



**NCSL STANDING COMMITTEE on COMMUNICATIONS,
FINANCIAL SERVICES AND INTERSTATE COMMERCE**

**POLICY DIRECTIVES AND RESOLUTIONS
2018 NCSL Capitol Forum**

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

3 **POLICY: BANKING AND FINANCIAL SERVICES**

4 **TYPE: POLICY DIRECTIVE**

5 **STATE SOVEREIGNTY IN FINANCIAL SERVICES**

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

13 **Preservation of Dual Banking System**

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

30 **Federal Regulatory Consolidation**

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

35 NCSL opposes any federal regulatory consolidation plan that would:

- 36 • Preempt, limit or interfere with the rights of states to regulate ~~state-state~~-chartered
37 banks;
- 38 • Require federal reporting requirements and examinations that duplicate state efforts;
- 39 • Place ~~state-state~~-chartered banks at a competitive disadvantage with national banks or
40 federal thrifts; and
- 41 • Grant oversight authority for ~~state-state~~-chartered banks to the OCC, the regulator of
42 national banks.

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

47 **Federal Preemption**

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

59 **Dual Chartering of Credit Unions**

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

77 CONSUMER PROTECTION

78 State legislatures and Congress must periodically consider legislation: to ensure consumer
79 access to basic financial services; to protect the privacy of financial consumers and the security
80 of their personal financial information; to provide protection for consumers from abusive lending
81 practices; to ensure disclosure of information about credit terms, interest rates, fees, and
82 balances; to regulate branch closing; and to otherwise protect the consuming public. NCSL
83 supports the efforts of state legislatures to develop new policy initiatives to protect consumers,
84 especially when the federal government fails to respond to consumers' concerns. Due to the
85 global nature of the financial marketplace, cooperative state and federal action is required to
86 further enhance consumer protection, privacy and information security. Federal legislation and
87 regulation must be designed and implemented in full consultation with state legislatures to
88 ensure the authority of state attorneys general, legislatures and regulators to enforce state and
89 federal statutes protecting consumers. In recognitionRecognizing that this is an area of the
90 overlapping federal and state jurisdiction, NCSL ~~will ordinarily~~does not oppose such federal
91 consumer protection measures, provided that there is no preemption of complementary state

Commented [HM1]: This addition brings consistency to this Policy Directive that states and the federal government work together to protect consumers and reinforces NCSL's position that federal laws and regulations should be designed in consultation with state legislatures.

92 consumer protection legislation. Federal legislation should not prohibit state legislatures and
93 state regulators from providing additional protections for consumers of financial services.

94 -Furthermore, as the Bureau of Consumer Financial Protection Bureau (formerly known as the
95 Consumer Financial Protection Bureau) established in Dodd-Frank ~~commences~~has its role as
96 the federal agency responsible for regulating consumer protection and enforcing applicable
97 federal laws, NCSL opposes any action that preempts state consumer protections law or
98 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 any
101 such rules should be crafted through a partnership between state and federal regulators and
102 should not place ~~state-state~~ chartered financial institutions at a disadvantage in the institution's
103 ability to provide services over the Internet.

104 **Financial Information Security and Data Security Breach Disclosure**
105 States play a vital role in protecting the privacy, confidentiality and security of sensitive
106 nonpublic personal financial information. States long have sought to balance the economic
107 value of information sharing with reasonable safeguards against the unnecessary disclosure
108 and inappropriate acquisition of sensitive nonpublic personal financial information, such as
109 credit information, account numbers, account balances, and Social Security numbers. NCSL
110 supports that states should have the authority and flexibility to adopt standards for the
111 acquisition, retention, disclosure and sharing of financial information by and among financial
112 institutions and nonaffiliated third parties that address local concerns or respond in a timely way
113 to incidences of neglect or abuse that may be local or regional in nature. Congress and federal
114 regulators should preserve state authority to exceed federal standards for information sharing
115 among nonaffiliated third parties and not preempt complementary state laws.

