



## Legislative Bulletin.....June 12, 2013

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### H.R. 1256 — Swap Jurisdiction Certainty Act (Garrett, R-NY)

**Order of Business:** The bill is [scheduled](#) to be considered on Wednesday, June 12, 2013, under a closed rule, with forty-minutes divided equally between the Chair and Ranking Member of the House Committee on Financial Services, and twenty-minutes divided equally between the Chairman and Ranking member of the House Committee on Agriculture. Additional details regarding the rule can be viewed [here](#).

**Major Changes Since the Last Time This Legislation was Before the House:** Similar legislation, [H.R. 3283](#), was introduced by Rep. Himes in the 112<sup>th</sup> Congress. It was reported favorably by the Committee on Financial Services by a vote of 41-18. The definitions of “U.S. person” and “Non-U.S. person” were more limited in scope in H.R. 3283 than in H.R. 1256.

**Summary:** [HR. 1256](#) clarifies how swaps between U.S persons<sup>1</sup> and non-U.S. persons are treated by the Commodity Futures Trading Commission (CFCT) and the Securities and Exchange Commission (SEC). This bill requires the CFCT and the SEC (the “Commissions”) to work together to issue identical joint rules so that there is no conflict on regulations regarding cross-border swaps between U.S persons and non-U.S. persons. Non-U.S. persons in compliance with their home foreign regulations from one of the largest international swaps markets would be exempt from U.S. swaps requirements unless the Commissions jointly determine that the foreign jurisdiction’s regulations are *not* “broadly equivalent” to U.S. swaps requirements. The Commissions must jointly establish standards for determining which foreign jurisdictions are not

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<sup>1</sup> H.R. 1256 defines “U.S. person” as “any natural person resident in the United States; any partnership, corporation, trust, or other legal person organized or incorporated under the laws of the United States or having its principal place of business in the United States; any account (whether discretionary or non-discretionary) of a U.S. person; and any other person as the Commissions may further jointly define to more effectively carry out the purposes of the act . . .”

“broadly equivalent” and issue a report to Congress detailing why the regulatory regimes of certain countries are not “broadly equivalent.”

The joint rules for cross-border swaps issued by the Commissions must address:

- the significance of the non-U.S. person’s connections to the U.S. that require the person to register with the CFTC and the SEC;
- which U.S. swaps requirements apply to the activities of U.S. persons, non-U.S persons; and their affiliates, subsidiaries, branches and agencies; and
- the conditions under which a non-U.S. person following the regulations of its home jurisdiction can be exempt from the swap requirements of U.S. regulators.

**Additional Background:** According to the [SEC](#), swaps are “financial contracts in which two counterparties agree to exchange or ‘swap’ payments with each other as a result of such things as changes in a stock price, interest rate or commodity price.” A diagram of the current regulatory regime for security-based swaps can be viewed [here](#). The CFTC has issued “guidance” for cross-border swaps, which do not have to force of law. The SEC issues rules, which do have force of law. Under current law, the CFTC and the SEC could issue conflicting regulations. According to the Committee on Financial Services, this legislation is needed because regulators are considering applying Title VII of the Dodd-Frank Act more broadly than Congress intended. In general, the [SEC](#) defines “derivatives” as “financial instruments whose performance is derived, at least in part, from the performance of an underlying asset, security or index. For example, a stock option is a derivative because its value changes in relation to the price movement of the underlying stock.”

**Committee Action:** H.R. 1256 was introduced on by Rep. Garrett on March 19, 2013. It was referred to the House Committee on Agriculture and the House Committee on Financial Services. It was reported favorably by the House Committee on Agriculture on March 20, 2013, by a [voice vote](#). It was reported favorably by the Committee on Financial Services on May 7, 2013, by a [vote](#) of 48-11.

**Administration Position:** On June 11, 2013, the Executive Office of the President issued a [Statement of Administration Policy \(SAP\)](#) in opposition to H.R. 1256.

**Cost to Taxpayers:** According to the Congressional Budget Office (CBO) [cost estimate](#), implementation of this bill would cost \$4 million for the SEC and \$4 million for CFTC, or \$8 million in total. However, the SEC is entitled to collect fees to offset costs so the net cost to the SEC would be “negligible”. The net costs to the CFTC would be \$4 million. The CBO cost estimates for version of H.R. 1256 as [reported by the House Committee on Agriculture](#) and the version as [reported by the House Committee on Financial Services](#) are the same.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No. However, [CBO estimates](#) that “implementing H.R. 1256 would increase the workload of both agencies to undertake a new rulemaking effort and an assessment of the regulations of the large swap markets.”

