

REV 141

AMENDMENT TO H.R. 4173**OFFERED BY MS. BEAN OF ILLINOIS**

*[Offered on behalf of Ms. Bean and
Mr. Castle, Mr. Crowley, Mr. Royce, Ms. Herseth-Sandlin,
Mr. Lance, and Mr. Adler*

Page 826, after line 20, insert the following new subsections at the end of section 4401:

1 (c) EXCEPTION FOR FEDERALLY CHARTERED DE-
2 POSITORY INSTITUTIONS.—Notwithstanding any other
3 provision of law, the substantive consumer protection
4 standards established by the Agency under this title or
5 the enumerated laws shall apply uniformly to a national
6 bank and Federal savings association whenever the Com-
7 troller of the Currency determines through rulemaking
8 that such standards provide consumers a high level of pro-
9 tection against unfair, deceptive or abusive practices, or
10 otherwise fully effectuate the goals of the enumerated
11 laws. For purposes of this section, uniform application of
12 the standards shall mean that a national bank or Federal
13 savings association will not be subject to different con-
14 sumer protection standards in different States, and a na-
15 tional bank or Federal savings association located in one
16 State shall not be subjected to different substantive con-

1 consumer protection standards because it is engaged in busi-
2 ness in another State.

3 (d) ADDITIONAL CONSUMER PROTECTION REGULA-
4 TIONS IN RESPONSE TO STATE ACTION.—

5 (1) NOTICE OF PROPOSED RULE REQUIRED.—

6 The Agency shall be required to issue a notice of
7 proposed rulemaking whenever a resolution in sup-
8 port of the establishment or modification by the
9 Agency of a consumer protection regulation has been
10 enacted by a majority of the States.

11 (2) AGENCY CONSIDERATION REQUIRED FOR
12 ISSUANCE OF FINAL REGULATION.—Before promul-
13 gating a final regulation based upon a notice issued
14 pursuant to paragraph (1), the Agency must take
15 into account whether—

16 (A) consider the potential benefits and
17 costs to consumers and covered persons, includ-
18 ing the potential reduction of consumers' access
19 to consumer financial products or services, re-
20 sulting from such regulation; and

21 (B) consult with the Federal banking agen-
22 cies, State bank supervisors, the Federal Trade
23 Commission, or other Federal agencies, as ap-
24 propriate, regarding the consistency of a pro-
25 posed regulation with prudential, consumer pro-

1 tection, civil rights, market, or systemic objec-
2 tives administered by such agencies or super-
3 visors.

4 (3) EXPLANATION OF CONSIDERATIONS.—The
5 Agency—

6 (A) shall include a discussion of the con-
7 siderations required in paragraph (2) in the
8 Federal Register notice of a final regulation
9 issued pursuant to this subsection; and

10 (B) whenever the Agency determines not to
11 issue a final regulation, shall publish an expla-
12 nation of such determination in the Federal
13 Register, and provide a copy of such expla-
14 nation to each State that enacted a resolution
15 in support of the proposed regulation, the Com-
16 mittee on Financial Services of the House of
17 Representatives, and the Committee on Bank-
18 ing and Urban Affairs of the Senate.

19 (4) RESERVATION OF AUTHORITY.—Nothing in
20 this section shall limit or restrict the authority of
21 the Agency to enhance consumer protection stand-
22 ards established pursuant to this title in response to
23 its own motion or in response to a request by any
24 other interested person.

1 (5) RULE OF CONSTRUCTION.—Nothing in this
2 section shall be construed to exempt the Agency
3 from complying with chapter 5 of title 5, United
4 States Code (commonly known as the Administrative
5 Procedures Act; 5 U.S.C. 500 et seq.).

6 (6) DEFINITION.—For purposes of this section,
7 the term “consumer protection regulation” means a
8 regulation within the scope of the Agency’s authority
9 that accords rights to, or protects the rights of, con-
10 sumers in transactions involving a specific financial
11 product or service, including rights related to the ne-
12 gotiation, sale, solicitation, disclosure, terms and
13 conditions, advice, and remedies for such product or
14 service.

