114TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
114–59

ELIMINATE PRIVACY NOTICE CONFUSION ACT

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. 601]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 601) to amend the Gramm-Leach-Bliley Act to provide an exception to the annual privacy notice requirement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 601, the Eliminate Privacy Notice Confusion Act, would create exemptions from annual privacy notice requirements imposed by federal law for a financial institution that: (1) provides nonpublic personal information about consumers to unaffiliated third parties only in accordance with exceptions under the Gramm-Leach-Bliley Act (e.g. service providers, law enforcement, or as necessary to fulfill a transaction requested by the customer), or (2) has not changed its disclosure policies and practices since the most recent disclosure was sent to consumers.

BACKGROUND AND NEED FOR LEGISLATION

The Gramm-Leach-Bliley Act of 1999 (P.L. 106–102) requires financial institutions to issue privacy disclosure notices to consumers that detail the institution's privacy policies if it shares customers' non-public personal information with affiliates or third parties. The law also requires institutions to notify existing and potential customers of their right to opt out of sharing non-public personal information with third parties. Such disclosures are required to occur when a customer relationship is first established with the institu-

tion and annually in written form as long as the relationship continues, even if no changes to the disclosure policies have occurred.

Requiring financial institutions to send annual privacy notices even when no policy changes have been made can be redundant, unnecessary, and confusing, considering that many consumers often ignore these mailings. Producing and mailing these notices cost institutions millions of dollars.[1] Eliminating the requirement would remove an additional expense for financial institutions, thereby helping to save valuable staff resources and lower the cost of financial services, while also making the mailings more significant to the consumer because they would come only after a change in policy.

On October 20, 2014, the Consumer Financial Protection Bureau (CFPB) finalized a rule that allows financial institutions to post their annual privacy notices online instead of delivering them individually if they meet a series of conditions, including not sharing the customer's nonpublic personal information with nonaffiliated third parties. H.R. 601 improves on the CFPB's rule, because it eliminates the annual privacy policy notice requirement for an institution that does not share information with non-affiliated third parties and does not change its privacy policy from the last time it was disclosed. H.R. 601 provides a simple and flexible approach, unlike the CFPB's final regulation, which adds unnecessary layers of conditions and qualifications.

In a joint letter dated March 23, 2015, the American Bankers Association (ABA), American Financial Services Association (AFSA), Consumer Bankers Association (CBA), Credit Union National Association (CUNA), Financial Services Roundtable (FSR), Independent Community Bankers of America (ICBA), Midsize Bank Coalition of America (MBCA), Mortgage Bankers Association (MBA), and National Association of Federal Credit Unions wrote:

> The Gramm-Leach-Bliley Act for the first time created an explicit privacy regime for those covered by the law. A key element of this regime is the requirement to provide customers copies of privacy notices every year, even if privacy policies do not change. These notices have become somewhat notorious for confusing customers with several pages of small-print legalese, as mandated by financial regulators. There is broad agreement that repeatedly flooding consumers with complicated notices, usually restating a policy that has not changed in years, has little value for either customers or financial institutions. In fact, customers have become so inured to the notices that they are largely discarded unread immediately upon receipt. H.R. 601 would greatly improve this regime by ensuring that customers have access to privacy policies including a paper notice if they choose to receive one. However, institutions will no longer be required to mail an annual paper notice so long as their policy is unchanged and the notice is available online and upon request, saving millions of pounds of paper every year. This legislation is a common-sense improvement that will help consumers. Having unanimously passed the House in previous Congresses, the bill has consistent broad bipartisan support. We appreciate your efforts on this issue and look forward to

[1] TBD.

working with you and your colleagues to better serve consumers.

Appearing before the Committee on March 18, 2015, Adam J. Levitin, Professor of Law, Georgetown University Law Center, testified:

> One thing that I think should go the way of the Dodo bird are the Gramm-Leach-Bliley privacy notices. Nobody reads them. If anything, the only effect they have would be to lull consumers into thinking they actually have some privacy rights. There is no reason anyone should—even the large banks, should [be] spending money on giving those notices.

HEARINGS

The Committee on Financial Services held no hearings on H.R. 601 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. 601 to be reported favorably to the House without amendment by a recorded vote of 57 yeas to 0 nays (Record vote no. FC–14), 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 57 yeas to 0 nays (Record vote no. FC–14), a quorum being present.

Record vote no. FC-14

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. 601 will end the practice of sending annual privacy disclosures to consumers that are redundant, unnecessary, and confusing, by exempting financial institutions from the requirement to send such disclosures in certain circumstances.

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 7, 2015.

Hon. JEB HENSARLING,
Chairman, Committee of Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 601, the Eliminate Privacy Notice Confusion Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 601—Eliminate Privacy Notice Confusion Act

Under current law, financial institutions must provide customers with an annual notice of their policies for disclosing personal information about customers to third parties. H.R. 601 would exempt financial institutions from that requirement if their policies remain unchanged from the most recent disclosure statement that was sent to customers.

CBO estimates that enacting H.R. 601 would increase direct spending; therefore, pay-as-you-go procedures apply. However, based on information from the Bureau of Consumer Financial Protection (CFPB), CBO estimates that enacting H.R. 601 would not significantly affect the workload of the agency and any additional costs would be insignificant. CBO estimates that enacting H.R. 601 would not affect revenues. Implementing the bill would not affect discretionary costs because the CFPB is permanently authorized to spend amounts transferred from the Federal Reserve System.

H.R. 601 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. 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. 601 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. 601 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. 601 does not require any directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 601 as the "Eliminate Privacy Notice Confusion Act."

Section 2. Exception to annual privacy notice requirement under The Gramm-Leach-Bliley Act

This section creates an exception to the annual privacy notice requirement so long as a financial institution: (1) only provides nonpublic personal information in accordance with exceptions under the Graham-Leach-Bliley Act (e.g. service providers, law enforcement, or as necessary to fulfill a transaction requested by the customer) or agency rules; and (2) has not changed its privacy policies and practices from those disclosed in the most recent disclosure sent to consumers.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

GRAMM-LEACH-BLILEY ACT

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TITLE V—PRIVACY

Subtitle A—Disclosure of Nonpublic Personal Information

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SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.

(a) DISCLOSURE REQUIRED.—At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, of such financial institution's policies and practices with respect to—

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 502, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) protecting the nonpublic personal information of consumers.

(b) REGULATIONS.—Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 504.

(c) INFORMATION TO BE INCLUDED.—The disclosure required by subsection (a) shall include—

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 502 of this subtitle, and including—

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 502(e); and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 501; and

(4) the disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act.

(d) EXEMPTION FOR CERTIFIED PUBLIC ACCOUNTANTS.—

(1) IN GENERAL.—The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

(A) a certified public accountant;

(B) certified or licensed for such purpose by a State; and

(C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) LIMITATION.—Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) DEFINITIONS.—For purposes of this subsection, the term "State" means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) MODEL FORMS.—

(1) IN GENERAL.—The agencies referred to in section 504(a)(1) shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) FORMAT.—A model form developed under paragraph (1) shall—

(A) be comprehensible to consumers, with a clear format and design;

(B) provide for clear and conspicuous disclosures;

(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) be succinct, and use an easily readable type font.

(3) TIMING.—A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after the date of enactment of this subsection.

(4) SAFE HARBOR.—Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

(f) EXCEPTION TO ANNUAL NOTICE REQUIREMENT.—A financial institution that—

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b), and

(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,

shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

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