116 NCSL does not oppose federal data security breach notification standards, provided that the
117 requirements do not preempt state authority to adopt standards that provide affected consumers
118 additional protection and notification. NCSL supports allowing state financial regulators and
119 attorneys general to enforce any new federal data security breach notification standards.

Commented [HM2]: This change rearranges the paragraph order and condenses the language to avoid duplication and possible confusion. Moved lines 148-164 and 172-185 to become lines 95-117.

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

129 **Financial Services and Economic Development**

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

139 **Securities Regulation**

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

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

151 **Mortgage Industry**

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

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

163 **Financial Information Security**

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

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

Commented [HM3]: Moved up to lines 95-117. This change rearranges the paragraph order and condenses the language to avoid duplication and possible confusion.

181 **Credit Reporting**

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

188 **Data Security Breach Disclosure**

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

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

Commented [HM4]: Moved up to lines 95-117. This change rearranges the paragraph order and condenses the language to avoid duplication and possible confusion.

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

3 **POLICY: THE INTERNET AND ELECTRONIC COMMERCE**

4 **TYPE: POLICY DIRECTIVE**

5 The Internet defies a detailed one-size-fits-all approach to public policy and regulation.
6 America's federal and state lawmakers, as well as policy makers from other countries should be
7 guided by principles that foster the Internet's development while protecting the security and
8 privacy of individual users.

9 Our nation's state legislatures are well aware of the impact that access to the Internet and
10 electronic commerce have on the economic vitality of our states and communities. State
11 legislatures also recognize that the marketplace for electronic commerce is not just in the United
12 States but is present in the vast global market. State legislatures share the concern of many in
13 Congress that ill-conceived over-regulation and taxation of the Internet and electronic
14 commerce services could harm our nation's ability to compete globally. However, state
15 legislatures also recognize that they have an obligation to act, when and if necessary, to protect
16 the general welfare of their constituents. As the use of the Internet continues to expand, any
17 future or existing regulations must be balanced against market forces in a competitive and
18 technologically neutral manner, as government must not choose the winners or losers of the
19 digital age.

20 Nothing in this policy statement is to be construed as limiting or affecting the right of any state to
21 regulate alcohol according to its local norms and standards pursuant to the 21st Amendment.

22 NCSL opposes unnecessary or unwarranted federal legislation or regulation that would impede
23 efforts by states to promote access to the Internet, enhance competition or increased consumer
24 choice or ensure the security of personal information of consumers conducting electronic
25 commerce transactions.

26 The National Conference of State Legislatures (NCSL) supports the following principles in
27 formulating laws and regulations that impact the Internet and electronic commerce:

28 **Privacy and Security**

29 Every American should be empowered to protect their privacy and personal information from
30 intrusion or piracy. While NCSL recognizes that there is a need for Congress to act to establish
31 a national policy to protect the personal information of Americans, state legislatures, in the
32 absence of any action by Congress and the federal government, have moved to fill the void.
33 NCSL calls upon the Congress to enact federal Internet privacy legislation that ensures the
34 security of Americans' personal information with the least amount of government regulation as
35 possible. However, NCSL opposes federal legislation that seeks to preempt existing state
36 statutes and regulations governing privacy protections and security for non-Internet based
37 transactions.

38 **Free Speech**

39 The Internet allows people to communicate and share ideas with others with an ease never
40 before possible. Federal government policy should rigorously protect freedom of speech and
41 expression on the Internet, but not restrict states or local governments from oversight protecting
42 freedom of speech. New technologies should adequately enable individuals, families and
43 schools to protect themselves and students from communications and materials they deem
44 offensive or inappropriate. State law enforcement, with federal assistance and resources, must
45 be able to enforce criminal statutes against predators that use the Internet to harm or abuse
46 children.