Strike sections 4403 through 4410 and insert the
following new sections:

15 **SEC. 4403. PRESERVATION OF EXISTING CONTRACTS.**

16 This title, and regulations, orders, guidance, and in-
17 terpretations prescribed, issued, and established by the
18 Agency, shall not be construed to alter or affect the appli-
19 cability of any regulation, order, guidance, or interpreta-
20 tion prescribed, issued, and established by the Comptroller
21 of the Currency or the Director of the Office of Thrift
22 Supervision regarding the applicability of State law under
23 Federal banking law to any contract entered into or activ-

1 ity or practice engaged in on or before the effective date
2 specified in section 4410 by national banks, Federal sav-
3 ings associations, or subsidiaries thereof that are regu-
4 lated and supervised by the Comptroller of the Currency
5 or the Director of the Office of Thrift Supervision, respec-
6 tively.

7 **SEC. 4404. STATE LAW PREEMPTION STANDARDS FOR NA-**
8 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
9 **FIED.**

10 (a) IN GENERAL.—Chapter one of title LXII of the
11 Revised Statutes of the United States (12 U.S.C. 21 et
12 1 seq.) is amended by inserting after section 5136B the
13 following new section:

14 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
15 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
16 **FIED.**

17 “(a) DEFINITIONS.—For purposes of this section, the
18 following definitions shall apply:

19 “(1) NATIONAL BANK.—The term ‘national
20 bank’ includes—

21 “(A) any bank organized under the laws of
22 the United States; and

23 “(B) any Federal branch established in ac-
24 cordance with the International Banking Act of
25 1978.

1 “(2) STATE CONSUMER FINANCIAL LAWS.—The
2 term ‘State consumer financial law’ means a State
3 law that does not directly or indirectly discriminate
4 against national banks and that regulates the man-
5 ner, content, or terms and conditions of any finan-
6 cial transaction (as may be authorized for national
7 banks to engage in), or any account related thereto,
8 with respect to a consumer.

9 “(3) OTHER DEFINITIONS.—The terms ‘affil-
10 iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the
11 same meaning as in section 3 of the Federal Deposit
12 Insurance Act.

13 “(b) PREEMPTION STANDARD.—

14 “(1) IN GENERAL.—National banks shall gen-
15 erally comply with State consumer financial laws.
16 State consumer financial laws are preempted only
17 if—

18 “(A) application of the State consumer fi-
19 nancial law would have a discriminatory effect
20 on national banks in comparison with the effect
21 of the law on a bank chartered by that State;

22 “(B) the State consumer financial law pre-
23 vents, significantly interferes with, impairs, or
24 hampers the ability of a national bank to en-
25 gage in the business of banking; or

1 “(C) the State consumer financial law is
2 preempted by Federal law other than this Act.

3 “(2) SAVINGS CLAUSE.—This Act does not pre-
4 empt or alter the applicability of any State consumer
5 financial law to any national bank subsidiary, affil-
6 iate, or other entity that is not an insured depository
7 institution chartered as a national bank.

8 “(3) RULE OF CONSTRUCTION.—This Act does
9 not occupy the field in any area of State consumer
10 financial law.

11 “(c) DETERMINATIONS BY THE COMPTROLLER.—

12 “(1) GENERAL RULE.—The Comptroller of the
13 Currency may determine by regulation or order on
14 a case-by-case basis that a State consumer financial
15 law is preempted only if the Comptroller determines
16 that such law prevents, significantly interferes with,
17 impairs, or hampers the ability of a national bank
18 to engage in the business of banking.

19 “(2) SUBSTANTIAL EVIDENCE IN THE ADMINIS-
20 TRATIVE RECORD.—No regulation or order of the
21 Comptroller of the Currency prescribed under this
22 subsection shall be interpreted or applied so as to in-
23 validate, or otherwise declare inapplicable to a na-
24 tional bank, a State consumer financial law unless
25 substantial evidence in the administrative record of

1 the rulemaking proceeding supports the specific find-
2 ing that the provision prevents, significantly inter-
3 feres with, impairs, or hampers the ability of a na-
4 tional bank to engage in the business of banking.

5 “(3) CASE-BY-CASE DETERMINATION.—A case-
6 by-case determination pursuant to this section
7 means a determination concerning the impact of a
8 particular State consumer financial law on any na-
9 tional bank that is subject to the law, or any other
10 State consumer financial law with substantively
11 equivalent terms.

12 “(d) OTHER FEDERAL LAWS.—Notwithstanding any
13 other provision of law, the Comptroller of the Currency
14 may not prescribe regulation or order pursuant to sub-
15 section (e) until the Comptroller of the Currency, after
16 consultation with the Consumer Financial Protection
17 Agency, makes a finding, in writing, that Federal law ap-
18 plicable to a national bank regulates the particular con-
19 duct, activity, or authority that is subject to the State con-
20 sumer financial law in question.

