

FEDERAL SAVINGS ASSOCIATION CHARTER FLEXIBILITY
ACT OF 2015

DECEMBER 12, 2016.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 1660]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1660) to amend the Home Owners' Loan Act to allow Federal savings associations to elect to operate as national banks, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1660 amends the Home Owners' Loan Act (12 U.S.C. 1464) to permit a federal savings association to elect to operate subject to supervision by the Comptroller of the Currency with the rights and duties of a national bank. The election is considered approved 60 days after the date on which the OCC receives the notice, unless the OCC otherwise notifies the electing entity. H.R. 1660 requires the OCC to issue a rulemaking that clarifies the required documentation and timeline for the election process, and one that requires the federal savings association to identify assets and subsidiaries that do not conform to those required of a national bank. H.R. 1660 also requires the OCC to establish a transition process for bringing any assets of an electing federal savings association that do not conform to national bank requirements after notice of election into conformance, or the ability to justify the grandfathering of such assets and subsidiaries.

BACKGROUND AND NEED FOR LEGISLATION

Federal savings associations and national banks are both chartered and regulated by the OCC and insured by the FDIC, but have different structures and different lending and investment powers.

Federal savings association charters were created under HOLA and are community-based financial institutions that have no shareholders. Because they are non-stock institutions, federal savings associations are built on the foundation of pledged deposits (similar to long-term certificates of deposit) that provide the capital to operate. Federal savings associations specialize in real estate financing, and are subject to several specific lending constraints.

Federal savings associations historically enjoyed several advantages not accorded national banks, including:

- (1) consolidated supervision by the Office of Thrift Supervision (OTS);
- (2) broad interstate branching authority;
- (3) liberal branching rights; and
- (4) the absence of uniform regulatory holding company capital requirements.

In order to qualify for these benefits, HOLA requires that federal savings associations be subject to statutory commercial lending limits and restrictions under the so-called qualified thrift lender (QTL) test. The QTL test requires that at least 65 percent of a savings association's portfolio assets must be comprised of mortgage and consumer-related assets. While the Dodd-Frank Act eliminated many of the benefits afforded to federal savings associations, the HOLA restrictions remain.

National banks are for-profit business corporations owned by private investors and governed by a board of directors chosen by the stockholders. Unlike federal savings associations, national banks enjoy the ability to engage in a wider range of lending activities because they are not required to focus on a particular area of lending and investment, and do not have specific asset-type lending constraints. Additionally, national banks are provided significant benefits in the form of federal preemption: the OCC has the authority to preempt state statutes and regulations, which means that national banks can operate under a single set of laws and regulations, rather than having to comply with multiple sets of state laws and regulations that may or may not be consistent.

Under current law, federal savings associations that want to offer products and services outside of these restrictions must convert to a national bank charter, a particularly burdensome process for smaller associations, as they must first convert to stock form before they can convert their charter.

On February 6, 2015, the OCC sent a letter to the House Financial Services Committee proposing several legislative measures to reduce the regulatory burden on banks, including a proposal to add a new section to HOLA that would give federal savings associations the flexibility to exercise national bank powers without changing their charters, which would give the institutions the ability to exceed the commercial and consumer loan limits that apply under HOLA, while retaining their charters and corporate forms, and continuing to be treated as federal savings associations for purposes

of consolidation, merger, dissolution, conservatorship, and receivership.

In a letter of support for H.R. 1660 dated April 15, 2015, the Independent Community Bankers of America wrote:

H.R. 1660 would provide flexibility for institutions to choose the business model that best suits their needs and the communities they serve, without having to go through the process or incurring the legal expense of converting to a national bank charter.

HEARINGS

The Committee on Financial Services' Subcommittee on Financial Institutions held a hearing examining matters relating to H.R. 1660 on June 11, 2015.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 3, 2015 and November 4, 2015, and ordered H.R. 1660 to be reported favorably to the House without amendment by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes in Committee with respect to this measure.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 1660 will reduce regulatory burden and provide for the greater availability of financial products and services by establishing a mechanism for federal savings associations to function with the powers and authorities of a national bank without having to change their charter.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 14, 2016.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

Dear MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1660, the Federal Savings Association Charter Flexibility Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

ROBERT A. SUNSHINE
(for Keith Hall, *Director.*)

Enclosure.

H.R. 1660—Federal Savings Association Charter Flexibility Act of 2015

H.R. 1660 would permit financial institutions known as federal savings associations to increase their commercial or consumer lending above current law limits without changing their charters and would require the Office of the Comptroller of the Currency (OCC) to complete a rulemaking process concerning this new authority. Implementing H.R. 1660 could affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that any net increase in spending would be insignificant for each year. Enacting the bill would not affect revenues.

