

**Frequently Asked Questions:  
Implementation of Covered Savings Association Final Rule**

This document is designed to provide general guidance on the election to operate as a covered savings association (CSA). It does not provide Office of the Comptroller of the Currency (OCC) official legal interpretations and does not create any rights or obligations of third parties. Federal savings associations should consult legal counsel regarding institution-specific implications of an election.

**General Process**

**Q1. When will the final rule be effective?**

The *Federal Register* published the final rule on May 24, 2019. The effective date is July 1, 2019. Eligible federal savings associations may make an election any time on or after July 1, 2019.

**Q2. Who is eligible to make the election to become a “covered savings association”?**

To qualify, a federal savings association must have existed on December 31, 2017. A federal savings association also must have reported total assets equal to or less than \$20 billion on its December 31, 2017, call report.

**Q3. What is a CSA?**

A CSA is a federal savings association that may engage in the same activities (including investment activities) as a national bank, subject to the same authorization, terms, and conditions as a national bank. A CSA keeps its federal savings association charter and continues to be subject to federal savings association laws in the areas of governance, consolidation, merger, dissolution, conservatorship, and receivership.

**Q4. What is a difference between the activities a federal savings association can engage in versus a CSA?**

A CSA can engage in the same activities as a national bank. For example, a CSA, like a national bank, does not have to comply with the lending limits established by the Home Owners' Loan Act that are applicable to federal savings associations. A CSA also does not have to comply with the qualified lender test. Detailed information on the specific powers and activities of national banks and federal savings associations is available on OCC.gov.

**Q5. The final rule notes the difference between being treated as a national bank for powers and activities purposes and being treated as a federal savings association for governance and other procedural or application purposes. How will this work?**

For purposes of activities, a CSA generally is treated as a national bank. A CSA generally has 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 CSA, with some exceptions. It also is subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that apply to a national bank, with some exceptions. A CSA is not permitted to retain any subsidiaries or assets or engage in activities that are not permissible for a national bank.

A CSA retains its federal savings association charter and continues to be treated as a federal savings association for purposes of governance, including incorporation, bylaws, boards of directors, shareholders, mutual members, and distribution of dividends. A CSA also is treated as a federal savings association for purposes of consolidation, merger, dissolution, conversion (including conversion to a stock bank or another charter), conservatorship, and receivership, and for other purposes described in the final rule. All CSAs continue to be required to maintain deposit insurance.

**Q6. How does a federal savings association make an election to become a CSA?**

The election process is described at 12 CFR 101.3. A federal savings association that wishes to make the election must submit a notice to the OCC signed by a duly elected officer. The federal savings association must submit the notice to its supervisory office, and the notice must identify any nonconforming activities, investments, and subsidiaries. The process does not require a licensing application. Management of a federal savings association may consult with its appropriate supervisory office on any questions related to making an election.

**Q7. Should there be a pre-notice meeting or consultation with the OCC and, if so, how far in advance should it be?**

While the OCC encourages open dialogue between management of the federal savings association and the supervisory office, there is no mandatory requirement to consult with the OCC in advance of submitting an election. The supervisory office is available to answer any questions. Depending on the complexity of operations and the volume of nonconforming activities, a federal savings association may benefit from a consultation with legal, policy, or supervision subject matter experts at the OCC.

**Q8. What should management of a federal savings association do to assess or prepare to make the election?**

Management of a federal savings association should consider whether the federal savings association has any activities, assets, or subsidiaries that are not permissible for national banks and how the federal savings association or CSA would divest, conform, or discontinue those activities, assets, or subsidiaries. Management should also consider whether the federal savings

association's strategic plan needs to be revised to consider possible new products or services, expanding existing products, and appropriate staffing levels and experience.

**Q9. After a federal savings association submits its notice to make an election to operate as a CSA, how long will it be before it can operate as a CSA?**

By operation of law, the election will become effective 60 days from the date the OCC receives the notice unless the OCC notifies the federal savings association sooner.

