

1 **COMMITTEE: Communications, Financial Services &**
2 **Interstate Commerce**

3 **POLICY: Banking Regulation**

4 **TYPE OF POLICY: DRAFT – Policy Statement**

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

13 14 **THE UNIQUE AMERICAN SYSTEM**

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

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21 The nation as a whole is weakened by preemptive federal actions to limit the
22 flexibility of state legislatures to deal with local economic problems, such as the
23 capacity to make choices about the financing of housing, small business lending
24 and community development. In recognition of the advantages of the dual system
25 to the public and to the health of the financial services industry, NCSL opposes
26 any efforts by the federal government to restrict state authority to charter,
27 supervise, or regulate the powers of state chartered banks and thrifts.
28 Nonetheless, NCSL recognizes that the states have a duty to use their powers
29 responsibly and in a way that does not endanger the deposit insurance system
30 and thereby the nation's financial stability.

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32 **FEDERAL PREEMPTION**

33 NCSL strongly believes that a high burden of proof must be established before
34 federal preemption of state banking authority is ever justified and that only
35 Congress—and not federal regulatory agencies—can preempt the actions of
36 elected state leaders.

37

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

42

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

50

51 **INTERSTATE BANK BRANCHING**

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

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

59

60 **FEDERAL REGULATORY CONSOLIDATION**

61 NCSL recognizes the need for the federal government to reduce federal
62 regulatory burden that can impede the economic vitality of our nation's financial

63 services industries. In consolidating the federal banking regulators, Congress
64 must ensure that any consolidation does not invalidate the regulatory
65 independence of the dual banking system.

66

67 NCSL will oppose any federal regulatory consolidation plan that would:

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

76

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

81

82 **CONSUMER PROTECTION**

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

94 legislatures and state regulators from providing additional protections for
95 consumers of financial services. Furthermore, as the Consumer Financial
96 Protection Bureau established in Dodd-Frank commences its role as the federal
97 agency responsible for regulating consumer protection and enforcing applicable
98 federal laws NCSL will oppose any action that preempts state consumer
99 protections law or undermines the principles of federalism.

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

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107 **FINANCIAL SERVICES AND ECONOMIC DEVELOPMENT**

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

113

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