

CAPITAL ACCESS FOR SMALL COMMUNITY FINANCIAL
INSTITUTIONS ACT OF 2015

APRIL 13, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 299]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 299) to amend the Federal Home Loan Bank Act to authorize privately insured credit unions to become members of a Federal home loan bank, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 299, the Capital Access for Small Community Financial Institutions Act of 2015, would amend Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) to treat certain privately insured credit unions as insured depository institutions for purposes of determining eligibility for membership in a Federal Home Loan Bank (FHLB). In order to be eligible for membership, a privately insured credit union would need to receive a certification from its state supervisor stating that it is eligible to apply for federal deposit insurance. Additionally, the private insurer of the credit union would be required to provide a copy of the credit union's annual audit report to the National Credit Union Administration (NCUA) and the Federal Housing Finance Agency (FHFA). Moreover, within 18 months of the bill's enactment, the Comptroller General of the United States is required to report to Congress on the adequacy of insurance reserves held by a private deposit insurer and provide information on the level of compliance with fed-

eral regulations relating to the disclosure of a lack of federal deposit insurance.

BACKGROUND AND NEED FOR LEGISLATION

The FHLB System was created in 1932 to improve the availability of funds to support homeownership. Its broader mission now is “to provide financial products and services to [FHLB System] members and eligible non-members, including but not limited to advances, that assist and enhance their financing of: (1) housing, including single-family and multifamily housing serving consumers at all income levels; and (2) community lending.”¹ According to the FHLB System, its banks provide “liquidity to members through secured loans (advances), thereby increasing the availability of credit for residential mortgages, community investments, and other services for housing and community development.”² Some of the FHLBs also help to enhance liquidity by purchasing mortgage loans from, and funding mortgage loans through, participating member institutions and housing associates.³

The FHLB System currently limits its membership to building and loan associations, savings and loan associations, cooperative banks, homestead associations, savings banks, insurance companies, community development financial institutions, federally insured banks and savings associations, and federally insured credit unions.⁴ As of year-end 2014, 7,361 lenders were members of the FHLB System, which consisted of 4,850 commercial banks, 1,269 credit unions, 906 thrifts, 303 insurance companies and 29 community development financial institutions.⁵

Currently, there are 128 privately insured credit unions that operate in nine states: Alabama, California, Idaho, Illinois, Indiana, Maryland, Nevada, Ohio, and Texas.⁶ Permitting these credit unions to apply for membership to the FHLB System would help them serve the financial needs of their members, and it would not expose the FHLB System to any appreciable additional risk. All advances made by the FHLB System must be fully collateralized and subject to strong underwriting standards. While privately insured credit unions are not currently eligible for membership, other non-federally insured entities are permitted to join the FHLB System, and under current law, state-chartered, privately insured credit unions which also have obtained Community Development Financial Institution status are eligible.⁷

As part of written testimony before the House Committee on Financial Services at a March 18, 2015 hearing entitled “Preserving Consumer Choice and Financial Independence,” Patrick Miller, President and CEO of CBC Federal Credit Union, said:

¹ <http://www.fhlbanks.com/fhlbanks-mission.html>.

² <http://www.fhlbanks.com/fhlbanks-mission.html>.

³ <http://www.fhlbanks.com/funding-and-liquidity-for-members.html>.

⁴ <http://www.fhfa.gov/DataTools/Downloads/Pages/Federal-Home-Loan-Bank-Member-Data.aspx>. In 1989 the FHLB System was opened up to commercial banks and credit unions. However, the authorizing legislation only applied to an “insured credit union” as defined by 12 U.S.C. 1752 of the Federal Credit Union Act. Privately insured credit unions were not originally included in this definition.

⁵ <http://www.fhfa.gov/DataTools/Downloads/Pages/Federal-Home-Loan-Bank-Member-Data.aspx>.

⁶ CUNA-provided data.

⁷ 12 U.S.C. 4703.

