

H.R. 4626 helps develop the Nationwide Mortgage Licensing System, NMLS, so that regulators retain the ability to keep track of bad actors and provide responsible mortgage providers with greater efficiency and consistency in the licensing process.

H.R. 4626 does not create any additional privilege or confidentiality rights, but the SAFE Act currently provides that information shared through the Nationwide Mortgage Licensing System among mortgage industry regulators retains existing State and Federal privilege and confidentiality protections.

The bill makes it so that these privileges and confidentiality protections remain as long as the information is shared with another mortgage regulator.

Mr. Speaker, the bill addresses uncertainty of confidentiality by clarifying that confidential or privileged information shared through the NMLS would continue to be protected under State and Federal law.

This bill will increase the cooperation—and I think this is the key piece—this bill will increase the cooperation between Federal and State regulators while ensuring that the NMLS fulfills its mission to enhance consumer protection and stability in the mortgage lending industry.

This is a good bill. It should be passed by the House of Representatives. It provides for safety for the home mortgage lending system and the licensure system. It provides for cooperation between Federal regulators and State regulators while preserving confidentiality rights of folks who are part of the licensing system, so I think a number of different goals are achieved.

I thank the gentlewoman from West Virginia for introducing this bill. With that, I urge its passage, and I yield back the balance of my time.

Mrs. CAPITO. Mr. Speaker, I yield myself such time as I may consume.

I would like to thank my friend from Colorado for his support of this and for his service on the committee. He is a great member of the Financial Services Committee.

Mr. Speaker, I would just like to reiterate that ensuring confidentiality will bring about more effectiveness with the national registers. We are responding basically to what a lot of our State regulators have asked us to do, to make sure that they better protect consumers and are able to keep the information in a privileged and confidential manner.

With that, I would urge passage of the bill, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from West Virginia (Mrs. CAPITO) that the House suspend the rules and pass the bill, H.R. 4626.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

EXAMINATION AND SUPERVISORY PRIVILEGE PARITY ACT OF 2014

Mrs. CAPITO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5062) to amend the Consumer Financial Protection Act of 2010 to specify that privilege is maintained when information is shared by certain non-depository covered persons with Federal and State financial regulators, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5062

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Examination and Supervisory Privilege Parity Act of 2014”.

SEC. 2. PRIVILEGE OF INFORMATION SHARED BY CERTAIN NONDEPOSITORY COVERED PERSONS.

Section 1024(b)(3) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5514(b)(3)) is amended—

(1) by striking “regulators and the State bank regulatory authorities” and inserting “regulators, the State bank regulatory authorities, and the State agencies that license, supervise, or examine the offering of consumer financial products or services”; and

(2) by adding at the end the following: “The sharing of information with such regulators, authorities, and agencies shall not be construed as waiving, destroying, or otherwise affecting any privilege or confidentiality such person may claim with respect to such information under Federal or State law as to any person or entity other than such Bureau, agency, supervisor, or authority.”.

The SPEAKER pro tempore (Mr. RODNEY DAVIS of Illinois). Pursuant to the rule, the gentlewoman from West Virginia (Mrs. CAPITO) and the gentleman from Colorado (Mr. PERLMUTTER) each will control 20 minutes.

The Chair recognizes the gentlewoman from West Virginia.

GENERAL LEAVE

Mrs. CAPITO. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and submit any extraneous materials for the RECORD on H.R. 5062, as amended, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from West Virginia?

There was no objection.

Mrs. CAPITO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill is very similar to the previous bill that we just passed. I rise in support of H.R. 5062, the Examination and Supervisory Privilege Parity Act of 2014—we always want to have a nice, long name for everything—and congratulate my colleagues on the Financial Services Committee, Mr. PERLMUTTER and Mr. BARR, for their hard work on advancing this legislation.

This bill clarifies that the sharing of information between Federal banking regulators and State agencies that license, supervise, or examine the offering of consumer financial products or services will not be construed as waiving, destroying, or otherwise affecting any privilege or confidentiality right that a person could claim.

Americans are familiar with the concept of privilege. Under current law, legal privilege exists with respect to certain communications, so long as they are not shared with a third party. Attorney-client privilege, for example, is destroyed if the client shares what he communicated to his attorney with his colleague at work.

This legislation provides assurance for financial institutions that privileged information shared between Federal banking regulators and State regulatory agencies will be protected and remain confidential.

