

TO AMEND THE S.A.F.E. MORTGAGE LICENSING ACT OF 2008 TO PROVIDE
A TEMPORARY LICENSE FOR LOAN ORIGINATORS TRANSITIONING BE-
TWEEN EMPLOYERS, AND FOR OTHER PURPOSES

FEBRUARY 13, 2018.—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. 2948]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2948) to amend the S.A.F.E. Mortgage Licensing Act of 2008 to provide a temporary license for loan originators transitioning between employers, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE AND SUMMARY

Introduced on June 20, 2017, by Representative Stivers, H.R. 2948 amends the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act of 2008 to provide temporary loan-origination authority for registered loan originators: (1) moving from a financial institution to a state-licensed non-bank originator, or (2) moving interstate to a state-licensed loan originator in another state. This legislation also updates civil liability protections to ensure that those protections continue to apply where state regulators use the National Mortgage Licensing System and Registry (NMLS) as a licensing system for financial services providers other than loan originators.

BACKGROUND AND NEED FOR LEGISLATION

Congress enacted the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act of 2008 (“SAFE Act”) as part of the Housing and Economic Recovery Act (HERA). The SAFE Act created state licensing or registration requirements for mortgage loan originators (MLOs). MLOs working as loan officers in federally-regulated depository institutions were required to register with the National

Mortgage Licensing System and Registry (NMLS). MLOs working for non-depository mortgage companies were required to become licensed at the state level, complete annual continuing education, and pass criminal background checks.

Because bank loan officers are not state-licensed MLOs, a problem arises when an individual wishes to leave a bank and instead work for a non-bank mortgage company: he or she must wait until completing the SAFE Act's state licensure requirements—a process that can take weeks or months, depending upon the state—in order to originate loans for the mortgage company, notwithstanding his or her prior experience as a registered bank loan officer. Under current law, the SAFE Act allows for a 60-day grace period for changes in employment due to acquisitions, mergers, and reorganizations, but does not provide for a grace period or other transitional accommodation for bank loan officers seeking to work for non-bank mortgage companies.

H.R. 2948 makes it easier for a registered bank MLO to transition to a non-bank mortgage company, or for a state-licensed MLO to move to another state. The bill grants such persons temporary authority to originate loans for up to 120 days after submitting their application for licensure. H.R. 2948 also establishes eligibility requirements for MLOs seeking transitional loan origination authority. For instance, registered MLOs seeking to move to a non-depository mortgage company must have been registered as an MLO in the NMLS for the 12 months immediately prior to seeking the transitional authority. Additionally, the registered MLO must:

- Not have had an application for an MLO license revoked or suspended in any governmental jurisdiction;
- Not have been subject to a cease and desist order;
- Not have been convicted of a felony that would make the individual ineligible for licensure; and
- Have submitted an application to be a state-licensed MLO through the NMLS.

H.R. 2948 establishes similar transitional authority for a state-licensed MLO to originate mortgages in a different state, provided that the person is employed by the mortgage company in the state where licensure is sought and has:

- Not had an application for an MLO license revoked or suspended in any governmental jurisdiction;
- Not been subject to a cease and desist order;
- Not been convicted of a felony that would make the individual ineligible for licensure;
- Submitted an application to be a state-licensed MLO through the NMLS; and
- Maintained licensure in the first state for the 30-day period preceding the date of application submission.

H.R. 2948 provides that both the MLO and the company hiring the MLO are subject to the SAFE Act and applicable state law as if the MLO were duly licensed, thus enabling state regulators to fulfill their obligations as regulators of mortgage companies and individual MLOs under the SAFE Act and state financial and consumer protection laws.

Finally, H.R. 2948 includes a technical change to Section 1513 of the SAFE Act to update the SAFE Act's existing civil liability protections to ensure that those protections continue to apply where

state regulators use the NMLS as a licensing system for financial services providers other than loan originators.