We also support H.R. 299, the “Capital Access for Small Community Financial Institutions Act of 2015”, legislation introduced by Representatives Steve Stivers and Joyce Beatty which corrects a drafting oversight in the *Federal Home Loan Bank Act* that has resulted in a small number of privately insured credit unions being ineligible to join a FHLB. In 1989, in the wake of the savings and loan crisis, the FHLB System was opened up for the first time to commercial banks and credit unions. Unfortunately, the bill was drafted in such a way to apply only to an “insured credit union” as defined under the *Federal Credit Union Act*. If the legislation had used a broader term in the 12 USC 1752 of the *Federal Credit Union Act*—such as “state credit union” or “state-chartered credit union”, terms that are clearly defined, then privately insured credit unions would have the same opportunity for membership as other financial institutions. This is why, for many years, we have suggested that this was likely an oversight in drafting. Unfortunately, it has meant for over two decades, a small group of credit unions have been denied the right to even apply for membership in the FHLB System. The House of Representatives has continuously recognized this as a problem. In 2004, 2006 and 2014, the full House passed corrective legislation. In 2008, as part of the *Housing and Economic Recovery Act of 2008*, Congress made a small change to permit privately-insured, state-chartered credit unions designated as a Community Development Financial Institution (CDFI) to apply for membership to the FHLBs; however, of the 127 privately insured credit unions, only two are CDFI certified. We understand some policymakers have concerns regarding the existence of the private insurance option; however, this legislation would not expand that option for credit unions nor would it present an increased risk to the FHLB System, since this legislation only allows privately insured credit unions the option to apply for membership. If enacted, privately insured credit unions would not be the only non-Federally insured institutions eligible for membership in the FHLB System. Currently, insurance companies, which are not federally insured, are members of the System. In fact, in terms of current outstanding advancements, 119 insurance companies are borrowing almost twice as much as 427 federally insured credit unions.⁸ It has never seemed reasonable to our small institutions that some of the largest banks in the world, insurance companies (which are not Federally insured) or a foreign bank’s U.S. subsidiary can borrow billions of dollars from the FHLB System, but credit unions serving teachers in Ohio and Texas, firefighters in California, postal and county workers in Illinois and farmers in Indiana cannot.

Credit union representatives from several of the nine states where privately insured credit unions operate submitted letters

⁸ *Combined Financial Report of the Federal Home Loan Bank System for the Quarter ending on September 30, 2013.*

supporting H.R. 299. In a joint letter of support dated March 23, 2015, the California Credit Union League and the Nevada Credit Union League stated:

On behalf of the 10.5 million credit union members in California and Nevada, I am writing in support of H.R. 299, which allows privately insured credit unions access to the Federal Home Loan Banks. As you know, currently credit unions that chose private insurance are limited in their options for liquidity sources. In our two states 19 credit unions are privately insured. We supported this legislation in the 113th session, where this bill passed the House by a vote of 395-0. Credit unions, as not-for-profit cooperatives exist to serve the needs of our members. In order for credit unions to continue to meet the demands of the communities we serve, credit unions require new and reliable sources of liquidity that can meet our growing necessities. H.R. 299 enables us to do just that. In California, the two largest privately insured credit unions primarily serve firefighters and first responders. Your legislation will create new lending opportunities for the memberships served by these credit unions. In Nevada, 7 of the states' 18 credit unions are privately insured, which is why your legislation is crucial to the state's success. After the financial crisis of the last few years, credit unions have worked tirelessly to provide new and innovative ways to serve our members. H.R. 299 is another tool in credit union belt.

The Ohio Credit Union League also expressed its support for the legislation in a letter dated March 23, 2015, stating:

On behalf of the Ohio Credit Union League and Ohio's 57 privately-insured credit unions, I am writing to offer full support for the markup of H.R. 299, the Capital Access for Small Community Financial Institutions Act. Ohio's privately-insured credit unions serve more than 333,000 members, many of which rely on their credit union for access to home mortgage products. The unintentional barring of financially-strong, well-regulated credit unions from a government-sponsored entity designed to facilitate credit for home buyers should be corrected. The Federal Home Loan Bank (FHLB) Act was amended in 1989 to allow commercial banks and credit unions the right to seek membership in the system. However, the definition of a credit union was worded incorrectly, mistakenly omitting privately-insured credit unions from applying for membership to the FHLB. We support upcoming efforts by the U.S. House Financial Services Committee to correct this language and grant privately-insured credit unions the option to apply. Credit unions play an important part in consumer lending and home ownership. In a very tangible way, providing privately-insured credit unions with access to the FHLB system will increase credit union lending and strengthen Ohio's economy. It also increases competition, generating more affordable housing options for qualified buyers. The Ohio Credit Union League, the trade association representing Ohio's 330 state- and federally-chartered