This will encourage a greater amount of sharing between institutions and their regulators and will allow our Nation's financial regulators to do their jobs to ensure that our financial institutions are operating lawfully while, at the same time, able to offer consumer credit products that are critical to Americans to finance their everyday purchases and start small businesses.

The Examination and Supervisory Privilege Parity Act is a simple bipartisan bill that clarifies that this is not always the case. I, again, congratulate Mr. BARR and Mr. PERLMUTTER on their work, and I would reserve the balance of my time.

Mr. PERLMUTTER. Mr. Speaker, I yield myself as much time as I might consume.

Mr. Speaker, I rise in support of H.R. 5062, the Examination and Supervisory Privilege Parity Act, which is difficult to say, but easy to understand. It is to provide for full cooperation, discourse, and communication among regulators while, at the same time, preserving some confidentiality and protections for those whose books and records are being reviewed. I want to thank my friend, Congressman BARR, for working with me on this legislation.

This legislation accomplishes two important things. First, it reduces regulatory burden by ensuring Federal regulators; the CFPB; State banking agencies; and, now, nonbank agencies may coordinate their respective examination schedules. Two, it provides parity to ensure privilege is not compromised when regulated entities turn over sensitive information to their regulators and when that information is subsequently shared among State and Federal agencies.

The Dodd-Frank legislation empowered the Consumer Financial Protection Bureau to regulate, supervise, and examine providers of consumer credit and financial products. Among these companies, nonbank financial institutions are typically State-licensed, and their primary regulator is often the State banking commissioner.

However, in 15 States, such entities are overseen by a nonbank agency, such as the attorney general, the Department of Consumer and Regulatory Affairs, or a dedicated consumer credit commissioner.

The bill extends the same protections that apply to all consumer creditors to ensure an effective and equitable examination and investigatory process.

Under the Federal Deposit Insurance Act, similar protections exist for banks which benefit from express legal protection that provides the confidence and legal certainty to turn over privileged information and documents at the request of their regulators.

This protection encourages regulated entities to comply with the examinations and mitigates their anxiety about disclosing sensitive proprietary information to regulators. Sharing of information will not waive attorney-client, work product, or other privileges recognized under Federal or State law.

Let me be clear, a firm cannot turn over any information to their regulators they choose to benefit from the extension of privilege and shield themselves from third-party lawsuits. Privilege of information only extends to the information requested by the regulators during the course of supervisory examinations per State and Federal law.

Additionally, the bill codifies the CFPB guidance bulletin and regulation that says the “confidential treatment of information that would provide that any person’s submission of information to the Bureau in the course of the Bureau’s supervisory or regulatory processes will not waive any privilege such person may claim with respect to such information.”

They go on to state that the rule is intended to “provide protections for the confidentiality of privileged information substantively identical to the statutory provisions that apply to the submission of privileged information to the prudential regulators and State and foreign bank regulators.”

However, this bill will extend protections to nonbank State regulators, such as the attorney general in Colorado and those regulated entities.

I am a strong supporter and believer in the Dodd-Frank Wall Street Reform and Consumer Protection Act, but I also know certain technical fixes need to be made. That is why I urge passage of this bill introduced by my friend, Mr. BARR.

With that, I will reserve the balance of my time.

Mrs. CAPITO. Mr. Speaker, I now yield such time as he may consume to the gentleman from Kentucky (Mr. BARR), the author of the bill and a great member of the Financial Services Committee.

Mr. BARR. Mr. Speaker, I thank the gentlewoman for yielding, and I appreciate her leadership as the chairman of the Financial Institutions Subcommittee and for her support of this important legislation.

Mr. Speaker, I rise in support of H.R. 5062, the Examination and Supervisory Privilege Parity Act, and I want to thank the gentleman from Colorado, my friend, Mr. PERLMUTTER, for working with me in a bipartisan fashion to introduce and advance this legislation.

In central Kentucky, one of our signature industries is the auto manufacturing industry, and no place exemplifies this proud fact more than Toyota Motor Manufacturing of Kentucky and the plant that is located in my district in Georgetown, Kentucky.

With over 7,300 Toyota team members and their families dependent on these high-quality jobs in that facility, I am committed to doing everything I can to support these Kentucky workers. This legislation does that.

H.R. 5062 is, as my friend from Colorado said, a technical fix, but it is an important piece of legislation because it helps automobile finance companies like Toyota Financial Services, which finances over two-thirds of new vehicle sales for Toyota customers.