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10<sup>th</sup> Amendment?:** No.

**Does the Bill Delegate Any Legislative Authority to the Executive Branch?:** No.

**Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No.

**Constitutional Authority:** According to the sponsor, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clauses 1 (‘The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States’), 3 (‘To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes’), and 18 (‘to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof’).” Congressman Garrett’s statement in the Congressional record can be viewed [here](#).

**Outside Organizations in Support:**

- The U.S. Chamber of Commerce has indicated that they support H.R. 1256 and they “may consider including votes on, or in relation to, these bills in [their] annual *How They Voted* scorecard.”
- Securities Industry and Financial Markets Association (SIFMA)

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## **H.R. 634 — Business Risk Mitigation and Price Stabilization Act of 2013 (Grimm, R-NY)**

**Order of Business:** The bill is [scheduled](#) to be considered on Wednesday, June 12, 2013, under a motion to suspend the rules and pass the bill, which requires a two-thirds majority vote for passage.

**Major Changes Since the Last Time This Legislation was Before the House:** Similar legislation, [H.R. 2682](#), was introduced by Rep. Grimm in the 112<sup>th</sup> Congress. It was placed on the Calendar under a suspension of the rules and passed by a [vote](#) of 370-24 on March 26, 2012.

**Summary:** [H.R. 634](#) provides end-user exemptions from the capital and margin requirements of Title VII of the Dodd-Frank Act (P.L. 111-203) relating to certain swaps.

**Additional Background:** According to the Committee on Financial Services, regulators do not have the authority to impose margin requirements for end-users under the Dodd-Frank Act. The [SEC](#) defines swaps as “financial contracts in which two counterparties agree to exchange or ‘swap’ payments with each other as a result of such things as changes in a stock price, interest rate or commodity price.” However, regulators have indicated that they will impose margin requirements on end-users that conduct swaps with a regulated entity. Many non-financial businesses that manage their business risk with derivatives are “end-users” and could be subject to the increased margin requirements that regulators have stated their intent to impose. According to the SEC, an “end-user” is “not a financial entity” and “is using the swap to hedge or mitigate commercial risk.” In general, the [SEC](#) defines “Derivatives” as “financial instruments whose performance is derived, at least in part, from the performance of an underlying asset, security or index. For example, a stock option is a derivative because its value changes in relation to the price movement of the underlying stock.”

**RSC Bonus Fact:** Federal Reserve Chairman Ben Bernanke has publically stated in testimony before the Senate Banking Committee that he supports relief from the margin requirements that regulators seek to impose on non-financial end-users in derivatives swaps transactions.

**Committee Action:** H.R. 634 was introduced on February 13, 2013, by Rep. Grimm. It was referred to both the House Committee on Agriculture and the House Committee on Financial Services. On March 20, 2013, the House Committee on Agriculture reported the bill favorably by a [voice vote](#). On May 7, 2013, the House Committee on Financial Services favorably reported the bill by [vote](#) of 59-0.

**Administration Position:** At time of press there was no Statement of Administration Policy (SAP) available.

**Cost to Taxpayers:** According to the Congressional Budget Office (CBO) [cost estimate](#) “any change in discretionary spending by the SEC or the CFTC to implement the legislation would not be significant” and the net cost to the SEC “would be negligible.” The CBO conducted cost estimates for the versions of H.R. 634 that passed the House Committee on Agriculture and the House Committee on Financial Services. According to the CBO, since both versions of the bill are the same, the costs estimates are the same.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10<sup>th</sup> Amendment?:** No.

**Does the Bill Delegate Any Legislative Authority to the Executive Branch?:** No.

**Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No.

**Constitutional Authority:** No.

**Outside Organizations in Support:**

- The U.S. Chamber of Commerce has indicated that they support H.R. 634 and they “may consider including votes on, or in relation to, these bills in [their] annual *How They Voted* scorecard.”