21 “(e) PERIODIC REVIEW OF PREEMPTION DETER-
22 MINATIONS.—The Comptroller of the Currency shall peri-
23 odically conduct a review, through notice and public com-
24 ment, of each determination that a provision of Federal
25 law preempts a State consumer financial law. The Comp-

1 troller of the Currency shall conduct such review within
2 the 5-year period after prescribing or otherwise issuing
3 such determination, and at least once during each 5-year
4 period thereafter. After conducting the review of, and in-
5 specting the comments made on the determination, the
6 Comptroller of the Currency shall timely propose to con-
7 tinue, amend or rescind it, as may be appropriate, in ac-
8 cordance with the procedures set forth in subsections (a)
9 and (b) of section 5244 (12 U.S.C. 43(a)–(b)).

10 “(f) APPLICATION OF STATE CONSUMER FINANCIAL
11 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
12 standing any provision of this title, a State consumer fi-
13 nancial law shall apply to a subsidiary or affiliate of a
14 national bank to the same extent that the State consumer
15 financial law applies to any person, corporation, or other
16 entity subject to such State law.

17 “(g) TRANSPARENCY OF OCC PREEMPTION DETER-
18 MINATIONS.—The Comptroller of the Currency shall pub-
19 lish, and update no less frequently than quarterly, a list
20 of OCC preemption determinations then in effect that
21 identifies the activities and practices covered by each de-
22 termination and the requirements and constraints deter-
23 mined to be preempted.

24 “(h) PRESERVATION OF POWERS RELATING TO
25 CHARGING INTEREST.—No provision of this section shall

1 be construed as altering, limiting, or affecting the powers
2 or authority of a national bank conferred under any provi-
3 sion of this title for the charging of interest at the rate
4 allowed by the laws of the State, territory, or district
5 where the bank is located, including with respect to the
6 meaning of ‘interest’ under such provision.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for chapter one of title LXII of the Revised Statutes of
9 the United States is amended by inserting after the item
10 relating to section 5136B the following new item:

“5136C. State law preemption standards for national banks and subsidiaries
clarified.”.

11 **SEC. 4405. VISITORIAL STANDARDS.**

12 Section 5136C of the Revised Statutes of the United
13 States (as added by section 4404) is amended by adding
14 at the end the following new subsections:

15 “(g) VISITORIAL POWERS.—No provision of this title
16 which relates to visitorial powers or otherwise limits or re-
17 stricts the visitorial authority to which any national bank
18 is subject shall be construed as limiting or restricting the
19 authority of any attorney general (or other chief law en-
20 forcement officer) of any State to bring an action in any
21 court of appropriate jurisdiction on behalf of residents of
22 such State, to enforce a non-preempted State law, and
23 seek remedies thereunder, against a national bank, as au-
24 thorized by State law.

1 “(h) ENFORCEMENT ACTIONS.—The ability of the
2 Comptroller of the Currency to bring an enforcement ac-
3 tion under this title or section 5 of the Federal Trade
4 Commission Act shall not be construed as precluding pri-
5 vate parties from enforcing rights granted under Federal
6 or State law in the courts.”.

7 **SEC. 4406. CLARIFICATION OF LAW APPLICABLE TO NON-**
8 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

9 Section 5136C of the Revised Statutes of the United
10 States is amended by inserting after subsection (h) (as
11 added by section 4405) the following new subsection:

12 “(i) CLARIFICATION OF LAW APPLICABLE TO NON-
13 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
14 ATES OF NATIONAL BANKS.—

15 “(1) DEFINITIONS.—For purposes of this sec-
16 tion, the following definitions shall apply:

17 “(A) DEPOSITORY INSTITUTION, SUB-
18 SIDIARY, AFFILIATE.—The terms ‘depository in-
19 stitution’, ‘subsidiary’, and ‘affiliate’ have the
20 same meanings as in section 3 of the Federal
21 Deposit Insurance Act.

22 “(B) NONDEPOSITORY INSTITUTION.—The
23 term ‘nondepository institution’ means any enti-
24 ty that is not a depository institution.