credit unions, strongly supports a credit union's ability to choose optimum business strategies, including its charter (federal or state) and deposit insurer (federal or private/American Share Insurance). This essence of choice enhances a healthy competitive environment that spurs innovation and improved service among regulators, insurers, and credit unions.

The Indiana Credit Union League sent a letter of support dated March 23, 2015, stating:

On behalf of Indiana's credit unions, we are writing to support H.R. 299, the Capital Access for Small Community Financial Institutions Act of 2015, which you and Indiana Representative Andre Carson introduced again this year that would allow privately-insured credit unions to become members of the Federal Home Loan Bank (FHLB). We understand that H.R. 299 will be marked up in the Financial Services Committee this week. We strongly support the legislation and urge the Committee to pass this important bill. Under current law, privately-insured credit unions are not permitted to become members of a FHLB. This legislation would allow these credit unions to join a FHLB, providing a new source of mortgage funding for these financial institutions and their members. Passage of this legislation would advance home ownership options for members of privately-insured credit unions. In Indiana, 17 state-chartered credit unions with more than 140,000 members and more than \$2 billion in assets are privately-insured.

HEARINGS

The Committee on Financial Services held no hearings on H.R. 299 in the 114th Congress.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 25, 2015 and March 26, 2015, and ordered H.R. 299 to be reported favorably to the House without amendment by a recorded vote of 56 yeas to 1 nays (Record vote no. FC-13), 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 vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 56 yeas to 1 nays (Record vote no. FC-13), a quorum being present.

Record vote no. FC-13

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)	X		
Mr. King (NY)	X			Mrs. Maloney (NY)	X		
Mr. Royce	X			Ms. Velázquez	X		
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks	X		
Mr. Neugebauer	X			Mr. Capuano	X		
Mr. McHenry	X			Mr. Hinojosa			
Mr. Pearce	X			Mr. Clay			
Mr. Posey	X			Mr. Lynch	X		
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland				Mr. Al Green (TX)	X		
Mr. Luetkemeyer	X			Mr. Cleaver	X		
Mr. Huizenga (MI)	X			Ms. Moore	X		
Mr. Duffy	X			Mr. Ellison	X		
Mr. Hurt (VA)	X			Mr. Perlmutter		X	
Mr. Stivers	X			Mr. Himes	X		
Mr. Fincher	X			Mr. Carney	X		
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney	X			Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee	X		
Mr. Ross	X			Mr. Murphy (FL)	X		
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty	X		
Mr. Rothfus	X			Mr. Heck (WA)	X		
Mr. Messer	X			Mr. Vargas	X		
Mr. Schweikert	X						
Mr. Dold	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	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. 299 will permit certain privately insured credit unions to become eligible for membership in the Federal Home Loan Bank System.

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.

COMMITTEE COST ESTIMATE

The Committee adopts as its own 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, April 8, 2015.

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. 299, the Capital Access for Small Community Financial Institutions Act of 2015.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 299—Capital Access for Small Community Financial Institutions Act of 2015

H.R. 299 would allow privately insured credit unions to become members of the Federal Home Loan Bank (FHLB) system. The bill also would direct the Government Accountability Office (GAO) to report to the Congress on privately insured institutions and their insurers. CBO estimates that implementing this legislation would have no significant effect on the federal budget. Enacting H.R. 299 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

The FHLB system is a cooperative, government-sponsored enterprise made up of 12 regional banks that offer financing to almost 7,400 members (banks, thrift institutions, insurance companies, and credit unions). FHLBs make loans (known as “advances”) and provide other credit services that members use to fund mortgages and other loans. Consolidated assets of the FHLBs totaled \$913 billion at the end of calendar year 2014, including about \$570 billion in advances.

