

114TH CONGRESS
2D SESSION

H. R. 6118

To promote innovation in financial services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2016

Mr. MCHENRY introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote innovation in financial services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Financial Services Innovation Act of 2016”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Agency identification of regulatory areas.
- Sec. 4. Establishment of FSIO at agencies.
- Sec. 5. FSIO Liaison Committee and chair.

Sec. 6. Petition to agency.
 Sec. 7. Agency determination of petition.
 Sec. 8. Enforceable compliance agreement.
 Sec. 9. Report to Congress.
 Sec. 10. Funding.

1 **SEC. 2. DEFINITIONS.**

2 In this Act, the following definitions shall apply:

3 (1) AGENCY REGULATION.—The term “agency
 4 regulation” means—

5 (A) a rule (as defined in section 551 of
 6 title 5, United States Code) issued by an agen-
 7 cy;

8 (B) guidance issued by an agency; or

9 (C) a published proposed or interim rule,
 10 policy statement, directive, adjudication, or in-
 11 terpretation of an agency.

12 (2) AGENCY.—The term “agency” means each
 13 of the Board of Governors of the Federal Reserve
 14 System, the Bureau of Consumer Financial Protec-
 15 tion, the Commodity Futures Trading Commission,
 16 the Department of Housing and Urban Develop-
 17 ment, the Department of the Treasury, the Farm
 18 Credit Administration, the Federal Deposit Insur-
 19 ance Corporation, the Federal Housing Finance
 20 Agency, the Federal Trade Commission, the Na-
 21 tional Credit Union Administration Board, the Of-
 22 fice of the Comptroller of the Currency, and the Se-
 23 curities and Exchange Commission.

1 (3) COVERED PERSON.—The term “covered
2 person” means a person that offers or intends to
3 offer a financial innovation by submitting a petition
4 to a Financial Services Innovation Office at one or
5 more agencies.

6 (4) ENFORCEABLE COMPLIANCE AGREE-
7 MENT.—The term “enforceable compliance agree-
8 ment” means a contractual agreement described
9 under section 8.

10 (5) FINANCIAL INNOVATION.—The term “finan-
11 cial innovation” means an innovative financial serv-
12 ice or product, the delivery of which is enabled by
13 technology, that is or may be subject to an agency
14 regulation or Federal statute.

15 (6) FINANCIAL SERVICES INNOVATION OFFICE
16 OR FSIO.—The term “Financial Services Innovative
17 Office” or “FSIO” means an office established in an
18 agency pursuant to section 5.

19 **SEC. 3. AGENCY IDENTIFICATION OF REGULATORY AREAS.**

20 Not later than 60 days after the date of the enact-
21 ment of this Act, and biannually thereafter, each agency
22 shall publish in the Federal Register a nonexclusive list
23 that identifies 3 or more areas of existing regulation—

24 (1) that apply or may apply to a financial inno-
25 vation; and

1 (2) that the agency would consider modifying or
2 waiving if the agency were to receive a petition
3 under section 6 relating to that regulation.

4 **SEC. 4. ESTABLISHMENT OF FSIO AT AGENCIES.**

5 (a) IN GENERAL.—Each agency shall establish a Fi-
6 nancial Services Innovation Office (known as “FSIO”) to
7 promote financial innovations and to assist a covered per-
8 son whose petition has been approved under section 7.

9 (b) DIRECTOR.—Each agency shall appoint an indi-
10 vidual to serve as the Director of the agency’s FSIO.

11 (c) DUTIES.—

12 (1) GENERAL DUTIES.—Each agency, acting
13 through the agency’s FSIO, shall—

14 (A) support the development of financial
15 innovations;

16 (B) coordinate with FSIOs at other agen-
17 cies to share information and data; and

18 (C) establish procedures to reduce the time
19 and cost of offering a financial innovation to
20 the public and enable greater access to financial
21 innovations.

22 (2) DUTIES FOR PETITIONS.—With respect to a
23 covered person whose petition has been approved
24 under section 7, each FSIO shall—

1 (A) work with the covered person to ad-
2 dress issues of how existing regulatory frame-
3 works apply to the financial innovation that is
4 the subject of the petition;

5 (B) assist the covered person in complying
6 with the requirements of Federal regulators of
7 the financial innovation; and

8 (C) assist the covered person in responding
9 to any challenges to a modification or a waiver
10 granted under subsection (d).

11 (d) WAIVER AUTHORITY.—With respect to a covered
12 person whose petition has been approved under section 7,
13 if an agency has a rational basis for doing so and if the
14 agency determines that a provision of a Federal statute
15 under which the agency has rulemaking authority or an
16 agency regulation is burdensome to the covered person,
17 the agency shall, acting through the agency's FSIO, mod-
18 ify or waive the application of the Federal statute or the
19 agency regulation.

