

FINANCIAL COMPETITIVE ACT OF 2013

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JUNE 28, 2013.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 1341]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1341) to require the Financial Stability Oversight Council to conduct a study of the likely effects of the differences between the United States and other jurisdictions in implementing the derivatives credit valuation adjustment capital requirement, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 3, line 22, strike “; and” and insert a semicolon.

Page 4, line 2, strike the period at the end and insert “; and” and after such line insert the following:

(C) ensure that the Financial Stability Oversight Council fulfills its statutory mandate to identify risks and respond to emerging threats to financial stability.

PURPOSE AND SUMMARY

H.R. 1341, the Financial Competitive Act of 2013, requires the Financial Stability Oversight Council (FSOC) to study the likely effects of the differences between the U.S. and other jurisdictions in implementing the derivatives credit valuation adjustment (CVA) capital requirement. The bill also requires the study to examine the impact on derivatives end users and on the international derivatives market.

BACKGROUND AND NEED FOR LEGISLATION

The Capital Requirements Directive IV package (“CRD IV”), announced by the European Union (EU) on February 28, 2013, includes the CVA requirement and Basel III, which will implement internationally agreed-upon standards on capital and liquidity across the European Union. Derivatives transactions with sovereign, pension fund and corporate counterparties (which are exempt from clearing obligations) will be exempt from the CVA.

The EU CVA exemption has raised concerns that there will not be global derivatives regulatory alignment and that the CVA exemption could impact the pricing of trades and the amount of liquidity available for non-financial U.S. derivative end-users, as their transactions would not receive the CVA exemption. The FSOC study mandated by the bill is due within 90 days of enactment to the Chairman and Ranking Members of the Committees on Agriculture and Financial Services of the House of Representatives, as well as the Chairman and Ranking Members of the Committees on Agriculture, Nutrition and Forestry and Banking, Housing and Urban Affairs of the Senate.

On April 11, 2013, Ken Bentsen, Acting CEO and President of the Securities Industry and Financial Markets Association, testified before the Subcommittee on Capital Markets and Government Sponsored Enterprises of the House Committee on Financial Services that

This common sense bill would require [FSOC] to examine how variations in the implementation of Basel III capital rules related to derivatives will affect the health of the U.S. financial system. Furthermore, the legislation would require U.S. regulators to report to Congress with recommendations on how to develop greater uniformity in the standards and on how to minimize any adverse impact on both U.S. financial institutions and end-users of derivatives.¹

As noted above, the CRD IV proposal would provide European banks with an exemption from CVA capital requirements for derivatives transactions with certain entities, including pension funds, sovereigns and all corporate counterparties. Consequently, the U.S. financial system (as well as all non-European jurisdictions) will be left with a misalignment of standards that, if unaddressed, could have a significant impact on the real economy.

More specifically, a potential division between the U.S. and other jurisdictions with regard to CVA implementation could lead to price imbalances that will put U.S.-based institutions at a significant competitive disadvantage. Impacted entities include not only U.S. banks that could lose business to institutions based overseas, but also mainline commercial businesses that will be forced to pay higher prices for hedging their risk than their international competitors. In this context, it is worth noting a recent decision by Canadian officials to delay that country’s CVA capital requirement, despite moving forward with the rest of Basel III, until there is

¹The official transcript of this hearing was not available as of the time of the filing of this report. Mr. Bentsen’s testimony is available via hyperlink on the Financial Services Committee’s website at <<http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=326536>>.

more clarity around implementation in other jurisdictions and the impact on Canada’s financial services and business communities.

HEARINGS

The Subcommittee on Capital Markets and Government Sponsored Enterprises of the Financial Services Committee held a hearing on H.R. 1341 on April 11, 2013.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 7, 2013, and ordered H.R. 1341, as amended, to be reported favorably to the House by a recorded vote of 59 yeas to 0 nays (recorded vote no. FC–10), a quorum present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The only recorded vote occurred on the motion to report the bill, as amended, favorably to the House. The motion was adopted by a recorded vote of 59 yeas to 0 nays (recorded vote no. FC–10).

