October 5, 2012

The Honorable John Boehner
House Majority Leader

The Honorable Nancy Pelosi
House Minority Leader

The Honorable Harry Reid
Senate Majority Leader

The Honorable Mitch McConnell
Senate Minority Leader

Via fax

We the undersigned state Attorneys General write to urge you to oppose H.R. 6139, a bill known as the Consumer Credit Access, Innovation, and Modernization Act. This proposal would preempt state laws governing consumer lending and undermine longstanding states’ rights in the area of consumer protection.

Most states have enacted laws and rules to regulate short term lending, including payday loans. Many of these states have chosen to strike a regulatory balance that preserves access to alternative forms of credit while protecting consumers from repeated debt cycles and other pitfalls associated with such products. H.R. 6139 would turn back existing consumer protections and curtail all future efforts by the states to enhance their consumer safeguards.

H.R. 6139 would give nonbank financial services providers – including payday lenders, installment lenders, car-title lenders, prepaid-card issuers, check cashers, and others – access to a federal charter issued by the Office of the Comptroller of the Currency. The bill would totally preempt state licensing laws for nonbank financial services providers, and require state consumer protection laws to be evaluated under the preemption standard set forth by the U.S. Supreme Court in *Barnett v. Nelson*.

In place of state safeguards, the bill would establish only minimal consumer protections. Although the bill would prohibit lenders from extending credit to consumers unless there is a reasonable basis for believing the consumer can repay the loan, the bill establishes no standards for determining a consumer’s ability to repay. Moreover, the bill would exempt loans with terms of one year or less from the disclosure requirements of the Truth in Lending Act – the universal standard for measuring the true cost of credit – and substitute a cost metric that is confusing and misleading.

By preempting state laws, the proposed legislation would impede state efforts to protect consumers from harm and respond quickly to emergent problems in the marketplace. State attorneys general have a long history of acting both

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Specifically, the bill would preempt state consumer laws that “significantly interfere with the exercise by a Credit Corporation of its powers. . . .”
independently and, when appropriate, cooperatively to protect consumers in our states against
deceptive, abusive, or predatory lending practices. The recent settlement agreement signed by 49
state Attorneys General and the five largest mortgage loan servicers exemplifies the importance
of our engagement in matters affecting the consumers we serve. Although H.R. 6139 does allow
our offices to engage in enforcement actions should we find violations of federal law, the bill
prohibits us from enforcing state laws that were carefully designed to address problems in the
local marketplace and significantly impairs our ability to respond in a targeted fashion to new
abuses as they emerge.

Even the Office of the Comptroller of the Currency (OCC) has expressed concerns about
serving as the chartering authority for providers of short term loans and other high cost
financial products. In a July 24 hearing before the House Subcommittee on Financial
Institutions and Consumer Credit, Deputy Comptroller Grovetta Gardineer emphasized
the OCC’s concern that “H.R. 6139 would provide special status and federal benefits to
companies and third-party vendors that would primarily engage in offering credit
products and services that the OCC has previously found to be unsafe and unsound and
unfair to consumers.” In support of preserving states’ ability to regulate potentially
harmful consumer financial products, Deputy Comptroller Gardineer further stated that
“where these services are offered, state officials . . . have adequate authority to regulate
these products and services and the companies that provide them.”

H.R. 6139 would supplant state laws without sufficiently providing tangible benefits to the
consumers of our respective states. In our view, the bill would eliminate crucial consumer
protections in many states and curtail our authority to enforce state laws governing the conduct
of financial services companies operating within our borders.

We continue to urge you to resist federal preemption of state laws, particularly in the area of
consumer financial protection.

Sincerely,

Lisa Madigan
Illinois Attorney General

Michael Geraghty
Alaska Attorney General

Dustin McDaniel
Arkansas Attorney General

Greg Zoeller
Indiana Attorney General

Tom Horne
Arizona Attorney General

Kamala Harris
California Attorney General
John W. Suthers  
Colorado Attorney General

Joseph R. “Beau” Biden III  
Delaware Attorney General

Sam Olens  
Georgia Attorney General

David Louie  
Hawaii Attorney General

Tom Miller  
Iowa Attorney General

William J. Schneider  
Maine Attorney General

Martha Coakley  
Massachusetts Attorney General

Lori Swanson  
Minnesota Attorney General

Steve Bullock  
Montana Attorney General

Jeffrey Chiesa  
New Jersey Attorney General

George Jepsen  
Connecticut Attorney General

Irvin Nathan  
Washington DC Attorney General

Lenny Rapadas  
Guam Attorney General

Lawrence Wasden  
Idaho Attorney General

James “Buddy” Caldwell  
Louisiana Attorney General

Douglas F. Gansler  
Maryland Attorney General

Bill Schuette  
Michigan Attorney General

Jim Hood  
Mississippi Attorney General

Michael Delaney  
New Hampshire Attorney General

Gary King  
New Mexico Attorney General
The Office of Consumer Protection is an agency which is not part of the State of Hawaii’s Attorney General’s Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii.

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