

**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 in-  
3 terpretations prescribed, issued, and established by the  
4 Agency, shall not be construed to alter or affect the appli-  
5 cability of any regulation, order, guidance or interpreta-  
6 tion prescribed, issued, and established by the Comptroller  
7 of the Currency or the Director of the Office of Thrift  
8 Supervision regarding the applicability of State law under  
9 Federal banking law to any contract entered into on or  
10 before the date of the enactment of this Act, by national  
11 banks, Federal savings associations, or subsidiaries there-  
12 of that are regulated and supervised by the Comptroller  
13 of the Currency or the Director of the Office of Thrift  
14 Supervision, respectively.

1 **SEC. 144. STATE LAW PREEMPTION STANDARDS FOR NA-**  
2 **TIONAL BANKS AND SUBSIDIARIES CLARI-**  
3 **FIED.**

4 (a) IN GENERAL.—Chapter one of title LXII of the  
5 Revised Statutes of the United States (12 U.S.C. 21 et  
6 1 seq.) is amended by inserting after section 5136B the  
7 following new section:

8 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**  
9 **TIONAL BANKS AND SUBSIDIARIES CLARI-**  
10 **FIED.**

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

13 “(1) NATIONAL BANK.—The term ‘national  
14 bank’ includes—

15 “(A) any bank organized under the laws of  
16 the United States; and

17 “(B) any Federal branch established in ac-  
18 cordance with the International Banking Act of  
19 1978.

20 “(2) STATE CONSUMER FINANCIAL LAWS.—The  
21 term ‘State consumer financial law’ means a State  
22 law that does not directly or indirectly discriminate  
23 against national banks and that regulates the man-  
24 ner, content, or terms and conditions of any finan-  
25 cial transaction (as may be authorized for national

1 banks to engage in), or any account related thereto,  
2 with respect to a consumer.

3 “(3) OTHER DEFINITIONS.—The terms ‘affil-  
4 iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the  
5 same meaning as in section 3 of the Federal Deposit  
6 Insurance Act.

7 “(b) PREEMPTION STANDARD.—

8 “(1) IN GENERAL.—National banks shall gen-  
9 erally comply with State laws. State laws are pre-  
10 empted only if—

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

15 “(B) the Comptroller of the Currency de-  
16 termines by regulation or order on a case-by-  
17 case basis that a State law prevents or signifi-  
18 cantly interferes with the ability of an insured  
19 depository institution chartered as national  
20 bank to engage in the business of banking; or

21 “(C) the State law is preempted by Fed-  
22 eral law other than this Act.

23 “(2) SAVINGS CLAUSE.—This Act does not pre-  
24 empt or alter the applicability of any State law to  
25 any national bank subsidiary, affiliate, or other enti-

1 ty that is not an insured depository institution char-  
2 tered as a national bank.

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

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

18 “(c) SUBSTANTIAL EVIDENCE.—No regulation of the  
19 Comptroller of the Currency prescribed under subsection  
20 (b)(1)(B), shall be interpreted or applied so as to invali-  
21 date, or otherwise declare inapplicable to a national bank,  
22 the provision of the State consumer financial law unless  
23 substantial evidence, made on the record of the pro-  
24 ceeding, supports the specific finding that the provision  
25 prevents or significantly interferes with the national

1 bank's exercise of a power explicitly granted by the Con-  
2 gress.

3       “(d) OTHER FEDERAL LAWS.—Notwithstanding any  
4 other provision of law, the Comptroller of the Currency  
5 may not prescribe regulation pursuant to subsection  
6 (b)(1)(B) until the Comptroller of the Currency, after con-  
7 sultation with the Consumer Financial Protection Agency,  
8 makes a finding, in writing, that a Federal law provides  
9 a substantive standard, applicable to a national bank,  
10 which regulates the particular conduct, activity, or author-  
11 ity that is subject to such provision of the State consumer  
12 financial law.

13       “(e) PERIODIC REVIEW OF PREEMPTION DETER-  
14 MINATIONS.—The Comptroller of the Currency shall peri-  
15 odically conduct a review, through notice and public com-  
16 ment, of each determination that a provision of Federal  
17 law preempts a State consumer financial law. The agency  
18 shall conduct such review within the 5-year period after  
19 prescribing or otherwise issuing such determination, and  
20 at least once during each 5-year period thereafter. After  
21 conducting the review of, and inspecting the comments  
22 made on, the determination, the agency shall timely pro-  
23 pose to continue, amend or rescind it, as may be appro-  
24 priate, in accordance with the procedures set forth in sub-  
25 sections (a) and (b) of section 5244.(12 U.S.C. 43(a)-(b)).

