To promote innovation in financial services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2016

Mr. MCHENRY introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote innovation in financial services, 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; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Financial Services Innovation Act of 2016”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Agency identification of regulatory areas.
Sec. 4. Establishment of FSIO at agencies.
Sec. 5. FSIO Liaison Committee and chair.
SEC. 2. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AGENCY REGULATION.—The term “agency regulation” means—

(A) a rule (as defined in section 551 of title 5, United States Code) issued by an agency;

(B) guidance issued by an agency; or

(C) a published proposed or interim rule, policy statement, directive, adjudication, or interpretation of an agency.

(2) AGENCY.—The term “agency” means each of the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, the Commodity Futures Trading Commission, the Department of Housing and Urban Development, the Department of the Treasury, the Farm Credit Administration, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Federal Trade Commission, the National Credit Union Administration Board, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission.
(3) Covered person.—The term “covered person” means a person that offers or intends to offer a financial innovation by submitting a petition to a Financial Services Innovation Office at one or more agencies.

(4) Enforceable compliance agreement.—The term “enforceable compliance agreement” means a contractual agreement described under section 8.

(5) Financial innovation.—The term “financial innovation” means an innovative financial service or product, the delivery of which is enabled by technology, that is or may be subject to an agency regulation or Federal statute.

(6) Financial services innovation office or FSIO.—The term “Financial Services Innovative Office” or “FSIO” means an office established in an agency pursuant to section 5.

SEC. 3. AGENCY IDENTIFICATION OF REGULATORY AREAS.

Not later than 60 days after the date of the enactment of this Act, and biannually thereafter, each agency shall publish in the Federal Register a nonexclusive list that identifies 3 or more areas of existing regulation—

(1) that apply or may apply to a financial innovation; and
(2) that the agency would consider modifying or waiving if the agency were to receive a petition under section 6 relating to that regulation.

SEC. 4. ESTABLISHMENT OF FSIO AT AGENCIES.

(a) IN GENERAL.—Each agency shall establish a Financial Services Innovation Office (known as “FSIO”) to promote financial innovations and to assist a covered person whose petition has been approved under section 7.

(b) DIRECTOR.—Each agency shall appoint an individual to serve as the Director of the agency’s FSIO.

(c) DUTIES.—

(1) GENERAL DUTIES.—Each agency, acting through the agency’s FSIO, shall—

(A) support the development of financial innovations;

(B) coordinate with FSIOs at other agencies to share information and data; and

(C) establish procedures to reduce the time and cost of offering a financial innovation to the public and enable greater access to financial innovations.

(2) DUTIES FOR PETITIONS.—With respect to a covered person whose petition has been approved under section 7, each FSIO shall—
(A) work with the covered person to address issues of how existing regulatory frameworks apply to the financial innovation that is the subject of the petition;

(B) assist the covered person in complying with the requirements of Federal regulators of the financial innovation; and

(C) assist the covered person in responding to any challenges to a modification or a waiver granted under subsection (d).

(d) WAIVER AUTHORITY.—With respect to a covered person whose petition has been approved under section 7, if an agency has a rational basis for doing so and if the agency determines that a provision of a Federal statute under which the agency has rulemaking authority or an agency regulation is burdensome to the covered person, the agency shall, acting through the agency’s FSIO, modify or waive the application of the Federal statute or the agency regulation.

(e) TERMINATION OF OTHER PROGRAMS; TRANSFER OF AUTHORITY.—Not later than 90 days after the establishment of a FSIO at an agency, the agency shall modify any offices or programs at the agency that promote financial innovations or assist covered persons in developing financial innovations to operate within the FSIO. Any legal
action or proceeding commenced by or against such office or program of the agency, including no-action letters and staff advisory opinions, shall be transferred to the FSIO of that agency.

(f) REPORT.—Not later than 6 months after the date of the enactment of this Act, and annually thereafter, each agency shall submit a report to Congress and to the Financial Stability Oversight Council, and shall present testimony to Congress, on the activities of the FSIO, including a description of the petitions considered, the rationale for acceptance or rejection of petitions, and the efforts of the FSIO to encourage financial innovations.

(g) SUNSET.—If an agency has not received a petition described in section 6 within 5 years of the date of the establishment of the agency’s FSIO, the agency shall eliminate the FSIO, while continuing to honor any enforceable compliance agreement of another agency.

SEC. 5. FSIO LIAISON COMMITTEE AND CHAIR.

(a) ESTABLISHMENT.—Not later than 60 days after the date of the enactment of this Act, the agencies shall establish a committee to be known as the “FSIO Liaison Committee”.

(b) MEMBERS.—The FSIO Liaison Committee shall be composed of the Director of each FSIO office and a
State banking supervisor selected by the Conference of State Bank Supervisors (or a successor organization).