**Q10. There is a 60-day period after the submission of the notice of the election after which the election is automatically effective. What will happen during the 60-day period?**

The final rule provides that the effective date of the election is 60 days from the date the OCC receives the notice from the federal savings association. The OCC may notify the federal savings association that the election can take effect earlier than the 60th day. During the 60-day period, the supervisory office and the federal savings association may discuss divestiture plans for nonconforming activities, investments, or subsidiaries and planned changes to the operating or strategic plan of the federal savings association, but these discussions will not affect the federal savings association's eligibility to make an election or delay the effective date of the election past 60 days from the receipt of the notice.

**Q11. How is the 60-day period calculated?**

The 60-day period is calculated in accordance with 12 CFR 5.12. Specifically, "day 1" is the day after the day the OCC receives a complete notice, even if that day is a Saturday, Sunday, or federal holiday. If the 60-day period will end on a Saturday, Sunday, or federal holiday, the period ends the next day that is not a Saturday, Sunday or federal holiday.

**Q12. Must the federal savings association provide public notice to its customers, members, shareholders, or depositors?**

A public notice to customers, members, shareholders, or depositors is not required by the rule. A federal savings association making the election may change its business strategy but will not change its corporate governance or corporate form. Management of the electing federal savings association should review the federal savings association's charter, bylaws, and any other corporate governance document to confirm compliance with all provisions.

**Q13. Is member or shareholder approval required?**

A shareholder or member vote is not required by the final rule, as a CSA is still a federal savings association and its corporate form will not change. Management of the electing federal savings association, however, should review the association's charter, bylaws, and other corporate documents to confirm compliance with all provisions.

**Q14. May a CSA terminate its election (i.e., revert to operating as a federal savings association)?**

After an appropriate period, as determined by the OCC, a CSA may terminate its election by submitting a notice to the supervisory office. The CSA must use the same process it used to make the election. The same time frames are applicable, including the 60-day period at the end of which the termination is effective, unless the OCC has confirmed the termination before the end of the 60-day period.

**Q15. May a federal savings association that has previously terminated an election to operate as a CSA “reelect” to operate as a CSA?**

Yes, a federal savings association can reelect to operate as a CSA, if at least five years has elapsed since the effective date of the termination. The OCC may permit a reelection before the expiration of the five-year period upon a determination of good cause.

**Q16. Will federal mutual savings associations be treated any differently than stock federal savings associations when making an election?**

No. Any federal mutual savings association that meets the criteria described in question 2 may make an election to operate as a CSA. The requirements for the election are the same regardless of whether the federal savings association is in stock or mutual form.

**Eligibility**

**Q17. What happens if the OCC has comments, questions, or objections to eligibility? Will there be a tolling process like with other advance notice filings that will result in a delay beyond 60 days of the confirmation that the federal savings association may operate as a CSA?**

Submitting the notice to the supervisory office does not involve a licensing application and is not subject to any extensions or tolling of the 60-day statutory requirement. The criteria to make the election (described in question 2) are simple. While the supervisory office may have questions or comments about nonconforming activities, assets, or subsidiaries, those questions or comments do not need to be resolved in advance of the effective date of the election. If the supervisory office determines that the federal savings association does not meet the criteria, it will notify the federal savings association in writing that it is not eligible to make an election. If the notice does not include the required information, the supervisory office will request that the federal savings association submit the missing information.

**Q18. Does a federal savings association need to have a 1 or 2 CAMELS rating to make the election to operate as a CSA? What happens if a federal savings association makes the election and its condition deteriorates to the point that it becomes 3-, 4-, or 5-rated? What**

**if the bank receives a needs to improve or substantial noncompliance Community Reinvestment Act (CRA) rating or becomes subject to an enforcement action?**

The condition of the federal savings association, including its CAMELS ratings, CRA ratings, financial performance, or status of compliance with violations of law or regulations, enforcement actions, or matters requiring attention, do not affect its ability to make an election or to continue to operate as a CSA after making an election. A federal savings association should consider whether its condition will allow for an orderly divestiture of any nonconforming assets, activities, or subsidiaries so that it does not violate the requirements of the regulation after making the election.

**Q19. Can a state-chartered savings bank, state-chartered savings association, or credit union that converted to a federal savings association after December 31, 2017, make an election to become a CSA?**

No, a state-chartered savings bank or savings association or a credit union is not be eligible if the conversion to a federal savings association charter occurred after December 31, 2017. To engage in the activities of a national bank, these entities should consider converting to a national bank charter through the OCC's standard licensing conversion process.