In a December 12, 2017, letter of support, the Mortgage Bankers Association expressed its support for H.R. 2948, stating:

Rather than leaving a job on a Friday and starting a new job on a Monday, an MLO who moves from a bank to a non-bank lender must sit idle for weeks, and sometimes months, unable to engage in loan origination activities while they complete the SAFE Act's licensing and testing requirements—despite the fact they have already been registered in the NMLS and originating loans. H.R. 2948 promotes a fair and competitive labor market by eliminating barriers to the ability of non-bank lenders (especially small lenders) to compete for talented staff, and allowing MLOs to more easily move to the employer that offers them the best chance to succeed.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 2948 on April 26, 2017, and April 28, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on December 12, 2017, and ordered H.R. 2948 to be reported favorably to the House without amendment by a recorded vote of 60 yeas to 0 nays (Record vote no. FC-129), 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 recorded vote was on 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 60 yeas to 0 nays (Record vote no. FC-129), a quorum being present.

Record vote no. FC-129

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY) ..	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hoffingsworth	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. 2948 will provide a temporary license for loan originators transitioning between employers, and for other purposes, would amend the S.A.F.E. Mortgage Licensing Act of 2008 to provide temporary loan-origination authority for registered loan originators: (1) moving from a financial institution to a state-licensed non-bank originator, or (2) moving interstate to a state-licensed loan originator in another state.

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.

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, February 12, 2018.

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. 2948, a bill to amend the S.A.F.E. Mortgage Licensing Act of 2008 to provide a temporary license for loan originators transitioning between employers, and for other purposes.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2948—A bill to amend the S.A.F.E. Mortgage Licensing Act of 2008 to provide a temporary license for loan originators transitioning between employers, and for other purposes

The Nationwide Mortgage Licensing System (NMLS) was established by a consortium of states in response to requirements of the Housing and Economic Recovery Act of 2008 that mandated the creation of such a system. The purpose of the NMLS is to track people who provide mortgages—across state lines and through changes in employment—to ensure that they meet certain qualifications and cannot evade pending regulatory action by moving to a new state or changing employers.

H.R. 2948 would provide temporary authority for licensed mortgage originators to work in a new state or under a new employer—if the employer is a state-licensed mortgage company—for up to 120 days or until a new license is issued. Licensed originators with certain active or previous regulatory violations would not be eligible to obtain the new temporary status.

Using information from the Consumer Financial Protection Bureau (CFPB), CBO estimates that rulemaking to implement the registration requirements would cost \$1 million. The CFPB is permanently authorized to spend amounts transferred from the Federal Reserve to fund its operations. Because that funding is not subject to appropriation, the CFPB's expenditures are recorded in the budget as direct spending.

Using information from the Department of Housing and Urban Development and the NMLS, CBO estimates that enacting H.R. 2948 would have no significant net effect on the collection of licensing fees (which are considered revenues) or on the NMLS's subsequent spending of those fees for its operations. Any change in the timing of when fees are collected would be insignificant.

Because enacting the bill would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 2948 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2948 contains no private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

H.R. 2948 would impose an intergovernmental mandate as defined in UMRA by preempting state licensing laws. The bill would grant a temporary license for some loan originators who become employed by a state-licensed mortgage company. Because the preemption would impose no duty on state governments that would result in additional spending or a loss of revenues, CBO estimates that the cost of the intergovernmental mandate would fall well below the UMRA threshold (\$78 million in 2017, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Rachel Austin (for mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

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

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95-220, as amended by Pub. L. No. 98-169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Eliminating barriers to jobs for loan originators

This section provides temporary loan-origination authority to registered loan originators: (1) moving from a financial institution to a state-licensed non-bank originator, or (2) moving interstate to a state-licensed loan originator in another state. This section further provides that both the mortgage loan originator and the company hiring the MLO are subject to the SAFE Act and applicable state law as if the MLO were duly licensed.

Section 2. Amendment to civil liability of the bureau and other officials

This section updates the SAFE Act's existing civil liability protections to ensure that those protections continue to apply where state regulators use the NMLS as a licensing system for financial services providers other than loan originators.

Section 3. Effective date

This section states that the Act takes effect 18 months after enactment.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

HOUSING AND ECONOMIC RECOVERY ACT OF 2008

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Housing and Economic Recovery Act of 2008”.

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

Sec. 1. Short title; table of contents.

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

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Sec. 1518. Employment transition of loan originators.

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DIVISION A—HOUSING FINANCE REFORM

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

SEC. 1501. SHORT TITLE.

This title may be cited as the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or “S.A.F.E. Mortgage Licensing Act of 2008”.

