

115TH CONGRESS
1ST SESSION

H. R. 4439

To amend the Revised Statutes, the Bank Service Company Act, the Federal Deposit Insurance Act, and the Home Owners' Loan Act to clarify that the role of the insured depository institution as lender and the location of an insured depository institution under applicable law are not affected by any contract between the institution and a third-party service provider, and to clarify that Federal preemption of State usury laws applies to any loan to which an insured depository institution is the party to which the debt is initially owed according to its terms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2017

Mr. HOLLINGSWORTH (for himself, Mr. HASTINGS, Mr. MCHENRY, Mr. LUETKEMEYER, and Mr. CUELLAR) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Revised Statutes, the Bank Service Company Act, the Federal Deposit Insurance Act, and the Home Owners' Loan Act to clarify that the role of the insured depository institution as lender and the location of an insured depository institution under applicable law are not affected by any contract between the institution and a third-party service provider, and to clarify that Federal preemption of State usury laws applies to any loan to which an insured depository institution is the party to which the debt is initially owed according to its terms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Modernizing Credit
5 Opportunities Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Insured depository institutions have found
9 efficiencies in their lending operations through a va-
10 riety of different relationships with nondepository in-
11 stitutions that perform different lending-related
12 functions.

13 (2) The Federal banking regulators have recog-
14 nized that insured depository institutions may enter
15 into relationships with third parties to originate
16 loans, have recognized the benefits of these arrange-
17 ments for institutions and borrowers alike, and have
18 issued guidance to ensure the safety and soundness
19 of such relationships and to protect borrowers.

20 (3) Insured depository institutions routinely en-
21 gage in third-party lending arrangements and regu-
22 lators have long recognized that third-party lending
23 arrangements provide institutions with the ability to
24 supplement, enhance or expedite lending services for
25 their customers, and that engaging in third-party

1 lending arrangements also enables institutions to re-
2 duce the cost of delivering credit products, to expand
3 access to credit, and to achieve strategic goals.

4 (4) Litigation concerning loans made by an in-
5 sured depository institution that involve arrange-
6 ments with third parties that perform lending-re-
7 lated functions have required the courts to deter-
8 mine the identity and location of the lender but have
9 reached inconsistent results.

10 (5) Inconsistencies in the determinations of the
11 identity and location of the lender under judicially
12 crafted multi-factor balancing tests lessen the effi-
13 ciency of the lending process, reduce the trans-
14 parency of the lending process for both lenders and
15 borrowers, and jeopardize the substantial benefits of
16 third-party lending arrangements for borrowers and
17 the economy.

18 (6) In order to maximize efficiency and trans-
19 parency, it is necessary to clarify and reinforce exist-
20 ing law by codifying clear and straightforward
21 standards that establish that an insured depository
22 institution is the lender on any loan or discount
23 made, or upon any note, bill of exchange or other
24 evidence of debt where it is the party to which the
25 debt is initially owed according to its terms and that

1 any relationship with a third party that performs
2 lending-related functions does not affect the deter-
3 mination of such institution's role as the lender or
4 its location.

5 **SEC. 3. LOCATION OF INSURED DEPOSITORY INSTITUTION.**

6 (a) AMENDMENT TO THE BANK SERVICE COMPANY
7 ACT.—Section 7 of the Bank Service Company Act (12
8 U.S.C. 1867) is amended—

9 (1) by redesignating subsection (d) as sub-
10 section (e); and

11 (2) by inserting after subsection (c) the fol-
12 lowing:

13 “(d) LOCATION OF INSURED DEPOSITORY INSTITU-
14 TION.—The geographic location within the United States
15 of a person performing services for an insured depository
16 institution under subsection (c) or the existence of an eco-
17 nomic relationship between an insured depository institu-
18 tion and another person shall not affect the determination
19 of the location of such institution under other applicable
20 law.”.

21 (b) AMENDMENT TO THE HOME OWNERS' LOAN
22 ACT.—Section 5(d)(7) of the Home Owners' Loan Act (12
23 U.S.C. 1464(d)(7)) is amended—

24 (1) by redesignating subparagraph (E) as sub-
25 paragraph (F); and

1 (2) by inserting after subparagraph (D) the fol-
2 lowing:

3 “(E) LOCATION OF SAVINGS ASSOCIA-
4 TION.—The geographic location within the
5 United States of a person performing services
6 for a savings association under subparagraph
7 (D) or the existence of an economic relationship
8 between a savings association and another per-
9 son shall not affect the determination of the lo-
10 cation of the savings association under other
11 applicable law.”.

12 **SEC. 4. TERMS AND CONDITIONS.**

13 (a) AMENDMENT TO THE REVISED STATUTES.—Sec-
14 tion 5197 of the Revised Statutes (12 U.S.C. 85) is
15 amended by inserting the following after the first sen-
16 tence: “A loan, discount, note, bill of exchange, or other
17 debt is made by an association, and subject to the pre-
18 ceding sentence, where the association is the party to
19 which the debt is owed according to the terms of the loan,
20 discount, note, bill of exchange, or other debt, regardless
21 of any later assignment. The existence of a service or eco-
22 nomic relationship between an association and another
23 person shall not affect the application of this section to
24 the rate of interest upon the loan or discount made, or

1 the note, bill, or other evidence of debt or the identity of
2 the association as the lender under the agreement.”.

3 (b) AMENDMENT TO THE FEDERAL DEPOSIT INSUR-
4 ANCE ACT.—Subsection (a) of section 27 of the Federal
5 Deposit Insurance Act (12 U.S.C. 1831d(a)) is amended
6 by adding at the end the following: “A loan, discount,
7 note, bill of exchange, or other debt is made by a State
8 bank or an insured branch of a foreign bank, and subject
9 to the preceding sentence, where a State bank or an in-
10 sured branch of a foreign bank is the party to which the
11 debt is owed according to the terms of the loan, discount,
12 note, bill of exchange or other debt, regardless of any later
13 assignment. The existence of a service or economic rela-
14 tionship between a State bank or insured branch of a for-
15 eign bank and another person shall not affect the applica-
16 tion of this subsection to the interest rate upon the loan
17 or discount made, or upon the note, bill of exchange, or
18 other evidence of debt or the identity of the State bank
19 or insured branch of a foreign bank as the lender under
20 the agreement.”.

21 (c) AMENDMENT TO THE HOME OWNERS’ LOAN
22 ACT.—Section 4(g)(1) of the Home Owners’ Loan Act (12
23 U.S.C. 1463(g)(1)) is amended by adding at the end the
24 following: “An extension of credit is made by a savings
25 association, and subject to the preceding sentence, where

1 a savings association is the party to which the debt is owed
2 according to the terms of the debt, regardless of any later
3 assignment. The existence of a service or economic rela-
4 tionship between a savings association and another person
5 shall not affect the application of this subsection to the
6 interest rate upon the extension of credit or the identity
7 of the savings association as the lender under the agree-
8 ment.”.

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