47 **Self-governance**

48 NCSL requests the Congress to maintain the current self-governance approach that allows the
49 competitive marketplace to drive broadband and broadband-related applications development
50 and deployment. Congress should avoid adopting new mandates and provide the Federal
51 Communications Commission (FCC) with defined and limited authority to oversee, but not
52 proactively intervene in, the broadband Internet marketplace consistent with principles that
53 focus on assessing whether the market continues to ensure that consumers can:

- 54 1. Receive meaningful information regarding their broadband service plans;
- 55 2. Have access to their choice of legal Internet content, subject to the limits on bandwidth
56 and quality of service of their service plan;
- 57 3. Run applications of their choice, subject to the needs of law enforcement and the limits
58 on bandwidth limits and quality of service of their service plans, as long as they do not

59 harm the provider's network or interfere with other consumers' use of the broadband
60 service; and
61 4. Be permitted to attach any devices they choose to their broadband connection at the
62 consumer's premise, so long as they operate within the limits on bandwidth and quality
63 of service of their service plans and do not harm the provider's network, interfere with
64 other consumers' use of the broadband service, or enable theft of services.

65 **Consumer Protection**

66 Industry self-regulation has made an important contribution to the development of electronic
67 commerce. Industry technologies and best practices, combined with the enactment of strong
68 state laws which outlaw deceptive practices and fraudulent online behavior, are essential
69 elements in promoting electronic commerce and enhancing consumer protection. Privacy and
70 consumer protection continue to be priority issues in state legislatures.

71 NCSL supports the efforts of state legislatures to develop new policy initiatives to protect
72 consumers online, especially when the federal government fails to respond to consumers'
73 concerns. ~~NCSL also recognizes that because of~~Due to the global nature of the Internet, ~~that~~
74 ~~states must seek~~ cooperative ~~state and~~ federal action ~~is required~~ to further enhance consumer
75 protection, privacy and information security. Federal legislation must ensure the authority of
76 state attorneys general to enforce federal statutes protecting consumers. However, NCSL
77 opposes any attempt by Congress to restrict the states' ability to impose criminal and/or civil
78 penalties for illegal activity that may occur over the Internet.

79 **Growth**

80 Public policies must be designed to foster continuing expansion of useful and affordable
81 bandwidth, encourage development of innovative technologies and promote broad universal
82 access. Federal and state governments must work together to ensure that all Americans,
83 regardless of where they live, have competitive access to high-speed broadband technologies.
84 Government must work to guarantee open and competitive markets for broadband services.

85 **Information Technology**

86 Information technology (IT) is a global industry. A strong American IT industry enhances and
87 strengthens the economic well-being of our states and nation. States and the federal
88 government must work together to ensure a climate that allows America's IT companies to

Commented [HM5]: The purpose of this amendment is to clean up language to ensure that the states and federal government work together to help protect consumers.

89 continue to perform research and technology development, to generate innovative new products
90 and services and to solve customer problems. States must have the unfettered ability to
91 continue to seek ways to use IT to better the lives of their residents. Therefore, NCSL opposes
92 any attempt by the federal government to restrict or penalize states' efforts to utilize information
93 technology services and products that allow states to provide more efficient government
94 services to residents at lower costs to taxpayers.

95 **Internet Gambling**

96 ~~Congress must respect the sovereignty of states to allow or to prohibit Internet gambling by their~~
97 ~~residents.~~

Commented [HM6]: With the adoption of the stand-alone State Sovereignty in Gaming Policy Directive, including the statement on Internet Gambling is no longer necessary in the Internet and Electronic Commerce Policy Directive.

98 **Electronic Commerce and Taxation**

99 Government policies should create a workable infrastructure in which electronic commerce can
100 flourish. Policy makers must resist any temptation to apply tax policy to the Internet in a
101 discriminatory or multiple manner that hinders growth. Government tax systems should treat
102 transactions, including telecommunications and electronic commerce, in a competitively neutral
103 and non-discriminatory manner. The federal government and America's industries should work
104 with state legislatures in ensuring equal tax treatment of all forms of commerce and should
105 encourage state efforts to achieve simplification and uniformity through the streamlining of state
106 and local sales and telecommunications tax systems.

107 NCSL supports the reform of the discriminatory taxation of communications services and
108 believes that if state and local governments were to take such action, the need for the federal
109 moratorium on Internet access would cease to exist.

