

Summary of Proposed Legislation to Add Flexibility to the Federal Savings Association Charter

Background

The powers of federal savings associations (also known as “thrifts”) are set out in the Home Owners’ Loan Act (HOLA) (12 U.S.C. 1461 et seq.). HOLA establishes the lending and investment powers for federal savings associations, with the goal of encouraging them to provide housing credit safely and soundly. HOLA imposes limitations, such as percentage-of-asset limits on the amount of commercial and consumer loans that a federal savings association may hold. The statute also requires that a specified percentage of the assets of the association be in qualified thrift investments.

A number of federal savings associations seeking to engage in additional activities to serve their communities are unable to do so because they are constrained by the current limits in HOLA. Under existing law, a federal savings association must convert to a bank charter to implement a strategic decision to engage in commercial or consumer lending to a greater extent than is permitted by HOLA. However, particularly for smaller institutions, charter conversions can be time consuming and burdensome. Federal mutual savings associations face especially hard choices, since they must convert to the stock form of organization before they can convert their charter to a bank.

Not all jurisdictions require financial institutions to change charters in order to implement changes to business plans. In Massachusetts, for example, all state-chartered financial institutions, regardless of their charter type, are permitted to exercise the same basic set of powers. This model allows an institution to choose the appropriate corporate form and governance structure, without unnecessarily limiting the evolution of the institution’s business plan.

The proposed legislation applies principles embodied by the Massachusetts model to the existing Federal framework while preserving the respective characteristics of the federal savings association and national bank charters. Providing federal savings associations with additional flexibility to adapt to changing economic conditions and business environments will enable them to better meet the needs of their communities. The proposed legislation provides this flexibility in a manner consistent with the safe and sound operation of these institutions.

Details

The proposal adds a new section to HOLA that would give federal savings associations the flexibility to exercise national bank powers without changing their charters. Because the OCC already supervises both charters, it has the experience and the expertise necessary to ensure that a federal savings association exercising this flexibility operates safely and soundly.

Election. The proposal would give federal savings associations a choice: they could continue to operate as traditional thrifts, or elect to be treated as “covered savings associations.” Generally, covered savings associations would have the powers of national banks, and be subject to the

same restrictions as national banks. To become a covered savings association, an association would file a streamlined election notice that would automatically take effect after 60 days unless the association was notified otherwise by the Comptroller of the Currency. An election would not be permanent. If a federal savings association's business plan changed after it became a covered savings association, it would be permitted to reverse its election and regain its traditional thrift status after an appropriate period of time, as determined by the Comptroller by rule.

Rights and duties. With a few exceptions (described below), the proposal would give covered savings associations the same rights and privileges as national banks, including the ability to exceed the commercial and consumer loan limits that currently apply to federal savings associations. Because national banks are not subject to the qualified thrift lender test under section 10(m) of HOLA, covered savings associations also would not be subject to the qualified thrift lender test. Covered savings associations would, however, be subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations as national banks, including limitations on real estate activities. In practice, this means that a federal savings association that chooses to become a covered savings association would gain national bank powers but would have to discontinue any activities not permissible for a national bank, subject to rules governing the treatment of non-conforming assets and subsidiaries.

Governance and corporate lifecycle. Under the proposal, covered savings associations would retain their federal savings association charters and corporate forms, whether stock or mutual. They would also continue to be treated like federal savings associations for purposes of consolidation, merger, dissolution, charter conversion, conversion from the mutual form to stock form, conservatorship, and receivership. This is consistent with the Massachusetts model, which allows financial institutions with a variety of governance structures to exercise the same set of powers.

Branches. Generally, the proposal provides that once a federal savings association becomes a covered savings association, it could only establish, acquire, and operate branches if a national bank were allowed to establish, acquire, or operate those same branches. However, the proposal includes grandfathering provisions that would allow a covered savings association to continue to operate the branches in operation when it made its election, even if a national bank were not allowed to operate those branches. This approach recognizes the value of existing branches to local communities while ensuring equal treatment of covered savings associations and national banks.

Rulemaking. The proposal would require the Comptroller of the Currency to issue rules to implement the amendment, including provisions for the transition to a covered savings association or the reversal of an election. By requiring notice and comment rulemaking, the proposal gives stakeholders an opportunity to provide feedback on the details of the election process and the treatment of covered savings associations.

Effective date. Under the proposal, federal savings associations would not be permitted to make elections until the final rules implementing the amendment took effect. This approach allows for a smooth and orderly initial election process.