

SWAP DATA REPOSITORY AND CLEARINGHOUSE
INDEMNIFICATION CORRECTION ACT OF 2013

JUNE 12, 2013.—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. 742]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 742) to amend the Securities Exchange Act of 1934 and the Commodity Exchange Act to repeal the indemnification requirements for regulatory authorities to obtain access to swap data required to be provided by swaps entities under such Acts, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 742, the “Swap Data Repository and Clearinghouse Indemnification Correction Act of 2012,” would repeal the indemnification provisions in Sections 725, 728, and 763 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) (Pub. L. No. 111-203) to increase market transparency, facilitate global regulatory cooperation, and ensure that U.S. regulators have access to necessary swaps data from foreign data repositories, derivatives clearing organizations, and regulators.

BACKGROUND AND NEED FOR LEGISLATION

Sections 728 and 763 of the Dodd-Frank Act require swap data repositories and security-based swap data repositories to make data available to non-U.S. financial regulators, including foreign financial supervisors, foreign central banks, and foreign ministries. Before a U.S. data repository can share data with a foreign regulator, however, the foreign regulator must agree that it will abide

by applicable confidentiality requirements that it will indemnify the data repository and the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC) for litigation expenses that may result from the sharing of data with the foreign regulator. Section 725 of the Dodd-Frank Act imposes similar requirements for data sharing between derivatives clearing organizations and foreign regulators, including the requirement that foreign regulators indemnify derivatives clearing organizations and U.S. regulators for litigation expenses that may result from the sharing of data with foreign regulators.

These indemnification provisions threaten to make data sharing arrangements with foreign regulators unworkable. Foreign regulators will most likely refuse to indemnify data repositories, derivatives clearing organizations, or their U.S. regulators for litigation expenses in exchange for access to data. As a result, foreign regulators may establish their own data repositories and clearing organizations to ensure they have access to data they need to perform their supervisory duties, which would result in the creation of multiple databases, needlessly duplicative data collection efforts, and the possibility of inconsistent or incomplete data being collected and maintained across multiple jurisdictions. Moreover, the indemnification provisions in Sections 725, 728, and 763 of the Dodd-Frank Act have prompted foreign regulators to consider adopting similar indemnification requirements, which would prevent U.S. regulators from obtaining data from foreign data repositories and derivatives clearing organizations.

Market participants and regulators have expressed concerns about these indemnification provisions. For example, in an April 11, 2013 hearing of the Capital Markets and Government Sponsored Enterprises Subcommittee hearing, Christopher Childs, Managing Director and Chief Executive Officer, DTCC Data Repository (U.S.), stated that, “The continued presence of the indemnification requirement is a significant barrier to the ability of regulators globally to effectively utilize the transparency offered by a trade repository registered in the U.S.”

In testimony before the Subcommittee on February 8, 2012, Larry Thompson, DTCC’s General Counsel, testified that “[m]any regulators worldwide have expressed deep concerns about the reach and scope of the indemnity provision and have stated it creates an environment for data fragmentation.” Mr. Thompson noted that such provisions will “(1) impede global regulatory cooperation, (2) risk fragmentation of a global data set for OTC derivatives, and (3) undermine efforts to increase market transparency and mitigate risk in this market.” Carlos Tavares, Vice Chairman of the European Securities and Markets Authority, expressed similar concerns in a January 17, 2012, letter to then-SEC Chairman Mary Schapiro, writing that “indemnification agreements undermine the key principle of trust . . . essential for exchanging information among regulators.”

On February 1, 2012, the CFTC and SEC staffs issued a “Joint Report on International Swap Regulation,” which acknowledged these problems with the indemnification provisions in Sections 728 and 763 of the Dodd-Frank Act. The Commissions’ staff reported that the indemnification provisions have “caused concern among foreign regulators, some of which have expressed unwillingness to

register or recognize [a swaps data repository] unless able to have direct access to necessary information.” The staff reported that foreign regulators “are considering the imposition of a similar requirement that would restrict the CFTC’s and SEC’s access to information at [data repositories] abroad.” The staff noted that even though the CFTC and SEC are working to provide access to foreign regulators consistent with the Dodd-Frank Act and to ensure that U.S. regulators have access to foreign-based information, “Congress may determine that a legislative amendment to the indemnification provision is appropriate.”