110 **VIDEO FRANCHISE REFORM**

111 Innovation and convergence of existing technologies are radically expanding communications
112 and information services, blurring distinctions between telephone, Internet services, cable,
113 wireless and satellite. These rapid changes often outpace abilities of federal, state and local
114 regulatory regimes to adapt. It is important that video regulatory policy assure that like services
115 are treated alike, investment is encouraged, and services are in a non-discriminatory manner.

116 **State Administration Will Preserve State Authority**

117 Local jurisdictions are the creation of either state constitutions or law. The powers that these
118 political subdivisions of the state exercise were granted to them over time by state legislatures.
119 Those local jurisdictions that have franchise authority have it as a result of state legislation or
120 the state constitution. Therefore, any attempt by Congress to preempt current local franchise
121 authority is a preemption of state sovereignty.

122 While NCSL rarely advocates the consideration of legislation in state legislatures, NCSL has at
123 times, when states are facing a crisis or a serious threat of federal preemption, urged state
124 legislatures to take action. NCSL endorses efforts that remove barriers to entry for or inequity of
125 regulation among video competitors and foster additional consumer choices in the video
126 marketplace ultimately ensuring competitive neutrality.

127 Government should encourage competition and consumer choices for broadband and video
128 services and promote the deployment of broadband services and technologies.

129 **Fees and Taxation of Video Providers**

130 Franchise fees today are levied, imposed or collected as a percentage of gross revenues, used
131 for general revenue purposes and not based on the actual direct and identifiable costs of any
132 benefit to the entity that pays the fee. To the extent such fees are intended as payment for use
133 of public rights-of-way, that fee should be limited to the actual, direct and identifiable cost of
134 such use, and that portion of the fee should be applied only to those who use the rights-of-way.
135 Franchise fees should be collected and administered by one central agency per state.

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

3 **POLICY: RESOLUTION TO PROTECT THE COMMUNITY**
4 **REINVESTMENT ACT TO ENSURE THAT EFFORTS**
5 **TO MODERNIZE REGULATIONS DO NOT**
6 **UNDERMINE THE INTENT OF THE LAW**

7 **TYPE: RESOLUTION**

8 **SPONSOR: Maryland Delegate Kris Valderrama**

9 **WHEREAS**, the Community Reinvestment Act (CRA) was enacted on Oct. 12, 1977, to end the
10 practice of “redlining” by financial institutions where they would draw a red line on a map around
11 the neighborhoods they did not want to offer financial services; before the enactment of the
12 CRA, redlining made it near impossible for low- and moderate-income Americans, racial and
13 ethnic minorities, and their neighborhoods to access credit services, such as mortgages and
14 business loans, regardless of their qualifications or creditworthiness; and

15 **WHEREAS**, CRA was a landmark civil rights law passed in 1977 to end discrimination that was
16 once common in America’s banking and housing markets; and

17 **WHEREAS**, discrimination in lending is still a problem; and

18 **WHEREAS**, the CRA states that “regulated financial institutions have continuing and affirmative
19 obligations to help meet the credit needs of the local communities in which they are chartered”;
20 and

21 **WHEREAS**, the CRA establishes a regulatory regime for monitoring the level of lending,
22 investments, and services in low- and moderate-income neighborhoods traditionally
23 underserved by lending institutions; examiners from three federal agencies assess and “grade”
24 a lending institution’s activities in low- and moderate-income neighborhoods; and

25 **WHEREAS**, the federal agencies conducting CRA examinations are: the Office of the
26 Comptroller of the Currency (OCC), which examines nationally chartered banks and the Federal
27 Deposit Insurance Corporation (FDIC) and the Federal Reserve Board—both of whom examine
28 state-chartered banks; and

29 **WHEREAS**, if a regulatory agency finds a financial institution not serving these neighborhoods,
30 it can delay or deny that institution's request to merge with another lender or to open a branch
31 or expand any of its other services; the financial institution regulatory agency can also approve
32 the merger application subject to specific improvements in a bank's lending or investment
33 record in low- and moderate-income neighborhoods; and

