On March 30, 2011, the agency summarized its work on this bill in the testimony
Review of CBO's Cost Estimate for the Dodd-Frank Wall Street Reform and Consumer Protection Act.

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

June 9, 2010

H.R. 4173
Restoring American Financial Stability Act of 2010

As passed by the Senate on May 20, 2010

SUMMARY

H.R. 4173 would grant new federal regulatory powers and reassign existing regulatory authority among federal agencies with the aim of reducing the likelihood and severity of financial crises.

The legislation would establish a program to facilitate the resolution of large financial institutions that become insolvent or are in danger of becoming insolvent when their failure is determined to threaten the stability of the nation's financial system (such institutions are known as systemically important firms). The Federal Deposit Insurance Corporation (FDIC) would be authorized to borrow funds from the Treasury to finance liquidation activities and to assess fees on large financial firms to recoup any losses, including interest costs.

Other provisions of H.R. 4173 would change how financial institutions and securities markets are regulated, create a new Bureau of Consumer Financial Protection (BCFP), broaden the authority of the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC), establish a grant program to encourage the use of traditional banking services, expand the supervision of firms that settle payments between financial institutions, and make many other changes to current laws.

H.R. 4173 also would change the terms and conditions of FDIC programs to guarantee financial obligations of banks and bank holding companies when federal officials determine that market conditions are impeding the normal provision of financing to creditworthy borrowers (known as a liquidity crisis). Under the program, participants would be charged fees designed to recover the costs of the government guarantees. The act would repeal the agency's existing authority to provide such assistance and create a new framework for future guarantees. Use of the new authorities would be contingent on the enactment of future legislation; consequently, CBO's cost estimate reflects the budgetary impact of eliminating the current authorization but includes no costs for the new program authorized by H.R. 4173 (such costs would be attributable to the future legislation that triggers use of the new authorities).

Under the legislation, as under current law, there is some probability that, at some point in the future, large financial firms will become insolvent and liquidity crises will arise, and that those financial problems will present significant risks to the nation's broader economy. The cost of addressing those problems under current law is unknown and would depend on how the Administration and the Congress chose to proceed when faced with financial crises in the future; they could, for example, change laws, create new programs, appropriate additional funds, and assess new fees. Depending on the effectiveness of the new regulatory initiatives and new authorities to resolve and support a broad variety of financial institutions contained in H.R. 4173, enacting this legislation could change the timing, severity, and federal cost of averting and resolving future financial crises. However, CBO has not determined whether the estimated costs under the act would be smaller or larger than the costs of alternative approaches to addressing future financial crises and the risks they pose to the economy as a whole.

Estimated Impact on the Federal Budget

CBO and the Joint Committee on Taxation (JCT) estimate that enacting H.R. 4173 would increase revenues by $12.1 billion over the 2011-2015 period and by $33.5 billion over the 2011-2020 period and increase direct spending by $25.0 billion and $53.2 billion over the same periods, respectively. In total, CBO estimates those changes would increase budget deficits by $12.9 billion over the 2011-2015 period and by $19.7 billion over the 2011-2020 period.[1] In addition, CBO estimates that implementing the act would increase spending subject to appropriation by $4.6 billion over the 2011-2015 period and $13.2 billion over the 2011-2020 period.

Because enacting the legislation would affect direct spending and revenues, pay-as-you-go procedures apply. Pursuant to section 311 of the Concurrent Resolution on the Budget for Fiscal Year 2009 (S. Con Res. 70), CBO estimates that the act would increase projected deficits by more than $5 billion in at least one of the four consecutive 10-year periods starting in 2021.

