

SAFE ACT CONFIDENTIALITY AND PRIVILEGE
ENHANCEMENT 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. 1480]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1480) to ensure access to certain information for financial services industry regulators, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1480, the “SAFE Act Confidentiality and Privilege Enhancement Act,” amends the Secure and Fair Enforcement of Mortgage Licensing Act of 2008 (SAFE Act) to allow state and federal financial regulators to share information regarding consumer financial services businesses that are licensed at the state level in the Nationwide Mortgage Licensing System and Registry (NMLS or the System) without waiving any applicable privilege or confidentiality protections provided by state and federal law.

BACKGROUND AND NEED FOR LEGISLATION

The NMLS was developed by state regulators in 2006 in order to help increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud by providing a single system for the licensing and registration of the nation’s mortgage industry. The System was originally created to allow states to track mortgage loan originators from state-to-state on a nationwide basis while keeping licensing and oversight authority at the state level.

Under current law, only mortgage regulators are permitted access to information provided by the NMLS.

The Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) was enacted on July 30, 2010, as part of the Housing and Economic Recovery Act of 2008 (P.L. 110–289). The SAFE Act requires all mortgage loan originators to be licensed and registered through the NMLS. The SAFE Act also requires states to adopt minimum standards for licensing residential mortgage loan originators.

Regulatory agencies in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands use the NMLS. Section 1512 of the SAFE Act (12 U.S.C. 5111(a)) provides that confidentiality and privilege protections arising under federal and state law applicable to information provided to the NMLS are not lost when shared among federal and state mortgage regulators.

States license other types of consumer finance businesses. For example, many states license and regulate:

1. Mortgages, including residential mortgage finance activities, underwriting, mortgage loan modifications, and commercial mortgage brokering or lending.
2. Consumer Finance, including consumer lending, student lending, title lending, payday lending, and pawn brokering.
3. Debt, including collections activities, credit counseling, and non-mortgage loan modifications.
4. Money Services, including money transmitters, check cashers, prepaid card issuers, and currency exchange services.

State regulators have begun using the NMLS as a licensing platform for regulating other non-depository financial service providers beyond residential mortgage providers to increase uniformity, reduce regulatory burden, enhance consumer protection and reduce fraud while ensuring privacy protections are maintained. As more state regulatory agencies—specifically state regulatory agencies that are not considered mortgage regulators—expand their use of NMLS with a broader range of licensees, greater assurance is needed that information provided to NMLS will not lose confidentiality and privilege protections when shared with these regulators. H.R. 1480 would clarify that such information and material may be shared with all State and Federal regulatory officials with mortgage or financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

In a letter to the Committee dated March 24, 2015, the Conference of State Bank Supervisors stated its support for H.R. 1480, writing that it “support[s] state regulators’ expanded use of the Nationwide Multi-state Licensing System and Registry (NMLS) as a licensing and regulatory system without the loss of privilege or confidentiality protections provided by state and federal laws.”

HEARINGS

The Committee on Financial Services did not hold hearings on H.R. 1480 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. 1480 to be reported favorably to the House without amendment by a recorded vote of 58 yeas to 0 nays (Record vote no. FC-18), 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 58 yeas to 0 nays (Record vote no. FC-18), a quorum being present.

Record vote no. FC-18

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	X		
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. 1480 will ensure that state financial regulators who are not mortgage regulators can use the Nationwide Mortgage Licensing System without weakening privilege and confidentiality protections applicable to information contained within the System.

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 6, 2015.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1480, the SAFE Act Confidentiality and Privilege Enhancement 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. 1480—SAFE Act Confidentiality and Privilege Enhancement Act

H.R. 1480 would broaden the group of regulators authorized to share information submitted to the Nationwide Mortgage Licensing System and Registry (NMLSR) without losing privilege or confidentiality protections to include public officials that oversee the financial services industry.

CBO estimates that enacting H.R. 1480 would increase direct spending; therefore, pay-as-you-go procedures apply. However, we expect those effects would be insignificant. CBO estimates that enacting H.R. 1480 would not affect revenues. Implementing the bill would not affect discretionary spending because the Bureau of Consumer Financial Protection (CFPB) is permanently authorized to spend amounts transferred from the Federal Reserve System.

Under current law, the confidentiality of information submitted to the NMLSR, a system established by the S.A.F.E Mortgage Licensing Act (Public Law 110–289) to register all originators of mortgage loans, is protected by state and federal privacy laws. H.R. 1480 would extend those protections to information that is shared with state or federal officials that oversee the mortgage industry.

Based on information from the CFPB, CBO estimates that enacting H.R. 1480 could affect the agency’s workload and operating costs, but such effects would not be significant.

H.R. 1480 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on 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 section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1480 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. 1480 establishes or re-

authorizes 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. 1480 does not require any directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 1480 as the “SAFE Act Confidentiality and Privilege Enhancement Act.”

Section 2. Confidentiality of information shared between state and federal financial services regulators

This section amends the SAFE Act to extend to state and federal regulatory officials having financial services oversight authority access to any information provided to the Nationwide Mortgage Licensing System and Registry (or any system established by the Director of the Consumer Financial Protection Bureau) without the loss of privilege or confidentiality protections provided by federal and state laws.

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):

S.A.F.E. MORTGAGE LICENSING ACT OF 2008

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DIVISION A—HOUSING FINANCE REFORM

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TITLE V—S.A.F.E. MORTGAGE LICENSING ACT

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SEC. 1512. CONFIDENTIALITY OF INFORMATION.

(a) **SYSTEM CONFIDENTIALITY.**—Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry

or a system established by the Director under section 1509, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage or financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) NONAPPLICABILITY OF CERTAIN REQUIREMENTS.—Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

(1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or the Director with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) COORDINATION WITH OTHER LAW.—Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(d) PUBLIC ACCESS TO INFORMATION.—This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public.

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