Under the bill, institutions that choose to increase their lending would be known as covered savings institutions. Based on information from the OCC, CBO estimates that no more than 10 percent of the 400 federal savings associations nationwide might be interested in becoming a covered savings institution under the provisions of the bill. Because the OCC would continue to regulate those institutions under the legislation, CBO expects that regulatory costs to the agency would be the same.

H.R. 1660 also would require the OCC to issue a rule to implement the new authority for federal savings associations. Based on information from the agency, CBO estimates that it would cost \$1 million to complete the rulemaking process. Costs incurred by the OCC are recorded in the budget as an increase in direct spending. However, the OCC is authorized to collect fees from the institutions it supervises to cover administrative expenses. CBO expects that the OCC would collect fees to recover any costs associated with

completing the rulemaking. In addition, CBO estimates that establishing such authority would not increase the likelihood of failure for any institution that converts its charter. As a result, the net effect on the deficit would be insignificant.

CBO estimates that enacting H.R. 1660 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year period beginning in 2026.

H.R. 1660 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

If the OCC increases fees to offset the costs associated with implementing the bill, H.R. 1660 would increase the cost of an existing mandate on private entities required to pay those fees. CBO expects that the incremental cost of the mandate would be about \$1 million and would fall well below the annual threshold for private-sector mandates established in UMRA (\$154 million in 2016, adjusted annually for inflation).

The CBO staff contacts for this estimate are Sarah Puro (for federal costs) and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1660 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 1660 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 1660 contains one directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 1660 as the “Federal Savings Association Charter Flexibility Act of 2015”.

Section 2. Option for federal savings associations to operate as a covered savings association

This section amends the Home Owners’ Loan Act to permit Federal savings associations to elect to operate with the rights and duties of national banks without changing their charters, by submitting a streamlined election notice to the OCC. The application is considered approved after 60 days, unless stated otherwise by the OCC. Further, the OCC is required to issue rules on documentation, timeline and identification for the election process and rules for identifying federal savings association assets and subsidiaries that are different from those required of a national bank. Lastly, the OCC must establish a transition process for those federal savings association assets and subsidiaries to conform to national bank requirements.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

HOME OWNERS’ LOAN ACT

* * * * *

SEC. 5A. ELECTION TO OPERATE AS A COVERED SAVINGS ASSOCIATION.

(a) *DEFINITION.*—*In this section, the term “covered savings association” means a Federal savings association that makes an election approved under subsection (b).*

(b) *ELECTION.*—

(1) *IN GENERAL.*—*Upon issuance of the rules described in subsection (f), a Federal savings association may elect to operate as a covered savings association by submitting a notice to the Comptroller of such election.*

(2) *APPROVAL.*—*A Federal savings association shall be deemed to be approved to operate as a covered savings association on the date that is 60 days after the date on which the Comptroller receives the notice under paragraph (1), unless the Comptroller notifies the Federal savings association otherwise.*

(c) *RIGHTS AND DUTIES.*—*Notwithstanding any other provision of law and except as otherwise provided in this section, a covered savings association shall—*

(1) *have the same rights and privileges as a national bank that has its main office situated in the same location as the home office of the covered savings association; and*

(2) *be subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to such a national bank.*

(d) *TREATMENT OF COVERED SAVINGS ASSOCIATIONS.—A covered savings association shall be treated as a Federal savings association for the purposes—*

(1) *of governance of the covered savings association, including incorporation, bylaws, boards of directors, shareholders, and distribution of dividends;*

(2) *of consolidation, merger, dissolution, conversion (including conversion to a stock bank or to another charter), conservatorship, and receivership; and*

(3) *determined by regulation of the Comptroller.*

(e) *EXISTING BRANCHES.—A covered savings association may continue to operate any branch or agency the covered savings association operated on the date on which an election under subsection (b) is approved.*

(f) *RULEMAKING.—The Comptroller shall issue rules to carry out this section—*

(1) *that establish streamlined standards and procedures that clearly identify required documentation or timelines for an election under subsection (b);*

(2) *that require a Federal savings association that makes an election under subsection (b) to identify specific assets and subsidiaries—*

(A) *that do not conform to the requirements for assets and subsidiaries of a national bank; and*

(B) *that are held by the Federal savings association on the date on which the Federal savings association submits a notice of such election;*

(3) *that establish—*

(A) *a transition process for bringing such assets and subsidiaries into conformance with the requirements for a national bank; and*

(B) *procedures for allowing the Federal savings association to provide a justification for grandfathering such assets and subsidiaries after electing to operate as a covered savings association;*

(4) *that establish standards and procedures to allow a covered savings association to terminate an election under subsection (b) after an appropriate period of time or to make a subsequent election;*

(5) *that clarify requirements for the treatment of covered savings associations, including the provisions of law that apply to covered savings associations; and*

(6) *as the Comptroller deems necessary and in the interests of safety and soundness.*

* * * * *