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SEC. 1513. LIABILITY PROVISIONS.

The Bureau, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who **[are loan originators or are applying for licensing or registration as loan originators.]** *have applied, are applying, or are currently licensed or registered through the Nationwide Mortgage Licensing System and Registry. The previous sentence shall only apply to persons in an industry with respect to which persons were licensed or registered through the Nationwide Mortgage Licensing System and Registry on the date of the enactment of this sentence.*

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SEC. 1518. EMPLOYMENT TRANSITION OF LOAN ORIGINATORS.

(a) *TEMPORARY AUTHORITY TO ORIGINATE LOANS FOR LOAN ORIGINATORS MOVING FROM A DEPOSITORY INSTITUTION TO A NON-DEPOSITORY INSTITUTION.—*

(1) *IN GENERAL.—Upon employment by a State-licensed mortgage company, an individual who is a registered loan originator shall be deemed to have temporary authority to act as a loan originator in an application State for the period described in paragraph (2) if the individual—*

(A) *has not had an application for a loan originator license denied, or had such a license revoked or suspended in any governmental jurisdiction;*

(B) *has not been subject to or served with a cease and desist order in any governmental jurisdiction or as described in section 1514(c);*

(C) *has not been convicted of a felony that would preclude licensure under the law of the application State;*

(D) *has submitted an application to be a State-licensed loan originator in the application State; and*

(E) *was registered in the Nationwide Mortgage Licensing System and Registry as a loan originator during the 12-month period preceding the date of submission of the information required under section 1505(a).*

(2) *PERIOD.—The period described in paragraph (1) shall begin on the date that the individual submits the information*

required under section 1505(a) and shall end on the earliest of—

(A) the date that the individual withdraws the application to be a State-licensed loan originator in the application State;

(B) the date that the application State denies, or issues a notice of intent to deny, the application;

(C) the date that the application State grants a State license; or

(D) the date that is 120 days after the date on which the individual submits the application, if the application is listed on the Nationwide Mortgage Licensing System and Registry as incomplete.

(b) **TEMPORARY AUTHORITY TO ORIGINATE LOANS FOR STATE-LICENSED LOAN ORIGINATORS MOVING INTERSTATE.**—

(1) **IN GENERAL.**—A State-licensed loan originator shall be deemed to have temporary authority to act as a loan originator in an application State for the period described in paragraph

(2) if the State-licensed loan originator—

(A) meets the requirements of subparagraphs (A), (B), (C), and (D) of subsection (a)(1);

(B) is employed by a State-licensed mortgage company in the application State; and

(C) was licensed in a State that is not the application State during the 30-day period preceding the date of submission of the information required under section 1505(a) in connection with the application submitted to the application State.

(2) **PERIOD.**—The period described in paragraph (1) shall begin on the date that the State-licensed loan originator submits the information required under section 1505(a) in connection with the application submitted to the application State and end on the earliest of—

(A) the date that the State-licensed loan originator withdraws the application to be a State-licensed loan originator in the application State;

(B) the date that the application State denies, or issues a notice of intent to deny, the application;

(C) the date that the application State grants a State license; or

(D) the date that is 120 days after the date on which the State-licensed loan originator submits the application, if the application is listed on the Nationwide Mortgage Licensing System and Registry as incomplete.

(c) **APPLICABILITY.**—

(1) Any person employing an individual who is deemed to have temporary authority to act as a loan originator in an application State pursuant to this section shall be subject to the requirements of this title and to applicable State law to the same extent as if such individual was a State-licensed loan originator licensed by the application State.

(2) Any individual who is deemed to have temporary authority to act as a loan originator in an application State pursuant to this section and who engages in residential mortgage loan origination activities shall be subject to the requirements of this

title and to applicable State law to the same extent as if such individual was a State-licensed loan originator licensed by the application State.

(d) DEFINITIONS.—In this section, the following definitions shall apply:

(1) STATE-LICENSED MORTGAGE COMPANY.—The term “State-licensed mortgage company” means an entity licensed or registered under the law of any State to engage in residential mortgage loan origination and processing activities.

(2) APPLICATION STATE.—The term “application State” means a State in which a registered loan originator or a State-licensed loan originator seeks to be licensed.

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