1 “(2) IN GENERAL.—No provision of this title
2 shall be construed as annulling, altering, or affecting
3 the applicability of State law to any nondepository
4 institution, subsidiary, other affiliate, or agent of a
5 national bank.”.

6 **SEC. 4407. STATE LAW PREEMPTION STANDARDS FOR FED-**
7 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**
8 **ARIES CLARIFIED.**

9 (a) IN GENERAL.—The Home Owners’ Loan Act (12
10 U.S.C. 1461 et seq.) is amended by inserting after section
11 5 the following new section:

12 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**
13 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

14 “(a) DEFINITIONS.—For purposes of this section:

15 “(1) FEDERAL SAVINGS ASSOCIATIONS.—The
16 term ‘Federal savings association’ has the same
17 meaning given that term in section 3 of the Federal
18 Deposit Insurance Act.

19 “(2) STATE CONSUMER FINANCIAL LAW DE-
20 FINED.—The term ‘State consumer financial law’
21 means a State law that does not directly or indi-
22 rectly discriminate against Federal savings associa-
23 tions and that regulates the manner, content, or
24 terms and conditions of any financial transaction (as
25 may be authorized for Federal savings associations

1 to engage in), or any account related thereto, with
2 respect to a consumer.

3 “(3) SUBSIDIARY, AFFILIATE, AND IN-
4 CLUDES.—The terms ‘subsidiary’, ‘affiliate’, ‘in-
5 cludes’, and ‘including’ have the same meanings as
6 in section 3 of the Federal Deposit Insurance Act.

7 “(b) PREEMPTION STANDARD.—

8 “(1) IN GENERAL.—Federal savings associa-
9 tions shall generally comply with State consumer fi-
10 nancial laws. State consumer financial laws are pre-
11 empted only if—

12 “(A) application of the State consumer fi-
13 nancial law would have a discriminatory effect
14 on Federal savings associations in comparison
15 with the effect of the law on a bank chartered
16 by that State;

17 “(B) the State consumer financial law pre-
18 vents, significantly interferes with, impairs, o
19 hampers the ability of a Federal savings asso-
20 ciations to engage in the business of banking;
21 or

22 “(C) the State consumer financial law is
23 preempted by Federal law other than this Act.

24 “(2) SAVINGS CLAUSE.—This Act does not pre-
25 empt or alter the applicability of any State consumer

1 financial law to any Federal savings associations
2 subsidiary, affiliate, or other entity that is not an in-
3 sured depository institution chartered as a national
4 bank.

5 “(3) RULE OF CONSTRUCTION.—This Act does
6 not occupy the field in any area of State consumer
7 financial law.

8 “(c) DETERMINATIONS BY THE COMPTROLLER.—

9 “(1) GENERAL RULE.—The Comptroller of the
10 Currency may determine by regulation or order on
11 a case-by-case basis that a State consumer financial
12 law is preempted only if the Comptroller determines
13 that such law prevents, significantly interferes with,
14 impairs, or hampers the ability of a Federal savings
15 association to engage in the business of banking.

16 “(2) SUBSTANTIAL EVIDENCE IN THE ADMINIS-
17 TRATIVE RECORD.—No regulation of the Comp-
18 troller of the Currency prescribed under this sub-
19 section shall be interpreted or applied so as to invali-
20 date, or otherwise declare inapplicable to a Federal
21 savings association, a State consumer financial law
22 unless substantial evidence in the administrative
23 record of the rulemaking proceeding supports the
24 specific finding that the provision prevents, signifi-
25 cantly interferes with, impairs, or hampers the abil-

1 ity of a Federal savings association to engage in the
2 business of banking.

3 “(3) CASE-BY-CASE DETERMINATION.—A case-
4 by-case determination pursuant to this section
5 means a determination concerning the impact of a
6 particular State consumer financial law on any Fed-
7 eral savings association that is subject to the law, or
8 any other State consumer financial law with sub-
9 stantively equivalent terms.

10 “(d) OTHER FEDERAL LAW.—Notwithstanding any
11 other provision of law, the Comptroller of the Currency
12 may not prescribe any regulation or issue any order pursu-
13 ant to subsection (c) until the Comptroller of the Cur-
14 rency, after consultation with the Consumer Financial
15 Protection Agency, makes a finding, in writing, that Fed-
16 eral law applicable to a Federal savings association regu-
17 lates the particular conduct, activity, or authority that is
18 subject to the State consumer financial law in question.