**Treatment of Nonconforming Subsidiaries, Assets, or Activities**

**Q20. How will nonconforming activities be treated and how much time will a CSA association have to wind down or divest nonconforming assets or activities?**

CSAs must divest, conform, or discontinue nonconforming subsidiaries, assets, and activities at the earliest time that prudent judgement dictates, but not later than two years after the effective date of the election. The OCC may grant a CSA extensions of not more than two years each up to a maximum of eight years.

**Q21. What are the circumstances under which the OCC will grant an extension of the period for divestiture, conformance, or discontinuance of a nonconforming subsidiary, asset, or activity?**

The final rule allows the OCC to grant CSA extensions of not more than two years each up to a maximum of eight years if the OCC determines that

- the CSA has made a good faith effort to divest, conform, or discontinue the nonconforming subsidiaries, assets, or activities.
- divestiture, conformance, or discontinuance would have a material adverse financial effect on the CSA.
- retention or continuation of the nonconforming subsidiaries, assets, or activities is consistent with the safe and sound operation of the CSA.

**Q22. Does a CSA that terminates its election have to divest assets or loans to come back into compliance with requirements applicable to federal savings associations?**

Yes. If a CSA terminates its election, it must divest, conform, or discontinue any activities, assets, or subsidiaries that are not permitted for federal savings associations. After terminating the election, the federal savings association must comply with the lending limits in the Home Owners' Loan Act and meet the qualified thrift lender test in time frames established in the rule.

**Q23. Some federal savings associations were previously state-chartered savings banks that converted to federal savings associations and have grandfathered activities. Will they lose the ability to engage in grandfathered activities or investments?**

Section 5(i)(4) of the Home Owners' Loan Act permits (1) a federal savings association that was previously a state-chartered savings bank that converted to a federal savings association before October 15, 1982, to make such investments or engage in activities not otherwise authorized for a federal savings association, or (2) a federal savings association that existed on August 9, 1989, and was formerly a state-chartered mutual bank to continue to engage in the activities or investments to the same extent they were permitted for a mutual savings bank. Such a federal savings association may continue to engage in the activities or investments to the same extent previously permitted if it makes an election.

**Q24. Can a CSA retain a service corporation?**

A CSA may not retain a service corporation even if the service corporation is engaged only in activities or investments permitted for national banks. A service corporation is a nonconforming subsidiary as described in 12 CFR 101.5. A CSA may redesignate the service corporation as an operating subsidiary if it is engaged in permissible activities for an operating subsidiary of a national bank. To redesignate a service corporation as an operating subsidiary, the CSA is required to comply with OCC licensing rules at 12 CFR 5.34.

**Operational Questions**

**Q25. If a federal savings association makes an election to operate as a CSA, can it still have “Savings & Loan Association” in its name?**

A CSA is a federal savings association and is not required to change its name after making the election.

**Q26. How should a CSA that is not required to be a qualified thrift lender complete item 15 of Schedule RC-M of the call report?**

The instruction in the call report form to item 15 states: “Item 15 is to be completed by institutions that are required or have elected to be treated as a Qualified Thrift Lender.” CSAs are not required to be qualified thrift lenders. Therefore they do not need to complete item 15.

**Q27. Can a CSA grow to be greater than \$20 billion in assets and continue to be a CSA?**

A CSA may grow to be greater than \$20 billion in assets organically or through acquisitions so long as the resulting entity is the entity that met the original size and charter eligibility requirements as of December 31, 2017.

**Q28. May a trust-only federal savings association make an election to operate as a CSA?**

A trust-only federal savings association may elect to operate as a CSA. A trust-only federal savings association like all savings associations must retain federal deposit insurance.

**Q29. Will a CSA be treated as a national bank for purposes of public welfare investments?**

A CSA will be treated as a national bank for purposes of public welfare investments.<sup>1</sup> Federal savings associations and national banks are subject to different statutory and regulatory requirements and limitations when making public welfare or community development investments. National banks are permitted to make public welfare investments, subject to specific authorization, terms, and conditions (namely, limits on the total amount of such investments). CSAs also will be permitted to make public welfare investments, subject to the same authorization, terms, and conditions (including the limits on the total amount of such investments) as a national bank. Any public welfare or community development projects existing at the time of an election that would not comply with the authorizations, terms, and conditions applicable to a national bank will be subject to divestiture, conformance, or discontinuation as described in the rule.

