

Charter Flexibility Act

Notice of Proposed Rulemaking
Published on September 18, 2018

Charter Flexibility Act

- Enacted as section 206 of the Economic Growth, Regulatory Relief, and Consumer Protection Act
- A federal savings association with total consolidated assets equal to or less than \$20 billion, as reported as of December 31, 2017, may elect to operate as a covered savings association
- OCC required to issue rule to implement the statute

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- A covered savings association has the same rights and privileges as a national bank and is subject to the same duties and restrictions as a national bank
- A covered savings association retains its federal savings association charter and existing governance framework
- A covered savings association is not subject to the HOLA lending limitations

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- The rule is required to establish streamlined standards and procedures for elections and clarify requirements for covered savings associations
- Notice of proposed rulemaking published on September 18, 2018
- Comments are due November 19, 2018

Supervisory Office Notice

- Signed by a duly authorized officer of the federal savings association
- Identify each branch or agency office the federal savings association operates or will operate on the effective date of the election that has not been the subject of an application or notice under 12 CFR part 5
- Identify and describe each nonconforming subsidiary, asset or activity that the federal savings association operates, holds, or conducts at the time it submits the notice, each of which must be divested, conformed or discontinued

Effective Date of Approval

- The statute requires that a federal savings association that submits a notice be deemed approved to operate as a covered savings association beginning on the date that is 60 days after the date on which the notice is received unless the OCC notifies the federal savings association that it is not eligible
- The proposed rule provides that the OCC may notify a federal savings association earlier than 60 days from the date the OCC receives the notice that it is eligible to operate as a covered savings association

Eligibility Requirements

- Federal savings association with assets of \$20 billion or less as of December 31, 2017
- Well-capitalized as defined in 12 CFR 6.4
- Composite CAMELS rating of 1 or 2
- CRA rating of satisfactory or outstanding
- Consumer compliance rating of 1 or 2
- Not generally subject to formal enforcement action or PCA directive

Treatment of Covered Savings Associations

- Option 1 - *Treatment as a national bank...* a covered savings association shall comply with the same provisions of law that would apply to a similarly located national bank and shall not be required to comply with the provisions of law that apply to federal savings associations.
- Option 2 - *National bank activities...* a covered savings association may engage in any activity that is permissible for a similarly located national bank to engage in as part of, or incidental to, the business of banking, or explicitly authorized by statute for a national bank, subject to the same authorization, terms, and conditions that would apply to a similarly located national bank, as determined by the OCC for purposes of this part

Treatment as a Federal Savings Association

The proposal lists the provisions of law that apply to federal savings associations that would continue to apply to covered savings associations

A covered savings association may continue to operate any branch or agency that the covered savings association operated on the effective date of the election

Nonconforming Subsidiaries, Assets, and Activities

A covered savings association shall divest, conform, or discontinue a nonconforming subsidiary, asset, or activity at the earliest time that prudent judgment dictates but not later than two years after the effective date of the election. The OCC may require a covered savings association to submit a plan to divest, conform, or discontinue a nonconforming subsidiary, asset, or activity

Nonconforming Subsidiaries, Assets, and Activities

The OCC may grant a covered savings association extensions of not more than two years each up to a maximum of eight years if the OCC determines that:

- (1) The covered savings association has made a good faith effort to divest, conform, or discontinue the nonconforming subsidiary, asset, or activity;
- (2) Divestiture, conformance, or discontinuation would have a material adverse financial effect on the covered savings association; and
- (3) Retention or continuation of the nonconforming subsidiary, asset, or activity is consistent with the safe and sound operation of the covered savings association

Termination of Election

- A covered savings association may terminate its election to operate as a covered savings association, after an appropriate period of time as determined by the OCC, by submitting a notice to the appropriate OCC supervisory office
- The process for terminating an election is the same as the process for making an election

Reelection

A federal savings association that has terminated its election to operate as a covered savings association may submit a notice to reelect to operate as a covered savings association, if at least five years have elapsed since the effective date of the termination. Upon determining that good cause exists, the OCC may permit a federal savings association to reelect to operate as a covered savings association prior to the expiration of the five-year period

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- The Federal Register notice contains a number of questions
- OCC is interested in comments on all aspects of the proposal