This legislation assures these consumer lenders that when they provide confidential and privileged information to their regulators in the course of supervision, the customary privilege or confidentiality of that information is not waived when shared with the State regulatory agencies.

This is necessary because the unintended fragmented structure of current law leaves privileged and confidential status of this information in question, and that poses a significant risk to auto finance companies.

Consumer access to finance is vital for new car sales and a healthy car market, and a healthy car market is good for the 7,300 automobile manufacturing workers in central Kentucky and all around America.

Mr. Speaker, I urge support for this legislation which, again, simply guarantees that when the Consumer Financial Protection Bureau asks for confidential and privileged information from a captive finance company and then shares that information with a State regulator, that information shared will continue to be treated as privileged and confidential. I urge support for this legislation.

Mr. PERLMUTTER. Mr. Speaker, I first would like to introduce into the RECORD, speaking of Toyota, a letter dated July 14, to myself and to Mr. BARR; a letter from the Financial Services Roundtable dated July 29, 2014; a letter from Honda dated July 15; a letter from the Conference of State Bank Supervisors dated July 15; and a letter from the American Financial Services Association dated July 25.

TOYOTA MOTOR NORTH AMERICA, INC.,
Washington, DC, July 14, 2014.

Hon. ED PERLMUTTER,
Longworth House Office Building,
Washington, DC.

Hon. ANDY BARR,
Longworth House Office Building,
Washington, DC.

DEAR CONGRESSMEN PERLMUTTER AND BARR: On behalf of the over 30,000 Toyota

Team members in the U.S., thank you for introducing H.R. 5062, the Examination and Supervisory Privilege Parity Act of 2014. We appreciate your commitment to common sense regulatory reform.

Consumer access to finance is the life blood of new car sales. To maintain competitiveness, automobile manufacturers must have a strong vehicle finance division. These “captive finance companies”, like Toyota Financial Services, provide tailored financing options to our customers, whether they be individual consumers or franchised dealers. As a captive, Toyota Financial Services exist solely to support the auto manufacturer in selling vehicles and are designed to maintain a long-term, positive, customer relationship with the consumer.

As you know, the Dodd-Frank Act placed captive finance companies under the jurisdiction of the newly created Consumer Financial Protection Bureau (CFPB). However, in a technical oversight, the Act did not extend the traditional protections of privilege over nonpublic, proprietary information—often disclosed in the course of supervision—to either the CFPB or the state agencies that jointly oversee captive finance companies under the CFPB’s jurisdiction.

A strong supervisory privilege plays an important role in supporting an effective and open examination process. Straightforward communications between regulators and the regulated entities are critical, and are made possible by the extension of privilege. Once lost, privilege cannot be restored.

H.R. 5062 corrects this oversight by simply guaranteeing that when captive finance companies produce information to the CFPB, the privileged status of that information is preserved when the CFPB shares the information with state regulation agencies.

At Toyota, we support H.R. 5062 and appreciate your taking the time to learn about this issue.

Sincerely,

STEPHEN CICCONE,
Group Vice President, Government Affairs.

FINANCIAL SERVICES ROUNDTABLE,
Washington, DC, July 29, 2014.

Hon. ED PERLMUTTER,
House of Representatives,
Washington, DC.

Hon. ANDY BARR,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVES PERLMUTTER AND BARR: The Financial Services Roundtable (FSR) commends your sponsorship of H.R. 5062, “The Examination and Supervisory Privilege Parity Act of 2014”, which seeks to ensure the protection of shared privileged information. FSR supports this legislation and urges the House to pass it at the earliest possible date.

The legislation provides assurance for financial institutions that privileged information shared between federal banking regulators and state regulatory agencies will be protected and remain confidential. While the Consumer Financial Protection Bureau (CFPB) has acted to protect confidential information obtained through the supervisory process, this legislation provides additional assurance that when the CFPB shares supervisory information with federal and state regulators—including any state agency that licenses, supervises or examines the offering of consumer financial products or services, that the confidential nature of the information will be protected.

We strongly support H.R. 5062 and urge its passage. Thank you for the consideration, and please do not hesitate to contact me if you would like to discuss this matter further.

Sincerely,

FRANCIS CREIGHTON,

Executive Vice President, Government Affairs, Financial Services Roundtable.

HONDA NORTH AMERICA, INC.,
Washington, DC, July 15, 2014.

Hon. SHELLEY MOORE CAPITO,
Chairwoman, Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, Washington, DC.

Hon. GREGORY W. MEEKS,
Ranking Member, Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, Washington, DC.