During a March 21, 2012 hearing on identical legislation introduced in the 112th Congress, the Subcommittee on Capital Markets and Government Sponsored Enterprises received testimony from Ethiopis Tafara, the former Director of the SEC’s Office of International Affairs, who acknowledged the problems associated with the indemnification provisions in the Dodd-Frank Act and the need for a legislative fix. Mr. Tafara stated that “[t]he requirement presents a barrier to U.S. and foreign governmental entities’ ability to obtain data from a security-based swap data repository, in particular because U.S. and most other foreign governmental entities lack the legal authority to enter into the necessary indemnification agreement required by Section 763(i).”

Mr. Tafara further testified that the SEC is “concerned that there is a potential danger to our regulatory framework if foreign regulators are unable to access data held by SEC-registered security-based swap data repositories.” Mr. Tafara concluded that the “SEC recommends that Congress consider removing the indemnification requirement added by the Dodd-Frank Act,” which “would assist the SEC, as well as other U.S. regulators, in securing the access it needs to data held in global trade repositories.”

HEARINGS

The Committee on Financial Services’ Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing on H.R. 742 on April 11, 2013.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 7, 2013, and ordered H.R. 742 to be reported favorably to the House without amendment by a recorded vote of 52 yeas to 0 nays (Record vote no. FC–9), 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 52 yeas to 0 nays (Record vote no. FC–9), a quorum being present.

RECORD VOTE NO. FC-9

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X	.....	.....	Ms. Waters	X	.....	.....
Mr. Gary G. Miller (CA)	X	.....	.....	Mrs. Maloney (NY)	X	.....	.....
Mr. Bachus	X	.....	.....	Ms. Velázquez	X	.....	.....
Mr. King (NY)	X	.....	.....	Mr. Watt	X	.....	.....
Mr. Royce	X	.....	.....	Mr. Sherman	X	.....	.....
Mr. Lucas	X	.....	.....	Mr. Meeks	X	.....	.....
Mrs. Capito	X	.....	.....	Mr. Capuano	X	.....	.....
Mr. Garrett	X	.....	.....	Mr. Hinojosa	X	.....	.....
Mr. Neugebauer	X	.....	.....	Mr. Clay	X	.....	.....
Mr. McHenry	X	.....	.....	Mrs. McCarthy (NY)	X	.....	.....
Mr. Campbell	X	.....	.....	Mr. Lynch	X	.....	.....
Mrs. Bachmann .....	.....	.....	.....	Mr. David Scott (GA)	X	.....	.....
Mr. McCarthy (CA)	X	.....	.....	Mr. Al Green (TX)	X	.....	.....
Mr. Pearce	X	.....	.....	Mr. Cleaver .....	.....	.....	.....
Mr. Posey	X	.....	.....	Ms. Moore	X	.....	.....
Mr. Fitzpatrick .....	.....	.....	.....	Mr. Ellison	X	.....	.....
Mr. Westmoreland .....	.....	.....	.....	Mr. Perlmutter	X	.....	.....
Mr. Luetkemeyer	X	.....	.....	Mr. Himes	X	.....	.....
Mr. Huizenga (MI)	X	.....	.....	Mr. Peters (MI)	X	.....	.....
Mr. Duffy	X	.....	.....	Mr. Carney	X	.....	.....
Mr. Hurt	X	.....	.....	Ms. Sewell (AL) .....	.....	.....	.....
Mr. Grimm	X	.....	.....	Mr. Foster	X	.....	.....
Mr. Stivers	X	.....	.....	Mr. Kildee .....	.....	.....	.....
Mr. Fincher	X	.....	.....	Mr. Murphy (FL) .....	.....	.....	.....
Mr. Stutzman	X	.....	.....	Mr. Delaney	X	.....	.....
Mr. Mulvaney	X	.....	.....	Ms. Sinema	X	.....	.....
Mr. Hultgren	X	.....	.....	Mrs. Beatty .....	.....	.....	.....
Mr. Ross	X	.....	.....	Mr. Heck (WA)	X	.....	.....
Mr. Pittenger .....	.....	.....	.....	
Mrs. Wagner	X	.....	.....		
Mr. Barr	X	.....	.....		
Mr. Cotton	X	.....	.....		
Mr. Rothfus	X	.....	.....		

