STATE SOVEREIGNTY IN FINANCIAL SERVICES

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

Preservation of Dual Banking System

NCSL is committed to the preservation of the dual banking system. 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. 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. NCSL opposes any federal attempts to tax state banks for federal oversight services already performed by the appropriate state banking agencies and departments. 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. NCSL acknowledges congressional efforts in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to limit the unchecked preemption efforts by the Office of the Comptroller of the Currency (OCC) of state financial consumer protections. NCSL urges
continued congressional vigilance of the OCC and asks the secretary of the Treasury to
ensure that the spirit of the Dodd-Frank Act in ensuring the states’ role in protecting
consumers is not diminished in regulations establishing the new Consumer Financial
Protection Bureau.

**Federal Regulatory Consolidation**
NCSL recognizes the need for the federal government to reduce the 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 opposes 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
- Grant 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.

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

**Dual Chartering of Credit Unions**

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

**Consumer Protection**

State legislatures and Congress must periodically consider legislation: to ensure consumer access to basic financial 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 opposes any action that preempts state consumer protections law or undermines the principles of federalism.

Finally, as online financial services continue 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 financial institutions at a disadvantage in the institution’s ability to provide services over the Internet.

Financial Services and Economic Development
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 each state has for financial institution regulation and solvency and for providing for fair lending to their constituents, believes that each state legislature has the responsibility to address the unique needs of its state. Likewise, the federal government as regulator of federal financial institutions must make the same determinations and act accordingly. However, Congress must not mandate federal guidelines that impede the states' abilities to regulate financial services.
Securities Regulation

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

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

Mortgage Industry

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

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

FINANCIAL INFORMATION SECURITY

NCSL believes that states should continue to play a vital role in protecting the privacy, confidentiality and security of sensitive nonpublic personal financial information. States
long have sought to balance the economic value of information sharing with reasonable safeguards against the unnecessary disclosure and inappropriate acquisition of sensitive nonpublic personal financial information, such as credit information, account numbers, account balances, and Social Security numbers. Understanding local and regional economic situations and the unique needs of consumers within these markets, states consistently have ensured the protection of sensitive nonpublic personal financial information.

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

Credit Reporting

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

Data Security Breach Disclosure

Consistent with NCSL’s general policy for safeguarding financial information, NCSL does not oppose baseline federal data security breach notification standards, provided that the requirements do not preempt state authority to adopt standards that provide affected consumers additional protection and notification. NCSL also supports allowing
state financial regulators and attorneys general to enforce any new federal data security breach notification standards.

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