DEAR CHAIRWOMAN CAPITO AND RANKING MEMBER MEEKS: Thank you and the Subcommittee on Financial Institutions and Consumer Credit for considering H.R. 5062, the Examination and Supervisory Privilege Parity Act of 2014, introduced by Congressmen Ed Perlmutter and Andy Barr during today's hearing entitled, "Examining Regulatory Relief Proposals for Community Financial Institutions Part II." Honda supports H.R. 5062 because its passage would ensure the protection of privileged supervisory information shared with and by the Consumer Financial Protection Bureau (CFPB) for nondepository financial institutions.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") gave the CFPB the authority to regulate and supervise a number of institutions that provide consumer financial products or services, and to the extent the CFPB may finalize its "larger participant" rule for the auto finance market (expected in 2015), we anticipate these institutions will include captive vehicle finance companies like Honda. However, state agencies also regulate captive vehicle finance companies, and it is important to preserve the privilege of supervisory information that regulated entities share with the CFPB, particularly because the CFPB is expected to share such information and coordinate examinations with state regulatory agencies.

Although Congress passed H.R. 4014 in late 2012 (P.L. 112-215) to address the privilege issue, that law only protects the privilege of information in those states where state bank supervisors regulate the consumer financial product or service. However, there are 15 states where a state agency, other than a state bank supervisor, has jurisdiction over the offering of consumer financial products or services; for example, in Texas, the governing body is the Office of the Consumer Credit Commissioner (OCCC). As a result of these differences in regulatory regimes, a question remains as to whether the sharing of supervisory information with those types of agencies would result in a waiver of privilege. H.R. 5062 would clarify that such sharing between the CFPB and prudential regulators, state bank regulatory authorities, as well as other state agencies that license, supervise, or examine the offering of consumer financial products or services, would not be "construed as waiving, destroying, or otherwise affecting any privilege" a financial institution could claim. With the CFPB working to develop its supervisory program for "larger participants" in the auto lending market, it has become critical to establish parity for the protection of privileged information among all financial institutions.

We hope that the Subcommittee and the Full Committee on Financial Services can take immediate action on H.R. 5062. Thank you again for your consideration. If you need any additional information, please contact me.

Sincerely,

TARA HAIRSTON,
Government & Industry Relations,
Honda North America, Inc.

CONFERENCE OF STATE
BANK SUPERVISORS,
Washington, DC, July 15, 2014.

Representative ED PERLMUTTER,
Longworth House Office Building,
Washington, DC.

Representative ANDY BARR,
Longworth House Office Building,
Washington, DC.

DEAR REPRESENTATIVES PERLMUTTER AND BARR: On behalf of the Conference of State Bank Supervisors ("CSBS"), I am writing to express our support of your bill, H.R. 5062, which ensures privileged information is protected when shared with and among regulators. As state regulators responsible for overseeing a variety of depository and nondepository financial services providers, our members strongly support your effort to ensure consistent treatment across regulated entities and regulatory agencies.

Effective and efficient financial regulation requires collaboration between state and federal regulators. Information sharing is the lynchpin of this partnership. The creation of the Consumer Financial Protection Bureau ("CFPB") with jurisdiction over an array of entities regulated at both the federal and state level makes this coordination and uniform treatment of information even more critical. By correcting current gaps in the law, this bill improves regulators' ability to coordinate and provides regulated entities with greater confidence that privileged information provided to regulators retains federal and state legal protections.

As you and your colleagues consider this bill, CSBS recommends improving the bill by adding confidentiality to the covered information protection. Not all states confer privilege upon information shared with regulators. Instead, such information is usually treated as confidential under state law. By adding "and confidentiality" after "privilege" the bill will address all intended scenarios for protection of sensitive information.

CSBS is committed to working with you to ensure that H.R. 5062 becomes law and urge you and your colleagues to pass the bill.

Sincerely,

JOHN W. RYAN,
President & CEO.

AMERICAN FINANCIAL
SERVICES ASSOCIATION,
JULY 25, 2014.

Re H.R. 5062, "Examination and Supervisory Privilege Parity Act of 2014"

Hon. ED PERLMUTTER,
House of Representatives,
Washington, DC.

Hon. ANDY BARR,
House of Representatives,
Washington, DC.