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in 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. 742 will repeal prerequisites that a swap data repository or derivatives clearing organization agree to indemnify the SEC or CFTC, as the case may be, before they may share information with specified regulatory entities.

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, May 17, 2013.

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. 742, the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 742—Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013

Under current law, derivatives clearing organizations (DCOs) and swap data repositories (SDRs) must report information about swap transactions to the Commodity Futures Trading Commission (CFTC), or in the case of SDRs that receive information about securities-based swaps, to the Securities and Exchange Commission (SEC). (A swap is a contract that calls for an exchange of cash between two participants, based on an underlying rate or index or the performance of an asset.) Such information also must be shared with other regulatory agencies, both foreign and domestic, if those agencies request the information and agree to certain conditions.

H.R. 742 would eliminate one of those conditions—that agencies requesting the information indemnify the SDRs and the CFTC (or the SEC for security-based swap information) for expenses that arise from litigation related to the shared information. The bill would still require the regulatory agencies requesting the information to agree to certain confidentiality requirements prior to receiving the data.

Based on information from the CFTC and the SEC, CBO expects that implementing the provisions of H.R. 742 would not require a significant increase in their workloads because neither agency expects to revise rules already in place. Therefore, CBO estimates that any change in discretionary spending to implement the legislation would be insignificant. Further, under current law, the SEC is authorized to collect fees sufficient to offset the cost of its annual appropriation each year; therefore, we estimate that the net cost to

the agency would be negligible, assuming annual appropriation actions consistent with that authority.

Based on information from several federal financial regulators, CBO estimates that enacting H.R. 742 would have an insignificant effect on direct spending and revenues; therefore, pay-as-you-go procedures apply. Under current law, any litigation expenses of the federal government related to sharing information about swap transactions, in certain instances, would be paid by foreign regulators. Under the bill, such expenses would become a federal liability. Because the regulations have only been finalized within the past year and any potential litigation is unlikely to be resolved quickly, CBO expects those costs would not arise in the next 10 years.

H.R. 742 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.

On April 11, 2013, CBO transmitted a cost estimate for H.R. 742, the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013, as ordered reported by the House Committee on Agriculture on March 20, 2013. Both versions of the bill are identical, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Deputy 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. 742 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(j) of H. Res. 5, 113th Cong. (2013), the Committee states that no provision of H.R. 742 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(k) of H. Res. 5, 113th Cong. (2013), the Committee states that H.R. 742 does not require any directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 742 as the “Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013.”

Section 2. Repeal of indemnification requirements

This section repeals the indemnification provisions in Sections 725, 728, and 763 of the Dodd-Frank Act.

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, existing law in which no change is proposed is shown in roman):

COMMODITY EXCHANGE ACT

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SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

(a) * * *

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(k) REPORTING REQUIREMENTS.—

(1) * * *

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[(5) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—
Before the Commission may share information with any entity described in paragraph (4)—

[(A) the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and

[(B) each entity shall agree to indemnify the Commission for any expenses arising from litigation relating to the information provided under section 8.]

(5) CONFIDENTIALITY AGREEMENT.—*Before the Commission may share information with any entity described in paragraph (4), the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided.*

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SEC. 21. SWAP DATA REPOSITORIES.

(a) * * *

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[(d) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the swap data repository may share information with any entity described in subsection (c)(7)—

[(1) the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and

[(2) each entity shall agree to indemnify the swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 8.]

(d) CONFIDENTIALITY AGREEMENT.—Before the swap data repository may share information with any entity described in subsection (c)(7), the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided.

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SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

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PERIODICAL AND OTHER REPORTS

SEC. 13. (a) * * *

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(n) SECURITY-BASED SWAP DATA REPOSITORIES.—

(1) * * *

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(5) DUTIES.—A security-based swap data repository shall—

(A) * * *

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[(H) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the security-based swap data repository may share information with any entity described in subparagraph (G)—

[(i) the security-based swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 24 relating to the information on security-based swap transactions that is provided; and

[(ii) each entity shall agree to indemnify the security-based swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 24.]

(H) CONFIDENTIALITY AGREEMENT.—Before the security-based swap data repository may share information with

any entity described in subparagraph (G), the security-based swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 24 relating to the information on security-based swap transactions that is provided.

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