efforts;
- 48 • Place state chartered banks at a competitive disadvantage with national banks or
49 federal thrifts; and
- 50 • Grant oversight authority for state chartered banks to the OCC, the regulator of
51 national banks.

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

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57 **Federal Preemption**

58 NCSL strongly believes that a high burden of proof must be established before federal
59 preemption of state banking authority is ever justified and that only Congress—and not
60 federal regulatory agencies—can preempt the actions of elected state leaders. NCSL
61 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 Act to govern

62 federal preemption of state laws as those laws apply to national banks. NCSL strongly
63 opposes any effort by the OCC to assert its regulatory authority to weaken the standard
64 of preemption or shield national banks and bank operating subsidiaries from state
65 consumer protection laws and enforcement. Moreover, NCSL encourages Congress to
66 eliminate the judicial deference given to the OCC by federal courts in challenges to
67 state financial services laws and to restrain OCC abuse of its regulatory authority to
68 preempt state laws.

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70 **Dual Chartering of Credit Unions**

71 NCSL believes that state credit union supervisors have the primary responsibility for
72 assuring the safety and soundness of credit unions chartered by and operating under
73 state law and regulation. NCSL supports the authority of state governments to
74 determine how state financial institutions must be insured and opposes any efforts by
75 the federal government to preempt states' authority to govern state deposit insurance
76 requirements. NCSL also acknowledges that states have a responsibility to provide a
77 credible regulatory environment where powers can be exercised in a way that does not
78 endanger the financial solvency of the National Credit Union Share Insurance Fund
79 (NCUSIF). NCSL additionally acknowledges that federal deposit insurance agencies,
80 like the National Credit Union Administration (NCUA), have a legitimate role to play if
81 state authorized powers lead to unreasonable risks for NCUSIF. However, NCUA
82 regulations and policies should be crafted in a way that minimizes the preemption of
83 state authority. NCSL opposes any effort by the Administration and Congress to erode
84 the dual chartering system for credit unions by preempting state credit union laws and
85 regulations that do not adversely impact the financial well-being of state chartered credit
86 unions and thus the NCUSIF. Any preemption of state credit union laws or regulatory
87 authority must be justified only by a clear and certain threat to the credit unions' share
88 insurance fund by those credit unions that are federally insured.

89

90 **Consumer Protection**

91 State legislatures and Congress must periodically consider legislation: to ensure
92 consumer access to basic financial services; to protect the privacy of financial

93 consumers and the security of their personal financial information; to provide protection
94 for consumers from abusive lending practices; to ensure disclosure of information about
95 credit terms, interest rates, fees, and balances; to regulate branch closing; and to
96 otherwise protect the consuming public. In recognition that this is an area of overlapping
97 federal and state jurisdiction, NCSL will ordinarily not oppose such federal consumer
98 protection measures, provided that there is no preemption of complementary state
99 consumer protection legislation. Federal legislation should not prohibit state legislatures
100 and state regulators from providing additional protections for consumers of financial
101 services. Furthermore, as the Consumer Financial Protection Bureau established in
102 Dodd-Frank commences its role as the federal agency responsible for regulating
103 consumer protection and enforcing applicable federal laws NCSL opposes any action
104 that preempts state consumer protections law or undermines the principles of
105 federalism.

106
107 Finally, as online financial services continue to grow, clear rules must be established as
108 to which jurisdiction's consumer protections apply to a given transaction. NCSL believes
109 that any such rules should be crafted through a partnership between state and federal
110 regulators and should not place state chartered financial institutions at a disadvantage
111 in the institution's ability to provide services over the Internet.

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113 **Financial Services and Economic Development**
114 NCSL recognizes that racial, ethnic, or gender discrimination by financial services
115 institutions may have an impact on the ability of residents in distressed communities to
116 obtain financial assistance. State legislators also recognize the need for financial
117 institutions to make safe, sound and profitable investments. NCSL, recognizing the
118 responsibilities that each state has for financial institution regulation and solvency and
119 for providing for fair lending to their constituents, believes that each state legislature has
120 the responsibility to address the unique needs of its state. Likewise, the federal
121 government as regulator of federal financial institutions must make the same
122 determinations and act accordingly. However, Congress must not mandate federal
123 guidelines that impede the states' abilities to regulate financial services.