DEAR CONGRESSMEN: On behalf of the American Financial Services Association (AFSA) and our more than 350 members, write in support of your legislation, H.R. 5062, the "Examination and Supervisory Privilege Parity Act of 2014." We applaud your efforts to ensure that the nonpublic, proprietary information of nonbank consumer finance companies remains privileged, wherever applicable, throughout the course of supervision at the federal and state levels. AFSA believes this to be a key step in promoting a candid and efficient supervisory relationship between financial regulators and the entities they oversee.

BACKGROUND ON SUPERVISORY PRIVILEGE

A strong supervisory privilege plays an important role in supporting an effective and open examination process. Straightforward communications between regulators and the regulated entities are critical, and are made possible by the maintenance of privilege.

There is precedent for this degree of protection in the longtime practice by bank regulators of asserting the confidentiality of records related to entities under their supervision, and resisting the efforts of third-party litigants to discover such information.

STATUS OF THE NONPUBLIC, PROPRIETARY INFORMATION OF NONBANKS

In establishing the Consumer Financial Protection Bureau (CFPB), Congress neglected to extend bank supervisors' historical protections over privileged information to either the CFPB or the state regulators of nonbanks, with whom the Bureau is expected to share information and coordinate examinations. Therefore, the proprietary information of nonbank consumer finance companies does not enjoy the same legal protections as that of banks when disclosed during the course of supervision or other regulatory processes.

Recognizing the importance of promoting effective supervision, Congress enacted H.R. 4014 in December 2012 to protect privileged information disclosed to the CFPB by covered persons. H.R. 4014 amended the Federal Deposit Insurance Act (FDI Act) to add the CFPB to the list of federal regulators with whom no applicable privilege is waived when disclosing privileged information by or about a company under supervision. The FDI Act also permits enumerated agencies to share such privileged information with "state bank supervisors" without waiving the privilege. However, in the case of a nonbank institution, federal law currently provides comprehensive protection of existing privilege if and only if the company does business exclusively in states where it is regulated by state bank supervisors, per se.

CURRENT LAW PROVIDES UNEVEN PROTECTIONS FOR NONBANKS

Across the country, nonbank consumer finance companies do not always fall under the jurisdiction of state bank supervisors. In fact, there are at least 15 states where an agency other than the state bank supervisor currently has either partial or full jurisdiction over nonbanks offering consumer credit in that state. This exposes such entities to significant legal risk, given the uncertainty surrounding whether privilege will withstand the transfer of information by the CFPB to, and among, state agencies not specifically referenced in federal law. Such uncertainty will necessarily chill communications between the CFPB and the companies it supervises, undermining the agency's effectiveness.

With the CFPB conducting examinations of state-regulated nondepository financial institutions, it is imperative for Congress to extend all applicable privileges to the range of institutions subject to supervision by the Bureau. Congress should ensure that the same protections apply to all consumer creditors to ensure an effective and equitable examination and investigatory process.

AFSA URGES CONGRESS TO ENACT H.R. 5062

H.R. 5062 would amend the Consumer Financial Protection Act of 2010 to specify that privilege is maintained when information is shared by certain nondepository covered persons with federal and state financial regulators. AFSA believes this bill will achieve parity in the statutory treatment of nonpublic, proprietary information disclosed by nondepository financial institutions with that of their depository peers, and will thereby promote greater candor with regulators and more efficient regulation. AFSA urges Congress to advance this legislation at the soonest possible opportunity, as covered persons face greater risk to the sanctity of their proprietary information as they disclose more documents to the CFPB with each passing day.

AFSA looks forward to working with you to address this matter. If you have any questions, please contact me.

Sincerely,

BILL HIMPLER,
Executive Vice President,
American Financial Services Association.

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Mr. PERLMUTTER. Since there are no other speakers on the majority side of the aisle, I will close as well.

Mr. Speaker, this is very similar to the bill we just heard. It really is trying to do two things. One, add the cooperation among Federal and State regulators and potential companies, individuals who might be under examination by those regulators, so that the individual or company who is providing information to the regulators knows that that information maintains protections and confidentiality and privilege in those respects. So we are seeking additional cooperation and additional communication.

This bill that Congressman BARR and I have introduced I think gets to those two key goals. Again, the purpose is so that the regulators understand what it is that they are examining and have as much information as possible, and that they get full cooperation from those that are being examined. So I thank my friend for introducing this bill.

With that, I yield back the balance of my time.

Mrs. CAPITO. Mr. Speaker, I again would like to thank the sponsors of the legislation, Mr. BARR and Mr. PERLMUTTER, for working together to seek a fix that will result in good things for the coordination aspect of the State regulators and Federal regulators. I encourage passage of the bill.