20 (e) TERMINATION OF OTHER PROGRAMS; TRANSFER
21 OF AUTHORITY.—Not later than 90 days after the estab-
22 lishment of a FSIO at an agency, the agency shall modify
23 any offices or programs at the agency that promote finan-
24 cial innovations or assist covered persons in developing fi-
25 nancial innovations to operate within the FSIO. Any legal

1 action or proceeding commenced by or against such office
2 or program of the agency, including no-action letters and
3 staff advisory opinions, shall be transferred to the FSIO
4 of that agency.

5 (f) REPORT.—Not later than 6 months after the date
6 of the enactment of this Act, and annually thereafter, each
7 agency shall submit a report to Congress and to the Fi-
8 nancial Stability Oversight Council, and shall present tes-
9 timony to Congress, on the activities of the FSIO, includ-
10 ing a description of the petitions considered, the rationale
11 for acceptance or rejection of petitions, and the efforts of
12 the FSIO to encourage financial innovations.

13 (g) SUNSET.—If an agency has not received a peti-
14 tion described in section 6 within 5 years of the date of
15 the establishment of the agency’s FSIO, the agency shall
16 eliminate the FSIO, while continuing to honor any en-
17 forceable compliance agreement of another agency.

18 **SEC. 5. FSIO LIAISON COMMITTEE AND CHAIR.**

19 (a) ESTABLISHMENT.—Not later than 60 days after
20 the date of the enactment of this Act, the agencies shall
21 establish a committee to be known as the “FSIO Liaison
22 Committee”.

23 (b) MEMBERS.—The FSIO Liaison Committee shall
24 be composed of the Director of each FSIO office and a

1 State banking supervisor selected by the Conference of
2 State Bank Supervisors (or a successor organization).

3 (c) DUTIES.—The FSIO Liaison Committee shall—

4 (1) consult on the administration, coordination,
5 and oversight of each agency's FSIO;

6 (2) facilitate the cooperation of each FSIO to
7 ensure that agencies share information and data on
8 petitions submitted under section 6;

9 (3) monitor regulatory proposals and develop-
10 ments related to financial innovations;

11 (4) encourage the application of uniform prin-
12 ciples and standards at each FSIO; and

13 (5) hold public field hearings 4 times a year to
14 informally provide—

15 (A) information and advice to the public
16 and covered persons; and

17 (B) a forum to gather information from
18 the public and covered persons.

19 (d) MEETINGS.—The FSIO Liaison Committee shall
20 meet at least twice a year.

21 (e) CHAIR.—

22 (1) ESTABLISHMENT.—The first Chair of the
23 FSIO Liaison Committee shall be elected by the
24 members. The Chair shall serve for a term of 2

1 years and thereafter the chairmanship shall rotate
2 among the members of the committee.

3 (2) POWERS OF THE CHAIR.—The Chair is au-
4 thorized to carry out the internal administration of
5 the FSIO Liaison Committee, including the appoint-
6 ment and supervision of employees and the distribu-
7 tion of tasks among members, employees, and ad-
8 ministrative units.

9 (f) TESTIMONY.—Not later than 6 months after the
10 date of the enactment of this Act, the Chair of the FSIO
11 Liaison Committee shall present testimony to Congress on
12 the activities of the FSIO Liaison Committee.

13 (g) FUNDING.—

14 (1) COMPENSATION OF MEMBERS.—Each mem-
15 ber of the FSIO Liaison Committee shall serve with-
16 out additional compensation but shall be entitled to
17 reasonable expenses incurred in carrying out official
18 duties as such a member.

19 (2) GENERAL EXPENSES.—The costs and ex-
20 penses of the FSIO Liaison Committee, including
21 the salaries of employees, shall be split equally be-
22 tween, and paid by, each agency other than an agen-
23 cy that has eliminated the agency's FSIO pursuant
24 to section 4(g).

1 **SEC. 6. PETITION TO AGENCY.**

2 (a) IN GENERAL.—A covered person may submit a
3 petition to an agency, through the agency’s FSIO, in such
4 form and in such manner as the agency’s FSIO may re-
5 quire, to request to enter into an enforceable compliance
6 agreement containing a modification or waiver of an agen-
7 cy regulation or Federal statutory requirement under
8 which the agency has supervisory or rulemaking authority
9 with respect to the covered person or a financial innova-
10 tion the covered person offers or intends to offer.