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## **H.R. 742 — Swap Data Repository and Clearing House Indemnification Correction Act of 2013 (Crawford, R-AR)**

**Order of Business:** The bill is [scheduled](#) to be considered on Wednesday, June 12, 2013, under a motion to suspend the rules and pass the bill, which requires a two-thirds majority vote for passage.

**Major Changes Since the Last Time This Legislation was Before the House:** Similar legislation, [H.R. 4235](#), was introduced in the 112<sup>th</sup> Congress. It passed the Committee on Financial Services by voice vote on March 27, 2012.

**Summary:** The Dodd-Frank Act imposed an indemnification clause on foreign regulators as a condition of obtaining access to data repositories. [H.R. 742](#) removes this requirement and replaces it with a requirement that foreign regulators sign a written confidentiality agreement before information on swap transactions is provided.

**Additional Background:** The [SEC](#) defines swaps as “financial contracts in which two counterparties agree to exchange or ‘swap’ payments with each other as a result of such things as changes in a stock price, interest rate or commodity price.” According to the Committee on Financial Services, the indemnification clause imposed by Dodd-Frank “threaten[s] to make data sharing agreements with foreign regulators unworkable.” According to written testimony given by [SEC](#) to the House Committee on Financial Services, the indemnification clause under the Dodd-Frank Act would require foreign regulators to agree to pay “for any expenses arising from litigation relating to the information provided” to them. In that same testimony, the [SEC](#) stated that it “recommends that Congress consider removing the indemnification requirement added by the Dodd-Frank Act.”

**Committee Action:** H.R. 742 was introduced on February 15, 2013, and referred to the House Committee on Agriculture and the House Committee on Financial Services. On March 20, 2013,

the House Committee on Agriculture favorably reported the bill by [voice vote](#). On May 7, 2013, the House Committee on Financial Services favorably reported the bill by a [vote](#) of 52-0.

**Administration Position:** At time of press no Statement of Administration Policy (SAP) was available.

**Cost to Taxpayers:** According to the Congressional Budget Office (CBO) [cost estimate](#) the net costs would be negligible.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10<sup>th</sup> Amendment?:** No.

**Does the Bill Delegate Any Legislative Authority to the Executive Branch?:** No.

**Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No.

**Constitutional Authority:** According to the sponsor, “Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8, clause 3, which provides Congress the power to ‘regulate commerce with foreign Nations and among the several States.’” Congressman Crawford’s statement in the Congressional Record can be viewed [here](#).

**Outside Organizations:** The U.S. Chamber of Commerce has indicated that they support H.R. 742 and they “may consider including votes on, or in relation to, these bills in [their] annual *How They Voted* scorecard.”

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## **H.R. 1038 — Public Power Risk Management Act of 2013 (LaMalfa, R-CA)**

**Order of Business:** The legislation is scheduled to be considered on June 12, 2013, under a motion to suspend the rules and pass the bill, which requires a two-thirds majority vote for passage.

**Summary:** H.R. 1038 amends the Commodity Exchange Act, specifically making amendments to the language dealing with how state-established utility entities are treated.

When making a determination as to if a swap dealer may receive a *de minimis* exception, the Commodity Futures Trading Commission (CFTC) shall treat a utility operations-related swap entered into with a utility special entity, as if it were entered into with an entity that is not a special entity.

The term “utility special entity” is defined as a special entity, or any instrumentality, department, or corporation of or established by a State or political subdivision of a State, that:

- “owns or operates an electric or natural gas facility or an electric or natural gas operation;
- “supplies natural gas and or electric energy to another utility special entity;
- “has public service obligations under Federal, State, or local law or regulation to deliver electric energy or natural gas service to customers; or
- “is a Federal power marketing agency, as defined in section 3 of the Federal Power Act.”

If a swap dealer receives the exemption, then they are not considered a swap dealer for purposes of regulation under the Dodd-Frank Wall Street Reform Act (Dodd-Frank). Amendments made by this legislation are made retroactively to the enactment of Dodd-Frank, July 21, 2010.

**Additional Information:** According to the sponsor:

There are over 2,000 municipal, state and locally-owned, not-for-profit utilities throughout the United States. As a group, public power utilities deliver electricity to one in every seven electricity customers in the United States, over 47 million people, serving some of the nation’s largest cities, such as Los Angeles, San Antonio, Seattle and Orlando.