With that, I yield back the balance of my time.

Mr. PERLMUTTER. Mr. Speaker, I submit the following letter of support of H.R. 5062.

JULY 25, 2013.

Re Supervisory Privilege for Nondepository Consumer Lenders

Hon. TIM JOHNSON,
Chairman, Senate Banking Committee, Washington, DC.

Hon. MIKE CRAPO,
Ranking Member, Senate Banking Committee, Washington, DC.

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

Hon. MAXINE WATERS,
Ranking Member, House Financial Services Committee, Washington, DC.

DEAR CHAIRMEN AND RANKING MEMBERS: The American Financial Services Association ("AFSA") and the undersigned automobile finance companies ask for your support to ensure the privilege protection for state licensed and regulated nondepository consumer lenders under the jurisdiction of the Consumer Financial Protection Bureau ("CFPB" or "Bureau") is fully extended to all such companies and their privileged information—regardless of which state agency happens to be their regulator.

THE DODD-FRANK ACT AND PRIVILEGE

While the Dodd-Frank Act ("Act") granted the CFPB authority to regulate and supervise a wide range of depository institutions and nondepository consumer lenders, the Act neglected to extend the historical protec-

tions over privileged information submitted to bank supervisors, during the course of supervision, to either the CFPB or certain state agencies with whom the Bureau is expected to share information and coordinate examinations.

A FLAWED SOLUTION

The enactment of H.R. 4014 during the 112th Congress sought to resolve the problem by amending the Federal Deposit Insurance Act ("FDI Act") to add the CFPB to the list of federal regulators approved to share information without waiving any applicable privilege. The FDI Act also permits enumerated agencies to share privileged information with "state bank supervisors" without waiving privilege. However, in the case of a nondepository consumer lender, H.R. 4014 provides comprehensive protection of privilege if and only if the company does business exclusively in states where it is regulated by state bank supervisors.

Nondepository consumer lenders, however, do not always fall under the jurisdiction of state bank supervisors. According to an informal survey conducted by AFSA, there are at least 15 states where a state agency other than the state bank supervisor currently has either partial or full jurisdiction over the financial activities of nonbanks doing business in that state. For example, in Texas, the Office of the Consumer Credit Commissioner regulates nondepository consumer lenders, and in Colorado, the state Attorney General regulates such entities. In addition, states periodically reorganize their regulatory regimes—raising the issue of whether a nondepository consumer lender currently under a state's banking agency would be protected if the state changes its regulatory regime in the future.

We ask that nondepository consumer lenders are universally afforded the customary and historical protections of privilege when the CFPB and other regulators share such privileged information with any applicable state agency with supervisory oversight over such companies. Our goal is to provide parity among financial institutions of all types, and we do not seek to advantage any class of creditor.

THE NECESSITY OF PRIVILEGE

It is important to emphasize the critical role that privilege plays in supporting a more effective and transparent supervisory process between regulators and regulated entities, as effective examinations are enhanced by the privilege. Indeed, the Court of Appeals for the D.C. Circuit expounded as follows:

The bank examination privilege is firmly rooted in practical necessity. Bank safety and soundness supervision is an iterative process of comment by the regulators and response by the bank. The success of the supervision therefore depends vitally upon the quality of communication between the regulated banking firm and the bank regulatory agency. This relationship is both extensive and informal. It is extensive in that bank examiners concern themselves with all manner of a bank's affairs. . . . Because bank supervision is relatively informal and more or less continuous, so too must be the flow of communication between the bank and the regulatory agency. Bank management must be open and forthcoming in response to the inquiries of bank examiners, and the examiners must in turn be frank in expressing their concerns about the bank. These conditions simply could not be met as well if communications between the bank and its regulators were not privileged. (Emphasis added.)

We believe the same policy should apply to all consumer creditors to ensure effective and equitable examination and investigatory processes.

PARTIAL PRIVILEGE IS NO PRIVILEGE

The CFPB operates under a rather rigid document called the Enforcement Action Process, which provides that an investigation begins with a civil investigative demand (CID), "which can easily be 20 or 30 pages long, [and] request almost every imaginable relevant piece of documentary evidence." Companies typically have ten days to draft an initial response, and companies like automobile finance companies that operate under all 50 state regulatory regimes could be compelled to provide information that, while privileged in some states in which the company is licensed, would not be in other states.