11 (b) CONTENTS.—In a petition submitted under this
12 section, the covered person shall—

13 (1) submit an alternative compliance strategy
14 that proposes a method to comply with the agency
15 regulation or Federal statutory requirement; and

16 (2) demonstrate that under the alternative com-
17 pliance strategy, the financial innovation—

18 (A) would serve the public interest;

19 (B) improves access to financial products
20 or services; and

21 (C) does not present systemic risk to the
22 United States financial system and promotes
23 consumer protection.

24 (c) MULTIPARTY PETITIONS.—One or more covered
25 persons that offer or intend to offer similar financial inno-
26 vations may jointly submit a petition under this section.

1 (d) SAFE HARBOR.—

2 (1) IN GENERAL.—During the period after a
3 covered person submits a petition under this section
4 and before the agency receiving the petition makes
5 a determination on the petition pursuant to section
6 7, an agency may not take an enforcement action
7 against a covered person relating to the financial in-
8 novation that was the subject of the petition.

9 (2) INJUNCTIVE RELIEF.—If an agency deter-
10 mines that a financial innovation described under
11 paragraph (1) presents an immediate danger to con-
12 sumers or presents systemic risk to the United
13 States financial system, the agency may apply to a
14 court of competent jurisdiction for injunction to pro-
15 hibit a covered person from offering such financial
16 innovation during the period described in paragraph
17 (1).

18 (e) NOTICE AND COMMENT.—

19 (1) IN GENERAL.—Not later than 30 days after
20 receiving a petition, the agency that receives the pe-
21 tition shall publish the petition in the Federal Reg-
22 ister and provide a 60-day period for public notice
23 and comment.

24 (2) EXCEPTION FOR NOTICE AND COMMENT PE-
25 RIOD.—The agency that receives the petition may

1 waive the notice and comment period described in
2 paragraph (1) if such agency determines that the
3 covered person submitting the petition is similarly
4 situated to another covered person that has been
5 granted approval of a petition pursuant to section 7.

6 (3) CONFIDENTIALITY.—The agency shall
7 maintain the confidentiality of any nonpublicly avail-
8 able data or information in any petition submitted
9 under this section. The agency shall give reasonable
10 consideration to maintaining the confidentiality of
11 data or information identified by the covered person
12 in the petition submitting under this section as non-
13 publicly available data or information.

14 **SEC. 7. AGENCY DETERMINATION OF PETITION.**

15 (a) IN GENERAL.—Not later than 30 days after the
16 end of the comment period described under section 6, or
17 if the comment period was waived, not later than 60 days
18 after receipt of a petition under section 6, the head of the
19 agency receiving the petition shall complete a review of
20 the petition and notify the covered person, in writing, of
21 the agency's determination of the petition.

22 (b) APPROVAL.—If the covered person submitting the
23 petition shows that it is more likely than not that the cov-
24 ered person meets the requirements for establishing an al-
25 ternative compliance strategy, the agency shall—

1 (1) approve the petition; and

2 (2) enter into an enforceable compliance agree-
3 ment with the covered person in accordance with the
4 requirements of section 8.

5 (c) DISAPPROVAL.—

6 (1) EXPLANATION.—If the agency rejects a pe-
7 tition, the agency head shall provide the covered per-
8 son with a written notice explaining the reason for
9 rejecting the petition, including—

10 (A) evidence that the covered person did
11 not satisfy the requirements for establishing an
12 alternative compliance strategy;

13 (B) an identification of the rules or regula-
14 tions of the agency applicable to the covered
15 person with respect to the financial innovation;
16 and

17 (C) a description of—

18 (i) any beneficial effects, including an
19 identification of persons likely to benefit,
20 from rejecting the petition;

21 (ii) any potential costs, including an
22 identification of persons likely to bear the
23 costs, of rejecting the petition; and

1 (iii) the baseline used by the agency to
2 measure the likely economic consequences
3 of rejecting the petition.

4 (2) RESUBMITTAL.—Not later than 90 days
5 after receiving a notice of disapproval, a covered per-
6 son may revise and resubmit a petition to the agency
7 under section 6.

8 (d) MORATORIUM.—If an agency disapproves a peti-
9 tion submitted in good faith under this section, the agency
10 shall provide the covered person a reasonable amount of
11 time before the agency takes an enforcement action
12 against the covered person relating to the financial innova-
13 tion that was the subject of the petition.

14 (e) JUDICIAL REVIEW.—A covered person may seek
15 judicial review of an agency’s determination on a petition
16 in accordance with subchapter II of chapter 5 of title 5,
17 United States Code, and chapter 7 of title 5, United
18 States Code (commonly known as the “Administrative
19 Procedure Act”).