(c) Duties.—The FSIO Liaison Committee shall—

(1) consult on the administration, coordination, and oversight of each agency’s FSIO;

(2) facilitate the cooperation of each FSIO to ensure that agencies share information and data on petitions submitted under section 6;

(3) monitor regulatory proposals and developments related to financial innovations;

(4) encourage the application of uniform principles and standards at each FSIO; and

(5) hold public field hearings 4 times a year to informally provide—

(A) information and advice to the public and covered persons; and

(B) a forum to gather information from the public and covered persons.

(d) Meetings.—The FSIO Liaison Committee shall meet at least twice a year.

(e) Chair.—

(1) Establishment.—The first Chair of the FSIO Liaison Committee shall be elected by the members. The Chair shall serve for a term of 2
years and thereafter the chairmanship shall rotate among the members of the committee.

(2) Powers of the Chair.—The Chair is authorized to carry out the internal administration of the FSIO Liaison Committee, including the appointment and supervision of employees and the distribution of tasks among members, employees, and administrative units.

(f) Testimony.—Not later than 6 months after the date of the enactment of this Act, the Chair of the FSIO Liaison Committee shall present testimony to Congress on the activities of the FSIO Liaison Committee.

(g) Funding.—

(1) Compensation of Members.—Each member of the FSIO Liaison Committee shall serve without additional compensation but shall be entitled to reasonable expenses incurred in carrying out official duties as such a member.

(2) General Expenses.—The costs and expenses of the FSIO Liaison Committee, including the salaries of employees, shall be split equally between, and paid by, each agency other than an agency that has eliminated the agency’s FSIO pursuant to section 4(g).
SEC. 6. PETITION TO AGENCY.

(a) In General.—A covered person may submit a petition to an agency, through the agency’s FSIO, in such form and in such manner as the agency’s FSIO may require, to request to enter into an enforceable compliance agreement containing a modification or waiver of an agency regulation or Federal statutory requirement under which the agency has supervisory or rulemaking authority with respect to the covered person or a financial innovation the covered person offers or intends to offer.

(b) Contents.—In a petition submitted under this section, the covered person shall—

(1) submit an alternative compliance strategy that proposes a method to comply with the agency regulation or Federal statutory requirement; and

(2) demonstrate that under the alternative compliance strategy, the financial innovation—

(A) would serve the public interest;

(B) improves access to financial products or services; and

(C) does not present systemic risk to the United States financial system and promotes consumer protection.

(e) Multiparty Petitions.—One or more covered persons that offer or intend to offer similar financial innovations may jointly submit a petition under this section.
(d) **Safe Harbor.**—

(1) **In general.**—During the period after a covered person submits a petition under this section and before the agency receiving the petition makes a determination on the petition pursuant to section 7, an agency may not take an enforcement action against a covered person relating to the financial innovation that was the subject of the petition.

(2) **Injunctive relief.**—If an agency determines that a financial innovation described under paragraph (1) presents an immediate danger to consumers or presents systemic risk to the United States financial system, the agency may apply to a court of competent jurisdiction for injunction to prohibit a covered person from offering such financial innovation during the period described in paragraph (1).

(e) **Notice and Comment.**—

(1) **In general.**—Not later than 30 days after receiving a petition, the agency that receives the petition shall publish the petition in the Federal Register and provide a 60-day period for public notice and comment.

(2) **Exception for notice and comment period.**—The agency that receives the petition may
waive the notice and comment period described in paragraph (1) if such agency determines that the covered person submitting the petition is similarly situated to another covered person that has been granted approval of a petition pursuant to section 7.

(3) CONFIDENTIALITY.—The agency shall maintain the confidentiality of any nonpublicly available data or information in any petition submitted under this section. The agency shall give reasonable consideration to maintaining the confidentiality of data or information identified by the covered person in the petition submitting under this section as nonpublicly available data or information.

SEC. 7. AGENCY DETERMINATION OF PETITION.

(a) IN GENERAL.—Not later than 30 days after the end of the comment period described under section 6, or if the comment period was waived, not later than 60 days after receipt of a petition under section 6, the head of the agency receiving the petition shall complete a review of the petition and notify the covered person, in writing, of the agency’s determination of the petition.

(b) APPROVAL.—If the covered person submitting the petition shows that it is more likely than not that the covered person meets the requirements for establishing an alternative compliance strategy, the agency shall—
(1) approve the petition; and

(2) enter into an enforceable compliance agreement with the covered person in accordance with the requirements of section 8.