Once lost, privilege cannot be restored, leaving formerly privileged documents produced to the CFPB subject to discovery by third parties. Moreover, the consequences of privilege waiver can be significantly compounded if a court rules that the privilege was waived not only as to the individual document or documents actually produced to the CFPB, but as to all information relating to that subject matter. The following example illustrates the point: in responding to a CID issued by the CFPB, an automobile finance company might feel compelled to produce an otherwise privileged internal memorandum on Topic X; the CFPB shares this memorandum with non-banking regulators in States A, B and C, all of which regulate the finance company. Assume for this hypothetical that the CFPB and States A, B and C all ultimately agree with the memorandum's conclusions on Topic X, and decide to take no action against the finance company. Under the current framework, the privileged nature of that memorandum is likely lost and any private litigant can seek (and possibly obtain) production of the memorandum. This is bad enough, essentially eviscerating the privilege. Worse is the possibility that a court might conclude that not only is the privilege waived as to the memorandum, but also as to all finance company documents relating to the topic in question.

CONGRESSIONAL INTERVENTION IS PARAMOUNT

Even in an instance where the CFPB may agree to respect privilege in all states, it is unclear whether the Bureau could effectuate that protection. For example, although the CFPB promulgated a rule governing privilege, it has not addressed this particular issue regarding gaps in its statutory authority. Further, even if so inclined, it is unclear that the CFPB could assist a company attempting to defend privilege in a law suit brought by a third party attempting to discover privileged material.

We note that, while the federal banking agencies had similar rules in place, Congress—believing a statute was necessary to safeguard privilege—enacted 12 U.S.C. 1828(x) to ensure that any privileged work product or protected materials that banks disclose in the course of supervision remain privileged as to all other parties.

We respectfully request that the House Financial Services Committee and the Senate Banking Committee act decisively and without delay to establish parity among all lenders by advancing legislation to reaffirm full privilege protection to all types of financial institutions.

Thank you for your consideration. Should you need any additional information, please contact AFSA's Executive Vice President, Bill Himpler, at (202) 466-8616 or bhimpler@afsamail.org.

Sincerely,

Katherine Adkins, General Counsel and Vice President, Legal & Compliance, Toyota Financial Services, Torrance, California;

Stephen P. Artusi, Vice President and General Counsel, World Omni Financial Corp., Deerfield Beach, Florida;
 Alan Ray Hunn, General Counsel, Nissan Motor Acceptance Corporation, Franklin, Tennessee (Headquarters), Irving, Texas (Operations);
 Doug Johnson, Executive Vice President, Chief Legal Officer, GM Financial, Fort Worth, Texas;
 Katherine M. Kjolhede, Executive Vice President & General Counsel, Ford Motor Credit Company LLC, Dearborn, Michigan;
 Kevin McDonald, Chief Compliance Officer, General Counsel & Secretary, VW Credit, Inc., Herndon, Virginia;
 Catherine M. McEvilly, Compliance Officer, American Honda Finance Corporation, Torrance, California;
 Carol J. Moore, Vice President and Executive General Counsel, Hyundai Capital America, Irvine, California;
 RJ Seaward, Vice President, General Counsel, Harley-Davidson Financial Services, Chicago, Illinois;
 Michelle Spreitzer, General Counsel, Mercedes-Benz Financial Services, Farmington Hills, Michigan.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from West Virginia (Mrs. CAPITO) that the House suspend the rules and pass the bill, H.R. 5062, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to amend the Consumer Financial Protection Act of 2010 to specify that privilege and confidentiality are maintained when information is shared by certain nondepository covered persons with Federal and State financial regulators, and for other purposes."

A motion to reconsider was laid on the table.

REAUTHORIZATION OF THE DEFENSE PRODUCTION ACT

Mr. CAMPBELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4809) to reauthorize the Defense Production Act, to improve the Defense Production Act Committee, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4809

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION.

Section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended—

(1) by striking "2014" and inserting "2019"; and

(2) by striking "on or after the date of enactment of the Defense Production Act Reauthorization of 2009".

SEC. 2. DEFENSE PRODUCTION ACT COMMITTEE IMPROVEMENTS.