20 **SEC. 8. ENFORCEABLE COMPLIANCE AGREEMENT.**

21 (a) IN GENERAL.—If an agency approves a petition
22 under section 7, the covered person may enter into an en-
23 forceable compliance agreement with the agency, which
24 shall include the terms under which the covered person
25 may develop or offer the approved financial innovation to

1 the public and any requirements of the covered person and
2 any agency with respect to the financial innovation.

3 (b) REQUIREMENTS.—Each agency, by rule, shall es-
4 tablish requirements relating to enforceable compliance
5 agreements that include—

6 (1) procedures for modifying the terms of the
7 agreement;

8 (2) consequences for failure to comply with the
9 terms of the agreement;

10 (3) a compliance examination process that—

11 (A) solicits feedback from other agencies
12 on the agreement; and

13 (B) occurs not less frequently than annu-
14 ally;

15 (4) a termination date for the agreement that
16 is at least 1 year after the date on which the agree-
17 ment is entered into;

18 (5) procedures for extending the termination
19 date;

20 (6) procedures for judicial review of another
21 agency's or State's challenge to the agreement in ac-
22 cordance with subchapter II of chapter 5 of title 5,
23 United States Code, and chapter 7 of title 5, United
24 States Code (commonly known as the “Administra-
25 tive Procedure Act”); and

1 (7) procedures for maintaining the confiden-
2 tiality of any information disclosed to the agency in
3 making the agreement.

4 (c) MULTIPARTY AGREEMENTS.—With respect to a
5 financial innovation that is the subject of an enforceable
6 compliance agreement entered into under this section, an
7 agency that did not enter into such enforceable compliance
8 agreement may join as a party to the enforceable compli-
9 ance agreement entered into pursuant to this section.

10 (d) LIMITATION ON ENFORCEMENT ACTIONS.—

11 (1) IN GENERAL.—If a covered person and an
12 agency enter into an enforceable compliance agree-
13 ment—

14 (A) another agency may not commence an
15 enforcement action against the covered person
16 with respect to the financial innovation that is
17 the subject of the enforceable compliance agree-
18 ment; and

19 (B) a State may not commence an enforce-
20 ment action against the covered person with re-
21 spect to the financial innovation that is the sub-
22 ject of the enforceable compliance agreement, if
23 the covered person provides the State with—

24 (i) the enforcement compliance agree-
25 ment; and

1 (ii) a statement of policies and proce-
2 dures the covered person has in place to
3 comply with State laws that are applicable
4 to the financial innovation.

5 (2) STATE EXCEPTION FOR CONSUMER
6 HARM.—Notwithstanding paragraph (1)(B), a State
7 may commence an enforcement action against a cov-
8 ered person with respect to a financial innovation
9 that is the subject of an enforceable compliance
10 agreement if, in an action brought by the State in
11 a court of competent jurisdiction, the court deter-
12 mines that the agency’s action was arbitrary and ca-
13 pricious and the financial innovation has substan-
14 tially harmed consumers within such State.

15 (e) ARBITRATION.—A covered person may elect to ar-
16 bitrate any action initiated by another person relating to
17 a financial innovation that is the subject of the enforceable
18 compliance agreement.

19 **SEC. 9. REPORT TO CONGRESS.**

20 Not later than 1 year after the date of the enactment
21 of this Act, and annually thereafter, the Financial Sta-
22 bility Oversight Council shall submit to Congress a report
23 on the aggregate impact of enforceable compliance agree-
24 ments entered into under this Act, which shall include—

1 (1) the number and characteristics of the agree-
2 ments;

3 (2) the most innovative and least burdensome
4 tools that the agency's FSIO has implemented for
5 achieving regulatory ends;

6 (3) strategies implemented to coordinate and
7 facilitate interagency cooperation among agency
8 FSIOs;

9 (4) the existing Federal and State laws, regula-
10 tions, or practices (including guidance materials, ex-
11 aminations, and enforcement proceedings and settle-
12 ments) that the Financial Stability Oversight Coun-
13 cil identifies as the most burdensome to innovation
14 in developing or providing financial products and
15 services, that adversely affect competition in the fi-
16 nancial services industry, or that restrict improve-
17 ments for consumers of financial products or serv-
18 ices; and

19 (5) an identification of the overlap or frag-
20 mentation of regulation of financial products or serv-
21 ices and recommendations for reducing, consoli-
22 dating, or eliminating such overlap or fragmentation.

23 **SEC. 10. FUNDING.**

24 The costs of carrying out the requirements of this
25 Act (except as specified in section 5(g)) shall be split

- 1 equally between, and paid by, each agency for fiscal years
- 2 2017 through 2021.

