

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

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4 **POLICY: BANKING & FINANCIAL SERVICES**

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6 **TYPE OF POLICY: DRAFT POLICY DIRECTIVE**

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8 **STATE SOVEREIGNTY IN FINANCIAL SERVICES**

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

16 **Preservation of Dual Banking System**

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

32 Frank Act in ensuring the states' role in protecting consumers is not diminished in  
33 regulations establishing the new Consumer Financial Protection Bureau.

34 **Federal Regulatory Consolidation**

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

40 NCSL opposes any federal regulatory consolidation plan that would:

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

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

53 **Federal Preemption**

54 NCSL strongly believes that a high burden of proof must be established before federal  
55 preemption of state banking authority is ever justified and that only Congress—and not  
56 federal regulatory agencies—can preempt the actions of elected state leaders. NCSL  
57 supports the “prevent or significantly interfere with” standard established by the Supreme  
58 Court and reiterated in Subtitle D of Title X of the Dodd-Frank Act to govern federal  
59 preemption of state laws as those laws apply to national banks. NCSL strongly opposes  
60 any effort by the OCC to assert its regulatory authority to weaken the standard of  
61 preemption or shield national banks and bank operating subsidiaries from state consumer  
62 protection laws and enforcement. Moreover, NCSL encourages Congress to eliminate the

63 judicial deference given to the OCC by federal courts in challenges to state financial  
64 services laws and to restrain OCC abuse of its regulatory authority to preempt state laws.

### 65 **Dual Chartering of Credit Unions**

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

### 84 **Consumer Protection**

85 State legislatures and Congress must periodically consider legislation: to ensure  
86 consumer access to basic financial services; to protect the privacy of financial consumers  
87 and the security of their personal financial information; to provide protection for  
88 consumers from abusive lending practices; to ensure disclosure of information about  
89 credit terms, interest rates, fees, and balances; to regulate branch closing; and to  
90 otherwise protect the consuming public. In recognition that this is an area of overlapping  
91 federal and state jurisdiction, NCSL will ordinarily not oppose such federal consumer  
92 protection measures, provided that there is no preemption of complementary state  
93 consumer protection legislation. Federal legislation should not prohibit state legislatures

94 and state regulators from providing additional protections for consumers of financial  
95 services. Furthermore, as the Consumer Financial Protection Bureau established in  
96 Dodd-Frank commences its role as the federal agency responsible for regulating  
97 consumer protection and enforcing applicable federal laws NCSL opposes any action that  
98 preempts state consumer protections law or undermines the principles of federalism.  
99 Finally, as online financial services continue to grow, clear rules must be established as to  
100 which jurisdiction's consumer protections apply to a given transaction. NCSL believes that  
101 any such rules should be crafted through a partnership between state and federal  
102 regulators and should not place state chartered financial institutions at a disadvantage in  
103 the institution's ability to provide services over the Internet.

#### 104 **Financial Services and Economic Development**

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

#### 115 **Securities Regulation**

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

121 NCSL is concerned that the preemption of state securities laws and regulations will serve  
122 only to erode investor trust in the capital markets by further weakening a system designed  
123 to protect investors and putting the financial well-being of hard-working Americans at risk.  
124 NCSL opposes such federal preemption and the creation of self-regulatory organizations

125 that usurp state authority. Instead, NCSL supports congressional efforts to expand the  
126 restoration of state securities regulators' authority.

### 127 **Mortgage Industry**

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

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

### 139 **FINANCIAL INFORMATION SECURITY**

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

149 State legislatures recognize that financial information security is an area of overlapping  
150 federal and state jurisdiction. Therefore, NCSL does not oppose federal baseline  
151 standards for the protection of financial information, provided that these standards  
152 generally do not preempt complementary state laws. NCSL believes that states should  
153 have the authority and flexibility to adopt standards for the acquisition, retention,  
154 disclosure and sharing of financial information by and among financial institutions and  
155 nonaffiliated third parties that address local concerns or respond in a timely way to

156 incidences of neglect or abuse that may be local or regional in nature. NCSL specifically  
157 believes that Congress should preserve state authority to exceed federal baseline  
158 standards for information sharing among nonaffiliated third parties.

159 **Credit Reporting**

160 NCSL acknowledges the benefit of a uniform national credit reporting system to the  
161 nation's economy. Therefore, NCSL does not oppose the limited areas that were subject  
162 to federal preemption by the 1996 Amendments of the Fair Credit Reporting Act and  
163 made permanent by the Fair and Accurate Credit Transactions Act. In doing so, NCSL  
164 supports the continued exemption of the state laws that were in existence prior to the  
165 1996 Amendments and thus are currently exempted from the preemption provisions.

166 **Data Security Breach Disclosure**

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

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