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125 **Securities Regulation**

126 NCSL recognizes that the federal government has an interest in efficient and fair capital
127 markets. NCSL also acknowledges that the states' securities agencies are
128 indispensable partners with their federal counterparts engaging in the pursuit of fair and
129 efficient capital markets by protecting local investors, workers, and communities by
130 ensuring compliance with securities laws.

131 NCSL is concerned that the preemption of state securities laws and regulations will
132 serve only to erode investor trust in the capital markets by further weakening a system
133 designed to protect investors and putting the financial well-being of hard-working
134 Americans at risk. NCSL opposes such federal preemption and the creation of self-
135 regulatory organizations that usurp state authority. Instead, NCSL supports
136 congressional efforts to expand the restoration of state securities regulators' authority.

137

138 **Mortgage Industry**

139 Currently states regulate a significant portion of mortgage lending. Federalizing this
140 area of supervision will displace the 50-state regulatory system that has rapidly evolved
141 and could erode, or even eliminate, the current authority the states have to approve,
142 supervise and bar mortgage professionals. The local nature of real estate and
143 consumer protection necessitates direct state authority.

144

145 States, through the Conference of State Bank Supervisors (CSBS) and the American
146 Association of Mortgage Regulators (AARMR), developed the Nationwide Mortgage
147 Licensing System (NMLS) to improve and coordinate mortgage supervision. This state
148 system enhances consumer protection and streamlines the licensing process for
149 regulators and the industry. NCSL supports the NMLS to encourage a more coordinated
150 system of state and federal supervision.

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152 **FINANCIAL INFORMATION SECURITY**

153 NCSL believes that states should continue to play a vital role in protecting the privacy,
154 confidentiality and security of sensitive nonpublic personal financial information. States

155 long have sought to balance the economic value of information sharing with reasonable
156 safeguards against the unnecessary disclosure and inappropriate acquisition of
157 sensitive nonpublic personal financial information, such as credit information, account
158 numbers, account balances, and Social Security numbers. Understanding local and
159 regional economic situations and the unique needs of consumers within these markets,
160 states consistently have ensured the protection of sensitive nonpublic personal financial
161 information.

162 State legislatures recognize that financial information security is an area of overlapping
163 federal and state jurisdiction. Therefore, NCSL does not oppose federal baseline
164 standards for the protection of financial information, provided that these standards
165 generally do not preempt complementary state laws. NCSL believes that states should
166 have the authority and flexibility to adopt standards for the acquisition, retention,
167 disclosure and sharing of financial information by and among financial institutions and
168 nonaffiliated third parties that address local concerns or respond in a timely way to
169 incidences of neglect or abuse that may be local or regional in nature. NCSL specifically
170 believes that Congress should preserve state authority to exceed federal baseline
171 standards for information sharing among nonaffiliated third parties.

172

173 **Credit Reporting**

174 NCSL acknowledges the benefit of a uniform national credit reporting system to the
175 nation's economy. Therefore, NCSL does not oppose the limited areas that were subject
176 to federal preemption by the 1996 Amendments of the Fair Credit Reporting Act and
177 made permanent by the Fair and Accurate Credit Transactions Act. In doing so, NCSL
178 supports the continued exemption of the state laws that were in existence prior to the
179 1996 Amendments and thus are currently exempted from the preemption provisions.

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181 **Data Security Breach Disclosure**

182 Consistent with NCSL's general policy for safeguarding financial information, NCSL
183 does not oppose baseline federal data security breach notification standards, provided
184 that the requirements do not preempt state authority to adopt standards that provide
185 affected consumers additional protection and notification. NCSL also supports allowing

186 state financial regulators and attorneys general to enforce any new federal data security
187 breach notification standards.

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189 In the event that Congress decides to preempt state law, NCSL urges that the
190 preemption be narrowly construed to preempt only state laws that are inconsistent with
191 the federal standard while preserving state laws that apply to entities that may be
192 excluded from the federal act. Additionally, should Congress decide to preempt state
193 data security breach notification laws, NCSL would support a strong federal law that
194 would require notification of the affected consumers when sensitive personally
195 identifiable information has been, or is reasonably believed to have been, accessed or
196 acquired. In this instance, exceptions should be made only when it is concluded that
197 there is no significant risk that the breach has resulted in, or will result in, harm to the
198 individual whose information has been breached.

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