AMENDMENT TO THE DISCUSSION DRAFT OF
SEPTEMBER 25, 2009 [H.R. 3126]
OFFERED BY MR. WATT OF NORTH CAROLINA
AND MR. MOORE OF KANSAS

Page 103, strike line 20 and all that follows through page 107, line 16, and insert the following new sections (and redesignate subsequent sections and any cross reference to any such section and conform the table of contents accordingly):

1 SEC. 143. PRESERVATION OF EXISTING CONTRACTS.

2 This title, and regulations, orders, guidance, and interpretations prescribed, issued, and established by the Agency, shall not be construed to alter or affect the applicability of any regulation, order, guidance or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of the enactment of this Act, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.
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SEC. 144. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

"(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) NATIONAL BANK.—The term ‘national bank’ includes—

"(A) any bank organized under the laws of the United States; and

"(B) any Federal branch established in accordance with the International Banking Act of 1978.

"(2) STATE CONSUMER FINANCIAL LAWS.—The term ‘State consumer financial law’ means a State law that does not directly or indirectly discriminate against national banks and that regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national
banks to engage in), or any account related thereto, with respect to a consumer.

"(3) OTHER DEFINITIONS.—The terms ‘affiliate’, ‘subsidiary’, ‘includes’, and ‘including’ have the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(b) PREEMPTION STANDARD.—

"(1) IN GENERAL.—National banks shall generally comply with State laws. State laws are preempted only if—

"(A) application of a state law would have a discriminatory effect on national banks in comparison with the effect of the law on a bank chartered by that State;

"(B) the Comptroller of the Currency determines by regulation or order on a case-by-case basis that a State law prevents or significantly interferes with the ability of an insured depository institution chartered as national bank to engage in the business of banking; or

"(C) the State law is preempted by Federal law other than this Act.

"(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any national bank subsidiary, affiliate, or other enti-
ty that is not an insured depository institution char-
tered as a national bank.

"(3) RULE OF CONSTRUCTION.—This Act does
not occupy the field in any area of State law and a
court shall review any claim that a State law is pre-
eempted by this Act as a matter of law and without
deference to any agency claim that a State law is
preempted under this Act.

"(4) REVIEW OF PREEMPTION DECISIONS.—A
court shall review any claim that a State law is pre-
eempted by this Act as a matter of law and without
deference to any agency claim that a state law is
preempted under this Act. Nothing in this sub-
section shall affect the deference that a court affords
to the Comptroller of the Currency regarding the
meaning or interpretation of the National Bank Act
or other Federal laws.

"(c) SUBSTANTIAL EVIDENCE.—No regulation of the
Comptroller of the Currency prescribed under subsection
(b)(1)(B), shall be interpreted or applied so as to invali-
date, or otherwise declare inapplicable to a national bank,
the provision of the State consumer financial law unless
substantial evidence, made on the record of the pro-
ceeding, supports the specific finding that the provision
prevents or significantly interferes with the national
bank's exercise of a power explicitly granted by the Congress.

"(d) OTHER FEDERAL LAWS.—Notwithstanding any other provision of law, the Comptroller of the Currency may not prescribe regulation pursuant to subsection (b)(1)(B) until the Comptroller of the Currency, after consultation with the Consumer Financial Protection Agency, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a national bank, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

"(e) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall timely propose to continue, amend or rescind it, as may be appropriate, in accordance with the procedures set forth in subsections (a) and (b) of section 5244.(12 U.S.C. 43(a)-(b)).
“(f) Application of State Consumer Financial Law to Subsidiaries and Affiliates.—Notwithstanding any provision of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.”

(b) Clerical Amendment.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

“Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.”

Page 110, strike line 4 and all that follows through page 114, line 2, and insert the following new section:

SEC. 147. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) In General.—The Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

“(a) State Consumer Financial Law Defined.—For purposes of this section, the term ‘State con-
sumer financial law’ means a State law that does not di-
rectly or indirectly discriminate against Federal savings
associations and that regulates the manner, content, or
terms and conditions of any financial transaction (as may
be authorized for Federal savings associations to engage
in), or any account related thereto, with respect to a con-
sumer.

“(b) PREEMPTION STANDARD.—

“(1) IN GENERAL.—Federal savings associ-
ations shall generally comply with State laws. State
laws are preempted only if—

“(A) application of a state law would have
a discriminatory effect on Federal savings asso-
ciations in comparison with the effect of the law
on a bank chartered by that State;

“(B) the Director of the Office of Thrift
Supervision determines by regulation or order
on a case-by-case basis that a State law pre-
vents or significantly interferes with the ability
of an insured depository institution chartered as
a Federal savings associations to engage in the
business of banking; or

“(C) the State law is preempted by Fed-
eral law other than this Act.
“(2) SAVINGS CLAUSE.—This Act does not pre-empt or alter the applicability of any State law to any Federal savings associations subsidiary, affiliate, or other entity that is not an insured depository institution chartered as a national bank.

“(3) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law and a court shall review any claim that a State law is pre-empted by this Act as a matter of law and without deference to any agency claim that a State law is preempted under this Act.

“(4) REVIEW OF PREEMPTION DECISIONS.—A court shall review any claim that a State law is pre-empted by this Act as a matter of law and without deference to any agency claim that a State law is preempted under this Act. Nothing in this subsection shall affect the deference that a court affords to the Director of the Office of Thrift Supervision regarding the meaning or interpretation of the National Bank Act or other Federal laws.

“(c) OTHER FEDERAL LAW.—Notwithstanding any other provision of law, the Director of the Office of Thrift Supervision may not prescribe any regulation pursuant to subsection (b)(1)(B) until such Director, after consultation with the Consumer Financial Protection Agency,
makes a finding, in writing, that a Federal law provides
a substantive standard, applicable to a Federal savings as-
soiation, which regulates the particular conduct, activity,
or authority that is subject to such provision of the State
consumer financial law.

"(d) SUBSTANTIAL EVIDENCE.—No regulation pre-
scribed by the Director of the Office of Thrift Supervision
issued under subsection (b)(1)(B) shall be interpreted or
applied so as to invalidate, or otherwise declare inapplic-
table to a Federal savings association, the provision of the
State consumer financial law unless substantial evidence,
made on the record of the proceeding, supports the specific
finding that the provision prevents or significantly inter-
feres with the Federal savings association's exercise of a
power explicitly granted by the Congress.

"(e) PERIODIC REVIEW OF PREEMPTION DETER-
MINATIONS.—The Director of the Office of Thrift Sup-
ervision shall periodically conduct a review, through notice
and public comment, of each determination that a provi-
sion of Federal law preempts a State consumer financial
law. The agency shall conduct such review within the 5-
year period after prescribing or otherwise issuing such de-
termination, and at least once during each 5-year period
thereafter. After conducting the review of, and inspecting
the comments made on, the determination, the agency
shall timely propose to continue, amend or rescind it, as
may be appropriate, in accordance with the procedures set
forth in subsections (a) and (b) of section 5244 of the
Revised Statutes of the United States (12 U.S.C. 43(a)-
(b)).
“(f) APPLICATION OF STATE CONSUMER FINANCIAL
LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
standing any provision of this Act, a State consumer fi-
nancial law shall apply to a subsidiary or affiliate of a
Federal savings association to the same extent that the
State consumer financial law applies to any person, cor-
poration, or other entity subject to such State law and
consistent with Federal law.”.
(b) CLERICAL AMENDMENT.—The table of sections
for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)
is amended by striking the item relating to section 6 and
inserting the following new item:

“Sec. 6. State law preemption standards for Federal savings associations and
subsidiaries clarified.”.