1       “(f) APPLICATION OF STATE CONSUMER FINANCIAL  
2 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-  
3 standing any provision of this title, a State consumer fi-  
4 nancial law shall apply to a subsidiary or affiliate of a  
5 national bank to the same extent that the State consumer  
6 financial law applies to any person, corporation, or other  
7 entity subject to such State law.”.

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

“Sec. 5136C. State law preemption standards for national banks and subsidi-  
aries clarified.”.

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

12 **SEC. 147. STATE LAW PREEMPTION STANDARDS FOR FED-**  
13 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**  
14 **ARIES CLARIFIED.**

15       (a) IN GENERAL.—The Home Owners’ Loan Act (12  
16 U.S.C. 1461 et seq.) is amended by inserting after section  
17 5 the following new section:

18 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**  
19 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

20       “(a) STATE CONSUMER FINANCIAL LAW DE-  
21 FINED.—For purposes of this section, the term ‘State con-

1 sumer financial law’ means a State law that does not di-  
2 rectly or indirectly discriminate against Federal savings  
3 associations and that regulates the manner, content, or  
4 terms and conditions of any financial transaction (as may  
5 be authorized for Federal savings associations to engage  
6 in), or any account related thereto, with respect to a con-  
7 sumer.

8 “(b) PREEMPTION STANDARD.—

9 “(1) IN GENERAL.—Federal savings associa-  
10 tions shall generally comply with State laws. State  
11 laws are preempted only if—

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

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

23 “(C) the State law is preempted by Fed-  
24 eral law other than this Act.

1           “(2) SAVINGS CLAUSE.—This Act does not pre-  
2           empt or alter the applicability of any State law to  
3           any Federal savings associations subsidiary, affiliate,  
4           or other entity that is not an insured depository in-  
5           stitution chartered as a national bank.

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

12          “(4) REVIEW OF PREEMPTION DECISIONS.—A  
13          court shall review any claim that a State law is pre-  
14          empted by this Act as a matter of law and without  
15          deference to any agency claim that a state law is  
16          preempted under this Act. Nothing in this sub-  
17          section shall affect the deference that a court affords  
18          to the Director of the Office of Thrift Supervision  
19          regarding the meaning or interpretation of the Na-  
20          tional Bank Act or other Federal laws.

21          “(c) OTHER FEDERAL LAW.—Notwithstanding any  
22          other provision of law, the Director of the Office of Thrift  
23          Supervision may not prescribe any regulation pursuant to  
24          subsection (b)(1)(B) until such Director, after consulta-  
25          tion with the Consumer Financial Protection Agency,



1 makes a finding, in writing, that a Federal law provides  
2 a substantive standard, applicable to a Federal savings as-  
3 sociation, which regulates the particular conduct, activity,  
4 or authority that is subject to such provision of the State  
5 consumer financial law.

6 “(d) SUBSTANTIAL EVIDENCE.—No regulation pre-  
7 scribed by the Director of the Office of Thrift Supervision  
8 issued under subsection (b)(1)(B) shall be interpreted or  
9 applied so as to invalidate, or otherwise declare inappli-  
10 cable to a Federal savings association, the provision of the  
11 State consumer financial law unless substantial evidence,  
12 made on the record of the proceeding, supports the specific  
13 finding that the provision prevents or significantly inter-  
14 feres with the Federal savings association’s exercise of a  
15 power explicitly granted by the Congress.

16 “(e) PERIODIC REVIEW OF PREEMPTION DETER-  
17 MINATIONS.—The Director of the Office of Thrift Super-  
18 vision shall periodically conduct a review, through notice  
19 and public comment, of each determination that a provi-  
20 sion of Federal law preempts a State consumer financial  
21 law. The agency shall conduct such review within the 5-  
22 year period after prescribing or otherwise issuing such de-  
23 termination, and at least once during each 5-year period  
24 thereafter. After conducting the review of, and inspecting  
25 the comments made on, the determination, the agency

1 shall timely propose to continue, amend or rescind it, as  
2 may be appropriate, in accordance with the procedures set  
3 forth in subsections (a) and (b) of section 5244 of the  
4 Revised Statutes of the United States (12 U.S.C. 43(a)-  
5 (b)).

6 “(f) APPLICATION OF STATE CONSUMER FINANCIAL  
7 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-  
8 standing any provision of this Act, a State consumer fi-  
9 nancial law shall apply to a subsidiary or affiliate of a  
10 Federal savings association to the same extent that the  
11 State consumer financial law applies to any person, cor-  
12 poration, or other entity subject to such State law and  
13 consistent with Federal law.”.

14 (b) CLERICAL AMENDMENT.—The table of sections  
15 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)  
16 is amended by striking the item relating to section 6 and  
17 inserting the following new item:

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