H.R. 299 would permit state-chartered, privately insured credit unions to become members of the FHLB system. Under current law, such credit unions may only gain membership if they are also community development financial institutions. Based on information provided by the National Credit Union Administration, there are about 130 privately insured credit unions holding about \$14 billion in assets that would become eligible for membership under the bill. CBO believes that it is unlikely that any advances made to these institutions would alter the financial condition of the FHLBs given the relative size of the credit unions to the FHLB system and the requirement that all advances be fully secured. Because these credit unions are privately insured, spending by the Federal Deposit Insurance Corporation would not be affected if an institution ultimately failed.

The bill also would direct GAO to report to the Congress on the adequacy of insurance reserves held by private deposit insurers and whether privately insured institutions comply with federal disclosure regulations. The cost of the study would be less than \$500,000, CBO estimates, and would be subject to the availability of appropriated funds.

H.R. 299 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt state laws that allow liquidators to void specific types of contracts. However, the preemption would impose no duty on state governments that would result in additional spending, and the threshold established by UMRA for costs of intergovernmental mandates (\$77 million in 2015, adjusted annually for inflation) would not be exceeded.

H.R. 299 would impose a private-sector mandate, as defined in UMRA, on private insurers of deposits at credit unions that are members of the FHLB system. It would require such insurers to submit a copy of their annual independent audit to the Federal Housing Finance Agency. Based on information from the National Credit Union Administration, CBO estimates that the cost of complying with the mandate would be small and would fall well below the annual threshold for private-sector mandates established in UMRA (\$154 million in 2015, adjusted annually for inflation).

The CBO staff contacts for this estimate are Martin von Gnechten (for federal costs), J'nell L. Blanco (for the intergovernmental mandate), and Paige Piper/Bach (for the private-sector mandate). The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

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

H.R. 299 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 299 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 299 does not require any directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 299 as the “Capital Access for Small Community Financial Institutions Act of 2015.”

Section 2. Privately insured credit unions authorized to become members of a Federal Home Loan Bank

This section amends the Federal Home Loan Bank Act to treat certain privately insured credit unions as insured depository institutions for purposes of determining eligibility for membership in a federal home loan bank. This section also permits a credit union

which lacks federal deposit insurance and has applied for membership in a federal home loan bank to be treated as meeting all the eligibility requirements for federal deposit insurance if the supervisor of the chartering state has determined that it meets all federal deposit insurance eligibility requirements. If the supervisor fails to make an eligibility determination within six months of the credit union's application, the credit union is deemed to have met the eligibility requirements.

Additionally, this section prohibits the application of a state law authorizing a conservator or liquidating agent of a credit union to repudiate contracts to any extension of credit from a federal home loan bank to a credit union which is a member of that bank or security interest in the assets of the credit union securing such extension of credit. This section also requires, notwithstanding any state law to the contrary, that if a home loan bank's interest in any collateral securing an advance to a state-chartered credit union that is not federally insured has the same priority and is afforded the same standing and rights that the security interest would have had if the advance had been made to a federally insured credit union, and the bank has the same right to access such collateral that it would have had if the advance had been made to a federally insured credit union.

Finally, this section amends the Federal Deposit Insurance Act to require private deposit insurers of credit unions that are members of a federal home loan bank to submit copies of their audit reports to the Federal Housing Finance Agency within seven days after the audit is completed.

Section 3. GAO report

This section directs the Comptroller General to study the adequacy of insurance reserves held by a private deposit insurer that insures deposits in an insured credit union, and such credit union's level of compliance with federal regulations relating to the disclosure of a lack of federal deposit insurance.

