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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Modernizing Credit
Opportunities Act".

SEC. 2. FINDINGS.

Congress finds the following:

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

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

(3) Insured depository institutions routinely en-
gage in third-party lending arrangements and regu-
lators have long recognized that third-party lending
arrangements provide institutions with the ability to
supplement, enhance or expedite lending services for
their customers, and that engaging in third-party
lending arrangements also enables institutions to reduce the cost of delivering credit products, to expand access to credit, and to achieve strategic goals.

(4) Litigation concerning loans made by an insured depository institution that involve arrangements with third parties that perform lending-related functions have required the courts to determine the identity and location of the lender but have reached inconsistent results.

(5) Inconsistencies in the determinations of the identity and location of the lender under judicially crafted multi-factor balancing tests lessen the efficiency of the lending process, reduce the transparency of the lending process for both lenders and borrowers, and jeopardize the substantial benefits of third-party lending arrangements for borrowers and the economy.

(6) In order to maximize efficiency and transparency, it is necessary to clarify and reinforce existing law by codifying clear and straightforward standards that establish that an insured depository institution is the lender on any loan or discount made, or upon any note, bill of exchange or other evidence of debt where it is the party to which the debt is initially owed according to its terms and that
any relationship with a third party that performs
lending-related functions does not affect the deter-
mination of such institution’s role as the lender or
its location.

SEC. 3. LOCATION OF INSURED DEPOSITORY INSTITUTION.

(a) Amendment to the Bank Service Company
Act.—Section 7 of the Bank Service Company Act (12
U.S.C. 1867) is amended—

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

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

“(d) Location of Insured Depository Institution.—The geographic location within the United States
of a person performing services for an insured depository
institution under subsection (c) or the existence of an eco-
nomic relationship between an insured depository institu-
tion and another person shall not affect the determination
of the location of such institution under other applicable
law.”.

(b) Amendment to the Home Owners’ Loan
Act.—Section 5(d)(7) of the Home Owners’ Loan Act (12
U.S.C. 1464(d)(7)) is amended—

(1) by redesignating subparagraph (E) as sub-
paragraph (F); and
(2) by inserting after subparagraph (D) the following:

“(E) LOCATION OF SAVINGS ASSOCIATION.—The geographic location within the United States of a person performing services for a savings association under subparagraph (D) or the existence of an economic relationship between a savings association and another person shall not affect the determination of the location of the savings association under other applicable law.”.

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

(a) Amendment to the Revised Statutes.—Section 5197 of the Revised Statutes (12 U.S.C. 85) is amended by inserting the following after the first sentence: “A loan, discount, note, bill of exchange, or other debt is made by an association, and subject to the preceding sentence, where the association is the party to which the debt is owed according to the terms of the loan, discount, note, bill of exchange, or other debt, regardless of any later assignment. The existence of a service or economic relationship between an association and another person shall not affect the application of this section to the rate of interest upon the loan or discount made, or
the note, bill, or other evidence of debt or the identity of
the association as the lender under the agreement.”.

(b) Amendment to the Federal Deposit Insurance Act.—Subsection (a) of section 27 of the Federal Deposit Insurance Act (12 U.S.C. 1831d(a)) is amended by adding at the end the following: “A loan, discount, note, bill of exchange, or other debt is made by a State bank or an insured branch of a foreign bank, and subject to the preceding sentence, where a State bank or an insured branch of a foreign bank is the party to which the debt is owed according to the terms of the loan, discount, note, bill of exchange or other debt, regardless of any later assignment. The existence of a service or economic relationship between a State bank or insured branch of a foreign bank and another person shall not affect the application of this subsection to the interest rate upon the loan or discount made, or upon the note, bill of exchange, or other evidence of debt or the identity of the State bank or insured branch of a foreign bank as the lender under the agreement.”.

c) Amendment to the Home Owners’ Loan Act.—Section 4(g)(1) of the Home Owners’ Loan Act (12 U.S.C. 1463(g)(1)) is amended by adding at the end the following: “An extension of credit is made by a savings association, and subject to the preceding sentence, where
a savings association is the party to which the debt is owed according to the terms of the debt, regardless of any later assignment. The existence of a service or economic relationship between a savings association and another person shall not affect the application of this subsection to the interest rate upon the extension of credit or the identity of the savings association as the lender under the agreement.”.