H.R. 1038—the “Public Power Risk Management Act of 2013”—would allow counterparties of government-owned utilities, such as energy producers, utility companies, and other non-financial companies, to continue entering into energy swaps with utility special entities without punitively requiring them to register with the CFTC as a “swap dealer” under the Dodd-Frank Act solely because of their dealings with government-owned utilities. To hinder these utilities’ ability to manage risk would only increase their costs and possibly lead to higher energy rates for millions of Americans – an unacceptable result during a period of tremendous economic uncertainty.

The Dodd-Frank Wall Street Reform and Consumer Protection Act passed the House of Representatives on December 11, 2009, by a [roll call vote of 223-202](#). The Conference Report then passed the House on June 30, 2010, by a [roll call vote of 237-192](#). The legislation became law on July, 21, 2010.

**Outside Group Support:**

- American Public Power Association
- Consumer Federation of America
- Commodity Markets Oversight Coalition (including Public Citizen)
- Edison Electric Institute

**Committee Action:** H.R. 1038 was introduced on January 15, 2013, and was referred to the House Agriculture Committee. On March 20, 2013, the full committee [held a markup](#) and reported the bill without amendment.

**Administration Position:** No Statement of Administration Policy is available.

**Cost to Taxpayers:** CBO estimates that implementing the bill would have a negligible effect on spending subject to appropriation. CBO's report can be [viewed here](#).

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to CBO, H.R. 1038 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

**Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The legislation does not contain earmarks, limited tax benefits or limited tariff benefits.

**Constitutional Authority:** Rep. LaMalfa states "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3 of the United States Constitution, as this legislation regulates commerce with foreign nations, between the states, and with Indian Tribes." The statement can be [viewed here](#).

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## **H.R. 2167 — Reverse Mortgage Stabilization Act of 2013 (Heck, D-WA)**

**Order of Business:** The bill is [scheduled](#) to be considered on Wednesday, June 12, 2013, under a motion to suspend the rules and pass the bill, which requires a two-thirds majority vote for passage.

**Summary:** [H.R. 2167](#) explicitly authorizes the Secretary of Housing and Urban Development to improve the soundness and fiscal safety of the Federal Housing Administration Reverse Mortgage (HECM) loan program.

**Additional Background:** Reverse mortgages are often used by seniors as an alternative source of cash. The HECM program, which is the Federal Housing Administration's (FHA) reverse mortgage program, is authorized by section 255 of the National Housing Act. The program is available to homeowners 62 years or older that complete housing counseling. The program allows the homeowners to withdraw equity in their homes under a variety of formats offered by FHA. The equity may be withdrawn all at once in a lump sum payment or through payments at various lengths of time. This bill is a result of the FHA's desire to ensure the financial stability of the program. According to the [Independent Actuary's Report](#) from November 16, 2016, if

FHA stopped writing loans immediately, the program would have a negative value of \$2.8 billion.

According to [testimony](#) submitted by to the House Committee on Financial Services, this legislation will allow FHA to “temporarily make changes to the HECM program via Mortgagee Letter while formal rule making is simultaneously in progress. Specifically, given this explicit authority, FHA would make the following changes via Mortgagee Letter in FY 2013:

- Limit the amount of the allowable draw;
- Where appropriate, mandate the use of escrow accounts or a set-aside to ensure continued and timely payment of property charges including taxes and insurance, and;
- Require the use of a financial assessment as part of the loan origination process to ensure the appropriateness of HECM products for potential borrowers.”

In summary, the bill would give FHA the flexibility to enhance the financial viability of the reverse mortgage program.

**Committee Action:** H.R. 2167 was introduced on May 23, 2013. It was referred to the House Committee on Financial Services. The Committee took no further action on the bill but did conduct a [hearing](#) on the government’s role in reverse mortgages on May 16, 2013.

**Possible Conservative Concerns:** Some conservatives have expressed concern that passage of this bill will impede broader FHA reform.

**Administration Position:** At time of press no Statement of Administration Policy (SAP) was available.

**Cost to Taxpayers:** No Congressional Budget Office (CBO) cost estimate was available.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10<sup>th</sup> Amendment?:** No.

**Does the Bill Delegate Any Legislative Authority to the Executive Branch?:** No.

**Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No.

**Constitutional Authority:** According to the bill sponsor, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1 (relating to the General Welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).” Congressman Heck’s statement in the Congressional Record can be viewed [here](#).

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