RECORD VOTE NO. FC–10

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	X	.....	.....	Mr. David Scott (GA)	X	.....	.....
Mr. McCarthy (CA)	X	.....	.....	Mr. Al Green (TX)	X	.....	.....
Mr. Pearce .....	.....	.....	.....	Mr. Cleaver	X	.....	.....
Mr. Posey	X	.....	.....	Ms. Moore	X	.....	.....
Mr. Fitzpatrick	X	.....	.....	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)	X	.....	.....
Mr. Grimm	X	.....	.....	Mr. Foster	X	.....	.....
Mr. Stivers	X	.....	.....	Mr. Kildee	X	.....	.....
Mr. Fincher	X	.....	.....	Mr. Murphy (FL)	X	.....	.....
Mr. Stutzman	X	.....	.....	Mr. Delaney	X	.....	.....
Mr. Mulvaney	X	.....	.....	Ms. Sinema	X	.....	.....
Mr. Hultgren	X	.....	.....	Mrs. Beatty	X	.....	.....
Mr. Ross	X	.....	.....	Mr. Heck (WA)	X	.....	.....
Mr. Pittenger	X	.....	.....		
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. 1341 will require the Financial Stability Oversight Council (FSOC) to study, among other things, the likely effects of the differences between the U.S. and other jurisdictions in implementing the derivatives credit valuation adjustment (CVA) capital requirement.

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, June 7, 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. 1341, the Financial Competitive 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,

ROBERT A. SUNSHINE
(For Douglas W. Elmendorf, Director).

Enclosure.

H.R. 1341—Financial Competitive Act of 2013

The Third Basel Accord, the latest in a series of international agreements among central banks and financial regulators to standardize capital requirements for banks, directs financial institutions

to, among other things, set aside additional capital reserves to account for the risk that counterparties participating in certain derivative agreements could default on the transaction. This additional capital requirement is known as the credit-value adjustment (CVA). H.R. 1341 would direct the Financial Stability Oversight Council (FSOC) to complete a study of the likely effects that differences between the way the United States and foreign regulators implement the CVA would have on financial institutions, users of derivatives, and derivatives markets. The study would include, among other things, an examination of the effect those differences would have on the pricing and cost of derivatives as well as the competitiveness of United States derivatives markets. H.R. 1341 would direct the FSOC to prepare a report of its findings for the Congress within 90 days of the date of enactment of the bill.

Based on information from the FSOC, CBO estimates that the bill would increase direct spending by about \$1 million over the 2014–2023 period for additional staff to conduct the study and prepare the report. Under current law, the FSOC is authorized to levy an assessment on certain financial institutions to offset its operating costs. Those assessments are recorded in the budget as revenues; CBO expects that the FSOC would exercise that authority, and therefore, we estimate that enacting the bill would increase revenues by about \$1 million as well.

In addition, CBO expects that the FSOC could use the expertise of staff from the regulatory agencies that make up the Council (the Federal Reserve System or the Securities and Exchange Commission, for example) to complete the study. CBO estimates that any additional costs incurred by those agencies would not be significant. On net, CBO estimates that enacting the bill would not have a significant effect on the deficit over the 10-year period. Because enacting H.R. 1341 would increase both direct spending and revenues, pay-as-you-go procedures apply.

H.R. 1341 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Assuming that the Financial Stability Oversight Council increases fees to offset the costs of conducting the study required by the bill, H.R. 1341 would impose a private-sector mandate by increasing the cost of an existing mandate on financial institutions required to pay those fees. Based on information from the FSOC, CBO estimates that the cost of the mandate would total about \$1 million over the next 10 years, and thus fall well below the annual threshold for private-sector mandates established in UMRA (\$150 million in 2013, adjusted annually for inflation).

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 section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1341 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. 1341 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. 1341 does not contain any directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION (AS AMENDED)

Section 1. Short Title. This section states that the Act may be cited as the Financial Competitive Act of 2013.

Section 2. Study of Implementation of Basel III Capital Requirements Related to Derivatives Exposures. This section requires the FSOC to conduct a study of the likely effects that differences between the U.S. and other jurisdictions in implementing the derivatives CVA capital requirements would have on: (i) U.S. financial institutions that conduct derivatives transactions and participate in derivatives markets; (ii) end users of derivatives; and (iii) international derivatives markets. The section requires certain content to be included in the study and requires the study to offer recommendations that Congress and the Federal financial regulatory agencies that comprise the FSOC should take in response to the study's findings.