

## [H.R. 1847, Swap Data Repository and Clearinghouse Indemnification Correction Act of 2015, as amended](#)

### FLOOR SITUATION

On Tuesday, July 14, 2015, the House will consider [H.R. 1847](#), *the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2015, as amended*, under suspension of the rules. H.R. 1847 was introduced on April 16, 2015, by Rep. Rick Crawford (R-AR) and was referred to the Committee on Agriculture, and in addition, to the Committee on Financial Services. The Committee on Financial Services ordered the bill reported by a vote of [60 to 0](#) on May 20, 2015.

### SUMMARY

H.R. 1847 repeals the indemnification provisions in Sections 725, 728, and 763 of the Dodd-Frank Wall Street Reform and Consumer Protection Act in an attempt 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

Swap data repositories (SDRs) serve as electronic warehouses for data and information regarding swap transactions.<sup>1</sup> Under current law, derivatives clearing organizations (DCOs) and SDRs must report information about swap<sup>2</sup> 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). Such information also must be shared with other regulatory agencies,<sup>3</sup> both foreign and domestic, if those agencies request the information and agree to certain conditions.

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

<sup>1</sup> See [House Report 113-106 Part I](#) at 1.

<sup>2</sup> 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.

<sup>3</sup> See CBO Report, [“H.R. 1847 Swap Data Repository and Clearinghouse Indemnification Correction Act of 2015.”](#) June 17, 2015.

data with a foreign regulator, however, the foreign regulator must agree that it will abide by applicable confidentiality requirements, and that it will indemnify the data repository and the SEC or the CFTC for litigation expenses that may result from the sharing of data with the foreign regulator.<sup>4</sup>

Section 725 of the Dodd-Frank Act imposes similar requirements for data sharing between DCOs 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.<sup>5</sup>

H.R. 1847 would eliminate the indemnification requirements in these sections. The bill would still require the regulatory agencies requesting the information to agree to certain confidentiality requirements prior to receiving the data.

According to the bill sponsor, “unlike most of the world, the concept of indemnification is only established within U.S. tort law. As a result, foreign regulators have been reluctant to comply with this provision, and international regulatory coordination is being thwarted. While the idea of the provision was to protect market confidentiality, in practice, it threatens to fragment global data on swap markets. Foreign regulators would be forced to create their own SDRs, resulting in a fragmented global data framework where regulators can’t possibly see a complete picture of the marketplace. Without effective coordination between international regulators and SDRs, monitoring and mitigating global systemic risk is severely limited. [The bill] fixes this problem altogether. And while the CFTC seeks to clarify this provision through interpretive guidance, all indications are that there is no viable solution without adopting my legislation.”<sup>6</sup>

H.R. 1847 is similar to [H.R. 742](#), which passed the House on June 12, 2013 by a vote of 420 to 2. The Senate did not act on the House-passed bill in the 113<sup>th</sup> Congress.

## **COST**

The Congressional Budget Office (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, CBO estimates that the net cost to the agency would be negligible, assuming annual appropriation actions consistent with that authority.

## **STAFF CONTACT**

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.

---

<sup>4</sup> See [House Report 113-106 Part I](#) at 2.

<sup>5</sup> Id.

<sup>6</sup> See press release, [“Crawford Swap Market Transparency Bill Gets Hearing.”](#) March 14, 2013.