19 “(e) PERIODIC REVIEW OF PREEMPTION DETER-
20 MINATIONS.—The Comptroller of the Currency shall peri-
21 odically conduct a review, through notice and public com-
22 ment, of each determination that a provision of Federal
23 law preempts a State consumer financial law. The Comp-
24 troller of the Currency shall conduct such review within
25 the 5-year period after prescribing or otherwise issuing

1 such determination, and at least once during each 5-year
2 period thereafter. After conducting the review of, and in-
3 specting the comments made on, the determination, the
4 Comptroller of the Currency shall timely propose to con-
5 tinue, amend or rescind it, as may be appropriate, in ac-
6 cordance with the procedures set forth in subsections (a)
7 and (b) of section 5244 of the Revised Statutes of the
8 United States (12 U.S.C. 43(a)-(b)).

9 “(f) APPLICATION OF STATE CONSUMER FINANCIAL
10 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
11 standing any provision of this Act, a State consumer fi-
12 nancial law shall apply to a subsidiary or affiliate of a
13 Federal savings association to the same extent that the
14 State consumer financial law applies to any person, cor-
15 poration, or other entity subject to such State law and
16 consistent with Federal law.

17 “(g) TRANSPARENCY OF OCC PREEMPTION DETER-
18 MINATIONS.—The Comptroller of the Currency shall pub-
19 lish, and update no less frequently than quarterly, a list
20 of OCC preemption determinations then in effect that
21 identifies the activities and practices covered by each de-
22 termination and the requirements and constraints deter-
23 mined to be preempted.

24 “(h) PRESERVATION OF POWERS RELATING TO
25 CHARGING INTEREST.—No provision of this section shall

1 be construed as altering, limiting, or affecting the powers
2 or authority of a national bank conferred under any provi-
3 sion of this Act for the charging of interest at the rate
4 allowed by the laws of the State, territory, or district
5 where the bank is located, including with respect to the
6 meaning of 'interest' under such provision.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.)
9 is amended by striking the item relating to section 6 and
10 inserting the following new item:

“Sec. 6. State law preemption standards for Federal savings associations clar-
fied.”.

11 **SEC. 4408. VISITORIAL STANDARDS.**

12 Section 6 of the Home Owners' Loan Act (as added
13 by section 4407 of this title) is amended by adding at the
14 end the following new subsections:

15 “(g) VISITORIAL POWERS.—No provision of this Act
16 shall be construed as limiting or restricting the authority
17 of any attorney general (or other chief law enforcement
18 officer) of any State to bring any action in any court of
19 appropriate jurisdiction on behalf of residents of such
20 State, to enforce non-preempted State Law, and seek rem-
21 edies thereunder, against a Federal savings association,
22 as authorized by State law.

23 “(h) ENFORCEMENT ACTIONS.—The ability of the
24 Director or any successor officer or agency to bring an

1 enforcement action under this Act or section 5 of the Fed-
2 eral Trade Commission Act shall not be construed as pre-
3 cluding private parties from enforcing rights granted
4 under Federal or State law in the courts.”.

5 **SEC. 4409. CLARIFICATION OF LAW APPLICABLE TO NON-**
6 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

7 Section 6 of the Home Owners' Loan Act is amended
8 by adding after subsection (h) (as added by section 4408)
9 the following new subsection:

10 “(i) CLARIFICATION OF LAW APPLICABLE TO NON-
11 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
12 ATES OF FEDERAL SAVINGS ASSOCIATIONS.—

13 “(1) DEFINITIONS.—For purposes of this sec-
14 tion, the following definitions shall apply:

15 “(A) DEPOSITORY INSTITUTION, SUB-
16 SIDARY, AFFILIATE.—The terms ‘depository in-
17 stitution’, ‘subsidiary’, and ‘affiliate’ have the
18 same meanings as in section 3 of the Federal
19 Deposit Insurance Act.

20 “(B) NONDEPOSITORY INSTITUTION.—The
21 term ‘nondepository institution’ means any enti-
22 ty that is not a depository institution.

23 “(2) IN GENERAL.—No provision of this title
24 shall be construed as preempting the applicability of
25 State law to any nondepository institution, sub-

1 subsidiary, other affiliate, or agent of a Federal savings
2 association.”.

3 **SEC. 4410. EFFECTIVE DATE.**

4 This subtitle shall take effect on the designated
5 transfer date.