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

FEDERAL HOME LOAN BANK ACT

* * * * *

ELIGIBILITY OF MEMBERS AND NONMEMBER BORROWERS

SEC. 4. (a) CRITERIA FOR ELIGIBILITY.—

(1) **IN GENERAL.**—Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, community development financial institution, or any insured depository institution (as defined in section 2 of this Act), shall be eligible to become a member of a Federal Home Loan Bank if such institution—

(A) is duly organized under the laws of any State or of the United States;

(B) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States or, in the case of a community development financial institution, is certified as a community development financial institution under the Community Development Banking and Financial Institutions Act of 1994; and

(C) makes such home mortgage loans as, in the judgment of the Director, are long-term loans (except that in the case of a savings bank, this subparagraph applies only if, in the judgment of the Director, its time deposits, as defined in section 19 of the Federal Reserve Act, warrant its making such loans).

(2) QUALIFIED THRIFT LENDER.—An insured depository institution that is not a member on January 1, 1989, may become a member of a Federal Home Loan Bank only if—

(A) the insured depository institution (other than a community financial institution) has at least 10 percent of its total assets in residential mortgage loans;

(B) the insured depository institution's financial condition is such that advances may be safely made to such institution; and

(C) the character of its management and its home-financing policy are consistent with sound and economical home financing.

(3) CERTAIN INSTITUTIONS.—An insured depository institution commencing its initial business operations after January 1, 1989, may become a member of a Federal Home Loan Bank if it complies with regulations and orders prescribed by the Director for the 10 percent asset requirement (described in the paragraph (2)) within one year after the commencement of its operations.

(4) LIMITED EXEMPTION FOR COMMUNITY FINANCIAL INSTITUTIONS.—A community financial institution that otherwise meets the requirements of paragraph (2) may become a member without regard to the percentage of its total assets that is represented by residential mortgage loans, as described in subparagraph (A) of paragraph (2).

(5) CERTAIN PRIVATELY INSURED CREDIT UNIONS.—

(A) IN GENERAL.—*Subject to the requirements of subparagraph (B), a credit union shall be treated as an insured depository institution for purposes of determining the eligibility of such credit union for membership in a Federal home loan bank under paragraphs (1), (2), and (3).*

(B) CERTIFICATION BY APPROPRIATE SUPERVISOR.—

(i) IN GENERAL.—*For purposes of this paragraph and subject to clause (ii), a credit union which lacks Federal deposit insurance and which has applied for membership in a Federal home loan bank may be treated as meeting all the eligibility requirements for Federal deposit insurance only if the appropriate supervisor of the State in which the credit union is chartered has determined that the credit union meets all the eligibility*

requirements for Federal deposit insurance as of the date of the application for membership.

(ii) *CERTIFICATION DEEMED VALID.*—If, in the case of any credit union to which clause (i) applies, the appropriate supervisor of the State in which such credit union is chartered fails to make a determination pursuant to such clause by the end of the 6-month period beginning on the date of the application, the credit union shall be deemed to have met the requirements of clause (i).

(C) *SECURITY INTERESTS OF FEDERAL HOME LOAN BANK NOT AVOIDABLE.*—Notwithstanding any provision of State law authorizing a conservator or liquidating agent of a credit union to repudiate contracts, no such provision shall apply with respect to—

(i) any extension of credit from any Federal home loan bank to any credit union which is a member of any such bank pursuant to this paragraph; or

(ii) any security interest in the assets of such credit union securing any such extension of credit.

(D) *PROTECTION FOR CERTAIN FEDERAL HOME LOAN BANK ADVANCES.*—Notwithstanding any State law to the contrary, if a Bank makes an advance under section 10 to a State-chartered credit union that is not federally insured—

(i) the Bank's interest in any collateral securing such advance has the same priority and is afforded the same standing and rights that the security interest would have had if the advance had been made to a federally insured credit union; and

(ii) the Bank has the same right to access such collateral that the Bank would have had if the advance had been made to a federally insured credit union.

(b) An institution eligible to become a member under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the Director.

(c) Notwithstanding the provisions of clause (2) of subsection (a) of this section requiring inspection and regulation under law as a condition with respect to eligibility for membership, any building and loan association which would be eligible to become a member of a Federal Home Loan Bank except for the fact that it is not subject to inspection and regulation under the banking laws or similar laws of the State in which such association is organized shall, upon subjecting itself to such inspection and regulation as the Director shall prescribe, be eligible to become a member.

