



Regulatory Compliance Bulletin

October 1, 2018

OCC Request for Comment: Proposed Rule Permitting Certain Federal Thrifts to Elect the Rights and Duties of National Banks

The OCC is inviting comment on a proposed rule implementing new section 5A¹ of the Home Owners' Loan Act (HOLA), which was enacted in Section 206 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).²

Comments are due on or before November 19, 2018. Instructions on how to submit comments appear at the end of this Bulletin.

Background

New Section 5A of HOLA allows a federal savings association (FSA) with total consolidated assets of \$20 billion or less as of December 31, 2017 to elect to operate as a "covered savings association" (CSA). A CSA 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. A CSA is subject to the same duties, restrictions, penalties, liabilities, conditions and limitations that would apply to a national bank; however, the CSA retains its FSA charter and continues to be treated as an FSA for purposes of governance.

The OCC views Section 5A of HOLA as providing FSAs with additional flexibility to adapt to new economic conditions and better serve their communities without the cost and time involved in changing their charters.

Section 10(m) of HOLA requires an FSA to maintain its status as a qualified thrift lender (QTL) by holding a specified percentage of its assets in qualified thrift investments. Prior to the enactment of Section 5A of HOLA, an FSA would have been required to convert to a bank charter to pursue commercial or consumer lending that exceeded the investment limits in HOLA.

For a number of years, FSAs have expressed a desire to engage in additional activities, such as additional commercial or small business lending and consumer lending, but have been unable to increase lending in those areas because of statutory lending limits and the requirement to comply with QTL.

¹ 12 U.S.C. §1464a

² Enacted May 24, 2018, Public Law No. 115-174

Summary of the Rules the OCC Proposes to Issue to Implement Section 5A of HOLA³

First, the proposed rules define a CSA as an FSA with assets of \$20 billion or less as of December 31, 2017 (as reported on the FSA's Consolidated Reports of Condition and Income for December 31, 2017) that has notified the OCC of its election to operate as a CSA.⁴

The notice must (i) be signed by a duly authorized officer of the FSA, (ii) identify each branch or agency that the FSA 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 5,⁵ (iii) identify each nonconforming subsidiary, asset or activity⁶ that the FSA operates, holds or conducts at the time it submits the notice, each of which are required to be divested, conformed, or discontinued.⁷

An election is effective 60 days after OCC receives the notice, unless the OCC notifies the FSA that it is not eligible to operate as a CSA. Or, before the

³ The proposed rules will be codified as 12 CFR, Part 101. All references herein to Section 101 refer to 12 CFR, Part 101.

⁴ Section 101.2(a)(2)

⁵ 12 CFR part 5 establishes rules, policies and procedures of the OCC for corporate activities and transactions involving national banks and FSAs.

⁶ A nonconforming subsidiary, asset or activity means a subsidiary, asset or activity that is not permissible for a CSA, or, if permissible, is being operated, held, or conducted in a manner that exceeds the limit applicable to a covered savings association, and includes an investment in a subsidiary or other entity that is not permissible for a CSA. Section 101.2(a)(4)

⁷ Section 101.3(a)(2)

expiration of the 60-day period, the OCC may notify an FSA that it is eligible to make the election to operate as a CSA, in which case the election shall take effect on the date the OCC so notifies the FSA.⁸

FSAs that are not "eligible savings associations" as defined in 12 CFR §5.3(g)⁹ are not eligible to elect to operate as a CSA. If the FSA is subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive, the FSA is not eligible to operate as a CSA unless the OCC informs the FSA in writing that it may be treated as an eligible savings association for purposes of the election.¹⁰

The OCC proposes two alternative iterations of the manner in which a CSA shall be treated:¹¹

Option A: "*Treatment as a national bank.* [A] covered savings association shall

⁸ Section 101.2(b)

⁹ An "eligible savings associations" is defined as an FSA that:

- (1) Is well capitalized as defined in 12 CFR 6.4;
- (2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS);
- (3) Has a Community Reinvestment Act (CRA), 12 U.S.C. 2901 *et seq.*, rating of "Outstanding" or "Satisfactory," if applicable;
- (4) Has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System; and
- (5) Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (*see 12 CFR part 6, subpart B*) or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the . . . savings association may be treated as an "eligible . . . savings association" for purposes of this part.

¹⁰ Section 101.2(c)

¹¹ Section 101.4(a)

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 B: “*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”

A CSA shall continue to comply with provisions of law that apply to FSAs in thirteen specific areas.¹²

A CSA must divest, conform or discontinue a nonconforming subsidiary, asset, or activity at the earliest prudent time, but in no event later than two years after the effective date of the election to operate as a CSA. The OCC may require a CSA to submit a plan to divest, conform or discontinue a nonconforming subsidiary, asset or activity.¹³ The OCC may grant extensions of not more than two years, up to a maximum of eight years, if the OCC determines that the CSA is making a good faith effort to comply, that divestiture, conformance or discontinuation would have a material adverse effect on the CSA, and that retention or continuation of the nonconforming subsidiary, asset or

¹² Section 101.4(a)(2)

¹³ Section 101.5(a)

activity is consistent with safe and sound operation of the CSA.¹⁴

The OCC’s notice of proposed rulemaking and request for comments can be reviewed at https://occ.gov/news-issuances/news-releases/2018/nr-occ-2018-95a.pdf?utm_campaign=ABA-Newsbytes-091118&utm_medium=email&utm_source=Eloqua

You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2018-0020” in your comment.

Please use the title “Covered Savings Associations” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- Federal eRulemaking Portal—“Regulations.gov”: Go to www.regulations.gov. Enter “Docket ID OCC-2018-0020” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

¹⁴ Section 101.5(b)

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- E-mail: *regs.comments@occ.treas.gov*.
- Mail: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- Hand Delivery/Courier: 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- Fax: (571) 465-4326.

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