Section 722 of the Defense Production Act of 1950 (50 U.S.C. App. 2171) is amended—

(1) in subsection (a)—

(A) by striking "advise the President" and inserting "coordinate and plan for"; and

(B) by striking "the authority" and inserting "the priorities and allocations authorities";

(2) in subsection (b), by amending paragraph (2) to read as follows:

"(2) The Chairperson of the Committee shall be the head of the agency to which the President has delegated primary responsibility for government-wide coordination of the authorities in this Act.";

(3) by amending subsection (c) to read as follows:

"(c) COORDINATION OF COMMITTEE ACTIVITIES.—The Chairperson shall appoint one person to coordinate all of the activities of the Committee, and such person shall—

"(1) be a full-time employee of the Federal Government;

"(2) report to the Chairperson; and

"(3) carry out such activities relating to the Committee as the Chairperson may determine appropriate."; and

(4) in subsection (d)—

(A) by striking "Not later than" and all that follows through "Committee shall submit" and inserting the following: "The Committee shall issue a report each year by March 31";

(B) by striking "each member of the Committee" and inserting "the Chairperson";

(C) in paragraph (1)—

(i) by striking "a review of the authority under this Act of" and inserting "a description of the contingency planning by"; and

(ii) by inserting before the semicolon the following: "for events that might require the use of the priorities and allocations authorities";

(D) in paragraph (2), by striking "authority described in paragraph (1)" and inserting "priorities and allocations authorities in this Act";

(E) by amending paragraph (3) to read as follows:

"(3) recommendations for legislation actions, as appropriate, to support the effective use of the priorities and allocations authorities in this Act.";

(F) in paragraph (4), by striking "all aspects of" and all that follows through the end of the paragraph and inserting "the use of the priorities and allocations authorities in this Act"; and

(G) by adding at the end the following:

"(5) up-to-date copies of the rules described under section 101(d)(1); and

"(6) short attestations signed by each member of the Committee stating their concurrence in the report.".

SEC. 3. UPDATED RULEMAKING.

Section 101(d)(1) of the Defense Production Act of 1950 (50 U.S.C. App. 2071(d)(1)) is amended by striking "not later than" and all that follows through "rules" and inserting the following: "issue, and annually review and update whenever appropriate, final rules".

SEC. 4. PRESIDENTIAL DETERMINATION.

(a) IN GENERAL.—Section 303(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2093(a)) is amended—

(1) in paragraph (5)—

(A) by striking "determines" and inserting the following: "on a non-delegable basis, determines, with appropriate explanatory material and in writing.";

(B) in subparagraph (A), by striking "and" at the end;

(C) in subparagraph (B), by striking the period and inserting "; and"; and

(D) by adding at the end the following:

"(C) purchases, purchase commitments, or other action pursuant to this section are the most cost effective, expedient, and practical alternative method for meeting the need."; and

(2) in paragraph (6), by adding at the end the following:

"(C) LIMITATION.—If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed \$50,000,000, no such action or actions may be taken, unless such action or actions are authorized to exceed such amount by an Act of Congress.".

(b) EXCEPTION.—Section 303(a)(6)(C) of the Defense Production Act of 1950, as added by subsection (a)(2), shall not apply to a project undertaken pursuant to a determination made before the date of the enactment of this Act.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

Section 711 of the Defense Production Act of 1950 (50 U.S.C. App. 2161) is amended—

(1) by striking "are hereby authorized to be appropriated such sums as may be necessary and appropriate" and inserting "is authorized to be appropriated \$133,000,000 for fiscal year 2015 and each fiscal year thereafter"; and

(2) by striking the second and third sentences.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. CAMPBELL) and the gentleman from Colorado (Mr. PERLMUTTER) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. CAMPBELL. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and submit extraneous material on H.R. 4809, as amended, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. CAMPBELL. Mr. Speaker, I yield myself such time as I may consume.

This bill today, H.R. 4809, is a bill to reauthorize the Defense Production Act. Simply put, the Defense Production Act is a bill that is intended to minimize distortions to the economy when it is necessary for the government to take action to aid speedy recovery from large natural or man-made disasters or to protect our servicemen and -women during combat situations. The underlying legislation was used in the recoveries from Hurricanes Katrina and Sandy and used to get new body armor in a hurry for troops in Iraq and Afghanistan when supplies ran dangerously low.

Shortly after the outbreak of the Korean war was when Congress first enacted the Defense Production Act, DPA, granting the President broad powers to access prompt, adequate, and uninterrupted supplies of industrial resources to satisfy national security needs. During that war, the DPA was used to establish a robust national defense infrastructure which later provided the U.S. strength in the ensuing cold war.

Since then, the DPA has been used only sparingly. In recent years, Congress expanded the Executive's use of the DPA to include the protection of critical infrastructure and needs arising from civil emergencies, such as