**Q30. Will the election by a federal savings association to operate as a CSA become public information?**

The fact of the election to operate as a CSA is not confidential supervisory information, but the OCC will not publish confirmation of the election publicly. If it chooses, a federal savings association may publicize its decision to make the election.

**Q31. The final rule states that a CSA must continue to comply with the laws applicable to federal savings associations for purposes of governance, boards of directors, and dividends. Does that mean that a CSA continues to follow the rules and any accompanying guidance applicable to federal savings associations regarding dividends?**

Yes, a CSA should continue to comply with the requirements applicable to federal savings associations in all matters related to the declaration and payment of dividends.<sup>2</sup>

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<sup>1</sup> Refer to 12 USC 24(Eleventh) and its implementing regulation, 12 CFR 24.

<sup>2</sup> Refer to 12 CFR 5.55

**Q32. The final rule permits CSAs to continue to operate branches and agency offices that the federal savings association operated on the date the election is effective. What rules will apply to new branches and agency offices?**

While a CSA may continue to operate branches and agency offices that the federal savings association operated on the date the election is effective, the acquisition or establishment of new branches must comply with the requirements applicable to national banks. Under the final rule, a CSA will be permitted to establish or retain new branches, or to close branches, subject to the authorization, terms, and conditions that apply to a similarly located national bank. This is true whether the branch is retained or closed as part of a merger.

**Q33. What will happen to a federal savings association agency office that engages in activities that must be transacted in a branch of a national bank?**

National banks are not permitted to operate agency or administrative (“non-branch”) offices in the same way federal savings associations are; national banks, however, may have non-branch offices that engage in some activities that are permissible for agency offices of federal savings associations. For example, a national bank may have a loan production office and a federal savings association may have an agency office that is a loan production office. A federal savings association, however, may be permitted to engage in certain activities in an agency office that a national bank would not be permitted to conduct in a non-branch location.

If, after making an election, an agency office of a CSA engages in activities that would qualify the agency as a branch under the national bank branching regulation, 12 CFR 5.30, those activities will be considered nonconforming activities, and the CSA would be required to discontinue the activities or conform them by submitting an application under 12 CFR 5.30 to establish the agency as a branch. For example, federal savings associations typically are permitted to disburse loan proceeds in an agency office. A national bank office that disburses loan proceeds could be considered a location at which there is “money lent,” and thus within the definition of “branch” in 12 CFR 5.30.

**Q34. The final rule provides that a CSA be treated as a federal savings association for purposes of merger, consolidation, dissolution, conversion, conservatorship, and receivership, but a CSA is permitted to retain branches and agency offices that the federal savings association operated on the date of election. How will possible conflicts in these requirements be addressed?**

The OCC has harmonized the regulations for business combination activities of national banks and federal savings associations to the extent possible, although some differences remain due to distinctions in the statutory authorities for national banks and federal savings associations. When the business combination provisions in 12 CFR 5.33 set out different requirements for federal savings associations and national banks, the federal savings association requirements apply to a CSA.

For purposes of the final rule, however, the provisions of law relating to retention of branches in mergers and those that establish interstate branching restrictions in the merger context should be considered branching requirements rather than merger requirements. For a CSA, this means that while the authority to engage in a proposed merger or consolidation transaction will be governed under the laws applicable to federal savings associations, the ability to establish or retain branches will be subject to the same authorization, terms, and conditions that would apply to a similarly located national bank (including conditions on the establishment of interstate branches).

### **Holding Companies**

#### **Q35. Many federal savings associations are in holding companies. Will they need to do anything at the holding company level to make the election?**

Federal savings associations in holding companies should contact the Board of Governors of the Federal Reserve System staff or staff at the appropriate Federal Reserve Bank regarding the treatment of the holding company by the Federal Reserve.

#### **Q36. Will mutual holding companies be treated any differently under the proposed election?**

Management of mutual holding companies should consult with Federal Reserve Board staff or staff at the appropriate Federal Reserve Bank regarding the treatment of mutual holding companies wishing to make an election.