34 **WHEREAS**, a financial institution's CRA grade can be downgraded if a federal agency uncovers
35 evidence of illegal, abusive or discriminatory lending on their fair lending exams that occur at
36 about the same time as CRA exams; and

37 **WHEREAS**, since 1996, according to analysis of bank lending data by the National Community
38 Reinvestment Coalition, CRA-covered banks issued more than 25 million small business loans
39 in low- and moderate-income tracts, totaling more than \$1 trillion, and \$980 billion in community
40 development loans that support affordable housing and economic development projects
41 benefiting low- and moderate-income communities; and

42 **WHEREAS**, the annual dollar amount of community development loans increased 443 percent
43 from \$17.7 billion in 1996 to \$96 billion in 2016; and, a 2016 review of the CRA examinations of
44 intermediate small banks (ISBs) and mid-sized banks (banks with asset sizes today between
45 \$313 million and \$1.252 billion) found that ISBs produced over \$9.3 billion of community
46 development (CD) loans and grants; and

47 **WHEREAS**, studies have found that CRA-covered home lending is safer and sounder than non-
48 CRA covered lending; when a larger share of lending is issued by CRA-covered banks than by
49 independent mortgage companies, a neighborhood experiences lower delinquency rates and
50 less risky lending; and

51 **WHEREAS**, despite the tremendous benefits of CRA to communities, the full potential of CRA
52 has not been realized because it has not been updated to take into account changes in the
53 banking industry and the economy; independent mortgage companies not covered by CRA now
54 make more than 50 percent of the home mortgage loans in America and financial technology
55 companies ("Fintech") not covered by CRA operating via the internet are rapidly increasing their
56 lending; and

57 **WHEREAS**, notwithstanding the need to modernize CRA, we are concerned about ideas from
58 some federal regulators that would substantially weaken the law; and

59 **WHEREAS**, geographic assessment areas must remain the focus of CRA exams for all banks;
60 banks should continue to be graded based on every geography where they lend or receive a
61 significant percentage of their deposits; banks cannot be allowed to cherry-pick where they
62 lend—and where they don't lend at all—or to ignore the credit needs of distressed and
63 vulnerable communities; and

64 **WHEREAS**, regulators review of a bank's CRA commitment should not be consumed by a "one
65 ratio" approach on which most or all of a bank's CRA rating would be based. One ratio would
66 consist of the dollar amount of a bank's CRA activities (loans, investments, and services to low-
67 and moderate-income people) divided by the bank's assets or the bank's "Tier One" capital.
68 One fraction cannot sum up how, if and where a bank is lending and investing and whether they
69 are being responsive to the particular credits needs of their local community; and

70 **WHEREAS**, the CRA should explicitly state the law's obligation to fairly serve all races and
71 ethnicities; banks that engage in large-scale illegal and harmful activities should fail their CRA
72 exams.

73 **THEREFORE BE IT RESOLVED**, that the National Conference of State Legislators (NCSL), will
74 support efforts to modernize CRA, but not relax or undermine the law's goal and intent; and

75 **BE IT FURTHER RESOLVED**, that NCSL will oppose regulators efforts to raise bank thresholds
76 and exempt more banks, such as ISBs/mid-sized banks, from examination of their community
77 development lending and investments; and

78 **BE IT FURTHER RESOLVED**, that NCSL will support modernizing CRA to apply it to non-bank
79 institutions including mortgage companies, financial technology companies, and credit unions;
80 and

81 **BE IT FURTHER RESOLVED**, that NCSL will oppose regulators efforts to water down the
82 penalties under CRA for discrimination; and

83 **BE IT FURTHER RESOLVED**, that NCSL will support a CRA with a clearly-defined grading
84 system that emphasizes lending, bank branches, fair lending performance, and responsible loan
85 products for working class families; and

86 **BE IT FINALLY RESOLVED**, that NCSL will support efforts to hold a bank accountable if it fails
87 its CRA exam, or wishes to acquire a bank with a better CRA grade, and urge agencies to
88 recognize and encourage community benefit agreements and efforts that motivate banks to
89 make more loans, investments, and services available to traditionally underserved communities.