(c) DISAPPROVAL.—

(1) EXPLANATION.—If the agency rejects a petition, the agency head shall provide the covered person with a written notice explaining the reason for rejecting the petition, including—

(A) evidence that the covered person did not satisfy the requirements for establishing an alternative compliance strategy;

(B) an identification of the rules or regulations of the agency applicable to the covered person with respect to the financial innovation; and

(C) a description of—

(i) any beneficial effects, including an identification of persons likely to benefit, from rejecting the petition;

(ii) any potential costs, including an identification of persons likely to bear the costs, of rejecting the petition; and
(iii) the baseline used by the agency to measure the likely economic consequences of rejecting the petition.

(2) RESUBMITAL.—Not later than 90 days after receiving a notice of disapproval, a covered person may revise and resubmit a petition to the agency under section 6.

(d) MORATORIUM.—If an agency disapproves a petition submitted in good faith under this section, the agency shall provide the covered person a reasonable amount of time before the agency takes an enforcement action against the covered person relating to the financial innovation that was the subject of the petition.

(e) JUDICIAL REVIEW.—A covered person may seek judicial review of an agency’s determination on a petition in accordance with subchapter II of chapter 5 of title 5, United States Code, and chapter 7 of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

SEC. 8. ENFORCEABLE COMPLIANCE AGREEMENT.

(a) IN GENERAL.—If an agency approves a petition under section 7, the covered person may enter into an enforceable compliance agreement with the agency, which shall include the terms under which the covered person may develop or offer the approved financial innovation to
1 the public and any requirements of the covered person and
2 any agency with respect to the financial innovation.
3
4 (b) REQUIREMENTS.—Each agency, by rule, shall es-
5 tablish requirements relating to enforceable compliance
6 agreements that include—
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8 (1) procedures for modifying the terms of the
9 agreement;
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11 (2) consequences for failure to comply with the
12 terms of the agreement;
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14 (3) a compliance examination process that—
15
16 (A) solicits feedback from other agencies
17 on the agreement; and
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19 (B) occurs not less frequently than annu-
20 ally;
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22 (4) a termination date for the agreement that
23 is at least 1 year after the date on which the agree-
24 ment is entered into;
25
26 (5) procedures for extending the termination
27 date;
28
29 (6) procedures for judicial review of another
30 agency’s or State’s challenge to the agreement in ac-
31 cordance with subchapter II of chapter 5 of title 5,
32 United States Code, and chapter 7 of title 5, United
33 States Code (commonly known as the “Administra-
34 tive Procedure Act”); and
35
(7) procedures for maintaining the confidentiality of any information disclosed to the agency in making the agreement.

(c) MULTIPARTY AGREEMENTS.—With respect to a financial innovation that is the subject of an enforceable compliance agreement entered into under this section, an agency that did not enter into such enforceable compliance agreement may join as a party to the enforceable compliance agreement entered into pursuant to this section.

(d) LIMITATION ON ENFORCEMENT ACTIONS.—

(1) IN GENERAL.—If a covered person and an agency enter into an enforceable compliance agreement—

(A) another agency may not commence an enforcement action against the covered person with respect to the financial innovation that is the subject of the enforceable compliance agreement; and

(B) a State may not commence an enforcement action against the covered person with respect to the financial innovation that is the subject of the enforceable compliance agreement, if the covered person provides the State with—

(i) the enforcement compliance agreement; and
(ii) a statement of policies and procedures the covered person has in place to comply with State laws that are applicable to the financial innovation.

(2) **State exception for consumer harm.**—Notwithstanding paragraph (1)(B), a State may commence an enforcement action against a covered person with respect to a financial innovation that is the subject of an enforceable compliance agreement if, in an action brought by the State in a court of competent jurisdiction, the court determines that the agency’s action was arbitrary and capricious and the financial innovation has substantially harmed consumers within such State.

(c) **Arbitration.**—A covered person may elect to arbitrate any action initiated by another person relating to a financial innovation that is the subject of the enforceable compliance agreement.

**SEC. 9. REPORT TO CONGRESS.**

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Financial Stability Oversight Council shall submit to Congress a report on the aggregate impact of enforceable compliance agreements entered into under this Act, which shall include—
(1) the number and characteristics of the agreements;

(2) the most innovative and least burdensome tools that the agency’s FSIO has implemented for achieving regulatory ends;

(3) strategies implemented to coordinate and facilitate interagency cooperation among agency FSIOs;

(4) the existing Federal and State laws, regulations, or practices (including guidance materials, examinations, and enforcement proceedings and settlements) that the Financial Stability Oversight Council identifies as the most burdensome to innovation in developing or providing financial products and services, that adversely affect competition in the financial services industry, or that restrict improvements for consumers of financial products or services; and

(5) an identification of the overlap or fragmentation of regulation of financial products or services and recommendations for reducing, consolidating, or eliminating such overlap or fragmentation.

SEC. 10. FUNDING.

The costs of carrying out the requirements of this Act (except as specified in section 5(g)) shall be split
1 equally between, and paid by, each agency for fiscal years
2 2017 through 2021.