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FEDERAL DEPOSIT INSURANCE ACT

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SEC. 43. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURERS.—

(1) AUDIT REQUIRED.—Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

(2) PROVIDING COPIES OF AUDIT REPORT.—

(A) PRIVATE DEPOSIT INSURER.—The private deposit insurer shall provide a copy of the audit report—

(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed; **[and]**

(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed**[.]**; *and*

(iii) in the case of depository institutions described in subsection (e)(2)(A) the deposits of which are insured by the private insurer which are members of a Federal home loan bank, to the Federal Housing Finance Agency, not later than 7 days after the audit is completed.

(B) DEPOSITORY INSTITUTION.—Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

(3) ENFORCEMENT BY APPROPRIATE STATE SUPERVISOR.—Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.

(b) DISCLOSURE REQUIRED.—Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

(1) PERIODIC STATEMENTS; ACCOUNT RECORDS.—Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate, a notice that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.

(2) ADVERTISING; PREMISES.—

(A) IN GENERAL.—Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

(B) EXCEPTIONS.—The following need not include a notice that the institution is not federally insured:

(i) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

(ii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

(3) ACKNOWLEDGMENT OF DISCLOSURE.—

(A) NEW DEPOSITORS OBTAINED OTHER THAN THROUGH A CONVERSION OR MERGER.—With respect to any depositor who was not a depositor at the depository institution before the effective date of the Financial Services Regulatory Relief Act of 2006, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

(i) the institution is not federally insured; and

(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(B) NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after the effective date of the Financial Services Regulatory Relief Act of 2006, receive any deposit for the account of such depositor only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

(C) CURRENT DEPOSITORS.—Receive any deposit after the effective date of the Financial Services Regulatory Relief Act of 2006 for the account of any depositor who was a depositor on that date only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution has complied with the provisions of subparagraph (E) which are applicable as of the date of the deposit.

(D) ALTERNATIVE PROVISION OF NOTICE TO NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—

(i) IN GENERAL.—Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(E) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS.—

(i) IN GENERAL.—Transmit to each depositor who was a depositor before the effective date of the Financial Services Regulatory Relief Act of 2006, and has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(ii) MANNER AND TIMING OF NOTICE.—

(I) FIRST NOTICE.—Make the transmission described in clause (i) via mail not later than three months after the effective date of the Financial Services Regulatory Relief Act of 2006.

(II) SECOND NOTICE.—Make a second transmission described in clause (i) via mail not less than 30 days and not more than three months after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.

(c) MANNER AND CONTENT OF DISCLOSURE.—To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Bureau, by regulation or order, shall prescribe the manner and content of disclosure required under this section, which shall be presented in such format and in such type size and manner as to be simple and easy to understand.

(d) EXCEPTIONS FOR INSTITUTIONS NOT RECEIVING RETAIL DEPOSITS.—The Bureau may, by regulation or order, make exceptions to subsection (b) for any depository institution that, within the United States, does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

(e) DEFINITIONS.—For purposes of this section:

(1) APPROPRIATE SUPERVISOR.—The “appropriate supervisor” of a depository institution means the agency primarily responsible for supervising the institution.

(2) DEPOSITORY INSTITUTION.—The term “depository institution” includes—

(A) any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

(B) any entity that, as determined by the Bureau—

- (i) is engaged in the business of receiving deposits; and
- (ii) could reasonably be mistaken for a depository institution by the entity’s current or prospective customers.

(3) LACKING FEDERAL DEPOSIT INSURANCE.—A depository institution lacks Federal deposit insurance if the institution is not either—

- (A) an insured depository institution; or
- (B) an insured credit union, as defined in section 101 of the Federal Credit Union Act.

(4) PRIVATE DEPOSIT INSURER.—The term “private deposit insurer” means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

(5) BUREAU.—The term “Bureau” means the Bureau of Consumer Financial Protection.

(f) ENFORCEMENT.—

(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the Bureau, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission.

(2) BROAD STATE ENFORCEMENT AUTHORITY.—

(A) IN GENERAL.—Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

(B) STATE POWERS.—For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Bureau or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau or Federal Trade Commission for any violation of this section that is alleged in that complaint.

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