

FEDERAL SAVINGS ASSOCIATION CHARTER FLEXIBILITY  
ACT OF 2017

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JANUARY 29, 2018.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1426]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1426) 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

Introduced by Representative Keith Rothfus on March 8, 2017, H.R. 1426, the “Federal Savings Association Charter Flexibility Act of 2017” 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 (OCC) with the same rights and duties of a national bank. Unless the OCC otherwise notifies the institution, the election is effective 60 days after the date on which the OCC receives the notice. The bill also 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. Finally, the bill requires the OCC to establish a transition process that permits an electing Federal savings association to bring any assets 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

The Office of the Comptroller of the Currency (OCC) charters and regulates and the Federal Deposit Insurance Corporation (FDIC), insures both federal savings associations and national banks. Each institution has different structures and different lending and investment powers.

The Home Owners Loan Act (HOLA) [12 U.S.C. 1461 et seq.] created the Federal savings associations charter. These institutions serve local community-based and do not have 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 to national banks, including:

- (1) consolidated supervision under 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 associations portfolio assets must be comprised of mortgage and consumer-related assets. While the Dodd-Frank Act eliminated many of the benefits provided 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 pre-emption. The OCC has the authority to pre-empt state statutes and regulations, which means that national banks can operate under a single set of laws and regulations, rather than to comply with multiple sets of state laws and regulations that may or may not be consistent.

As discussed above, HOLA constrains federal savings associations in their ability to pursue certain activities. Under current law, the only option for federal savings associations that want to offer products and services outside of these HOLA restrictions is to expend human and financial resources to convert to a national bank charter. This is a particularly burdensome process for smaller associations, as they must first convert to stock form before they can convert their charter.

In testimony on April 23, 2015, OCC Senior Deputy Comptroller Toney Bland, proposed 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 flexi-

bility to exercise national bank powers without changing their charters.<sup>1</sup> This legislative change would give the institutions the ability to exceed the commercial and consumer loan limits that apply under HOLA, but retain their charters and corporate forms, and continue the treatment as federal savings associations for purposes of consolidation, merger, dissolution, conservatorship, and receivership.

Because the OCC already supervises both the national bank and federal savings association charters, the regulator can maintain safe and sound operation of institutions that elect to operate as national banks under its proposal. The OCC bases its proposal on the model used in Massachusetts, which permits all state-chartered financial institutions, regardless of charter type, to exercise the same basic set of powers.

#### HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 1426 on April 26, 2017 and April 28, 2017.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on January 17 and 18, 2018, and ordered H.R. 1426 to be reported favorably to the House as amended by a recorded vote of 55 yeas to 0 nays (Record vote no. FC-138), a quorum being present.

#### 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. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House with amendment. The motion was agreed to by a recorded vote of 55 yeas to 0 nays (Record vote no. FC-138), a quorum being present.

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<sup>1</sup> <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=398896>

## Record vote no. FC-138

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Maxine Waters (CA) .....	X		
Mr. McHenry .....				Mrs. Carolyn B. Maloney (NY) ..	X		
Mr. King .....				Ms. Velázquez .....	X		
Mr. Royce (CA) .....	X			Mr. Sherman .....	X		
Mr. Lucas .....	X			Mr. Meeks .....	X		
Mr. Pearce .....	X			Mr. Capuano .....	X		
Mr. Posey .....	X			Mr. Clay .....			
Mr. Luetkemeyer .....	X			Mr. Lynch .....	X		
Mr. Huizenga .....	X			Mr. David Scott (GA) .....	X		
Mr. Duffy .....	X			Mr. Al Green (TX) .....	X		
Mr. Stivers .....				Mr. Cleaver .....	X		
Mr. Hultgren .....	X			Ms. Moore .....	X		
Mr. Ross .....	X			Mr. Ellison .....	X		
Mr. Pittenger .....	X			Mr. Perlmutter .....	X		
Mrs. Wagner .....	X			Mr. Himes .....	X		
Mr. Barr .....	X			Mr. Foster .....	X		
Mr. Rothfus .....	X			Mr. Kildee .....	X		
Mr. Messer .....				Mr. Delaney .....	X		
Mr. Tipton .....	X			Ms. Sinema .....	X		
Mr. Williams .....	X			Mrs. Beatty .....	X		
Mr. Poliquin .....	X			Mr. Heck .....	X		
Mrs. Love .....	X			Mr. Vargas .....	X		
Mr. Hill .....	X			Mr. Gottheimer .....	X		
Mr. Emmer .....	X			Mr. Gonzalez (TX) .....	X		
Mr. Zeldin .....	X			Mr. Crist .....	X		
Mr. Trott .....	X			Mr. Kihuen .....	X		
Mr. Loudermilk .....	X						
Mr. Mooney (WV) .....	X						
Mr. MacArthur .....	X						
Mr. Davidson .....	X						
Mr. Budd .....	X						
Mr. Kustoff (TN) .....	X						
Ms. Tenney .....	X						
Mr. Hollingsworth .....	X						

## 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. 1426 will permit a federal savings association to elect to operate subject to supervision by the Comptroller of the Currency (OCC) with the same rights and duties of a national bank.

## 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.

## 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 26, 2018.*

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. 1426, the Federal Savings Association Charter Flexibility Act of 2017.

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

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 1426—Federal Savings Association Charter Flexibility Act of 2017*

H.R. 1426 would permit financial institutions known as federal savings associations to increase their commercial or consumer lending above the limits in current law without changing their charters. The bill also would require the Office of the Comptroller of the Currency (OCC) to issue a rule concerning this new authority.

Under H.R. 1426, institutions that choose to increase their lending would be known as covered savings institutions. Using information from the OCC, CBO estimates that no more than 10 percent of the roughly 325 federal savings associations nationwide might be interested in becoming a covered savings institution under the provisions of the bill. Those institutions hold less than 0.1 percent of the assets at banks. Because the OCC would continue to regulate those institutions under the bill, CBO expects that regulatory costs to the agency would not increase. In addition, CBO estimates that establishing such authority would not change the likelihood of failure for any institution that converts its charter.

H.R. 1426 also would require the OCC to issue a rule to implement the new authority for federal savings associations. Using 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; those fees are recorded as reductions in direct spending. Thus, the net effect on direct spending would be insignificant.

Because enacting H.R. 1426 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 1426 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1426 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Sarah Puro. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

#### 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

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the pro-

visions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

#### DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires one directed rulemaking within the meaning of such section. The rulemaking requires the Comptroller of the Currency to establish streamlined standards and procedures that clearly identify required documentation or timelines for an election.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section cites H.R. 1426 as the “Federal Savings Association Charter Flexibility Act of 2017.”

##### *Section 2. Option for Federal savings associations to operate as a covered savings association*

This section amends Section 5 of 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 60 days after the date on which the OCC receives the notice, unless the OCC otherwise notifies them. The bill also 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. Finally, the bill 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.

#### 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics,

and existing law in which no change is proposed is shown in roman):

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**

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**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.

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