Intergovernmental and Private-Sector Mandates

The act would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on banks and other private and public entities that participate in financial markets. The legislation also would impose intergovernmental mandates by prohibiting states from taxing and regulating certain insurance products issued by companies that are based in other states and by preempting certain state laws. Because the costs of complying with some of the mandates would depend on future

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1. Different time periods are relevant for the purpose of enforcing the current pay-as-you-go rules in the Senate and the House of Representatives. Over the 2010-2014 period, CBO estimates that enacting H.R. 4173 would increase direct spending by $19.7 billion, revenues by $9.1 billion, and net deficits by $10.6 billion. Over the 2010-2019 period, we estimate that enacting H.R. 4173 would increase direct spending by $46.9 billion, revenues by $28.6 billion, and net deficits by $18.3 billion.

regulations that would be established by the act, and because CBO has limited information about the extent to which public entities enter into swaps with unregulated entities, CBO cannot determine whether the aggregate costs of the intergovernmental mandates would exceed the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation). However, CBO estimates that the cost of the mandates on private-sector entities would significantly exceed the annual threshold established in UMRA for such mandates ($141 million in 2010, adjusted annually for inflation) because the amount of fees collected would be more than that amount.

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ABBREVIATIONS USED IN THE COST ESTIMATE

BCFP – Bureau of Consumer Financial Protection
CFTC – Commodity Futures Trading Commission
DIF – Deposit Insurance Fund
FDIC – Federal Deposit Insurance Corporation
FSOC – Financial Stability Oversight Council
GAO – Government Accountability Office
JCT – Joint Committee on Taxation
OCC – Office of the Comptroller of the Currency
OFR – Office of Financial Research
OLF – Orderly Liquidation Fund
OTS – Office of Thrift Supervision
PCAOB – Public Company Accounting Oversight Board
SEC – Securities and Exchange Commission
SIPC – Securities Investor Protection Corporation

MAJOR PROVISIONS

Title I would establish the Financial Stability Oversight Council and the Office of Financial Research (OFR), both of which would be funded by assessments on certain financial and nonfinancial entities starting two years after the act's enactment. For the first two years after enactment, the Federal Reserve would fund those activities. Title I also would direct the Federal Reserve to register and supervise non-bank financial companies.

Title II would establish a new program for resolving certain financial firms that are insolvent or in danger of becoming insolvent. The act would create the Orderly Liquidation Fund (OLF) from which the costs of liquidation would be paid. The FDIC could borrow funds to pay resolution costs and would be directed to assess fees on private firms to recover costs incurred by the fund.

Title III would abolish the Office of Thrift Supervision (OTS) and change the regulatory oversight of banks, thrifts, and related holding companies by transferring authorities and employees among the remaining financial regulators.

Titles IV, VII, and IX would change and broaden the authority of the SEC to oversee activities and entities associated with the national securities exchanges. Title IX also would require that initial issuances of certain asset-backed securities obtain credit ratings from a credit rating agency approved and selected by an entity established by the SEC.

Title V would establish an Office of National Insurance and set national standards for how states may regulate and collect taxes for a type of insurance that covers unique or atypical risks—known as "surplus lines" or "nonadmitted insurance." The act also would establish national standards for how states regulate reinsurance—often referred to as insurance for insurance companies.

Titles VI would modify the regulation of bank, thrift, and securities holding companies.

Title VII would change and broaden the authority of the CFTC to regulate certain derivatives transactions on over-the-counter markets. Title VII also would require that certain types of transactions be traded on regulated exchanges; for the purpose of paying individual income taxes, this requirement would change the tax treatment of such activities.

Title VIII would broaden the supervision of certain firms that settle payments between financial institutions.

Title X would establish the BCFP as an independent agency within the Federal Reserve to enforce federal laws that affect how banks and nonfinancial institutions make financial products available to consumers for their personal use. The BCFP would be funded by transfers from the Federal Reserve.

Title XI would revise the FDIC's authority to guarantee obligations of certain financial entities when federal officials determine that the economy faces a liquidity crisis. Future legislation would be required before the FDIC could use this authority. This title also would make changes to certain lending activities of the Federal Reserve.

Title XII would establish several grant programs to encourage certain individuals to increase their use of the federally insured banking system and community-based financial institutions.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4173 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit), 450 (community and regional development), and 800 (general government).

TABLE 1. ESTIMATED BUDGETARY IMPACT OF H.R. 4173, THE RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

	By Fiscal Year, in Billions of Dollars											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011-2015	2011-2020
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	4.0	6.2	5.3	5.0	5.3	5.6	5.5	5.2	5.8	6.4	25.7	54.0
Estimated Outlays	3.6	6.1	5.1	5.0	5.3	5.5	5.4	5.2	5.7	6.4	25.0	53.2
CHANGES IN REVENUES												
Estimated Revenues	1.8	2.1	2.5	2.7	3.0	3.4	4.0	4.4	4.7	4.9	12.1	33.5
NET CHANGES IN THE BUDGET DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Estimated Impact on Deficit [a]	1.7	4.0	2.6	2.3	2.3	2.1	1.4	0.8	1.1	1.5	12.9	19.7
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	0.7	0.7	0.9	1.0	1.2	1.3	1.5	1.7	1.9	2.2	4.4	13.1
Estimated Outlays	0.8	0.7	0.9	1.0	1.2	1.3	1.5	1.7	1.9	2.2	4.6	13.2

a. Positive numbers indicate increases in deficits.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 4173 will be enacted before the end of fiscal year 2010, that the necessary amounts will be appropriated in each year, and that spending will follow historical patterns for activities of the FDIC, the Federal Reserve, and other agencies.

CBO estimates that the net increase in the deficit as a result of the changes in revenues and direct spending would total $19.7 billion over the 2011-2020 period. Most of the estimated cost would stem from potential net outlays for the orderly liquidation of systemically important firms, measured on an expected value basis.

The cost of the orderly liquidation program would be offset in part by a $4.9 billion decrease in the net deficit that would result from providing the SEC permanent authority to collect and spend certain fees and reclassifying discretionary spending and offsetting collections for the SEC as direct spending and revenues. Revenues from the fees would exceed the SEC's outlays. (Under current law, the SEC's authority to collect and spend fees is provided in annual appropriation acts; fee collections are recorded as offsetting collections, that is, a credit against the agency's spending.) Fees collected by the SEC have historically exceeded the agency's spending; those excess collections currently offset discretionary spending in other areas of the budget. Consequently, changing the budgetary treatment of the SEC's spending and receipts would increase discretionary spending by removing that offset. CBO estimates that such spending would increase by about $11.8 billion over the 2011-2020 period. (Other provisions of the act would increase discretionary spending by $1.4 billion over the same period.) The $4.9 billion in net savings from the change in direct spending and revenues would be less than the increase in discretionary outlays because the SEC fees under H.R. 4173 would be lower than those projected under current law.

Direct Spending and Revenues

CBO estimates that enacting the legislation would increase revenues by $33.5 billion over the 2011-2020 period (see Table 2). About $24.4 billion of those revenues would be reclassified fees collected by the SEC; the remaining revenues would arise from other activities under the act. Specifically:

- Several provisions of the act, most importantly those establishing the BCFP and reassigning supervisory responsibilities over financial institutions among the various regulators, would increase the net earnings of the Federal Reserve, which are recorded in the budget as revenues.

- Assessments imposed by the FDIC as part of the orderly liquidation authority also would increase revenues, as would additional fees collected by the Public Company Accounting Oversight Board (PCAOB) and the Securities Investor Protection Corporation (SIPC).

TABLE 2. NET CHANGES IN THE BUDGET DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES UNDER H.R. 4173, THE RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

	By Fiscal Year, in Billions of Dollars											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011-2015	2011-2020
NET CHANGES IN THE BUDGET DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES [a]												
Orderly Liquidation Authority	2.4	4.4	2.9	2.1	2.0	1.9	1.4	0.8	1.1	1.4	13.7	20.3
Securities and Exchange Commission Regulation	-0.7	-0.5	-0.4	-0.4	-0.5	-0.5	-0.5	-0.5	-0.5	-0.5	-2.5	-4.9
Consumer Financial Protection	*	0.1	0.1	0.4	0.4	0.4	0.4	0.4	0.4	0.5	1.0	3.2
Emergency Financial Stability	-0.1	-0.3	-0.4	-0.3	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-1.2	-2.1
Changes Among Financial Regulators	*	*	0	*	*	-0.1	-0.1	-0.1	-0.1	-0.1	*	-0.3
Derivatives Regulation	*	0.1	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.8	1.5
Other Financial Oversight and Protection	*	0.1	0.1	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.7	1.3
Financial Stability Oversight	*	*	*	0.1	0.1	*	*	*	*	*	0.3	0.4
Other Provisions Affecting the Federal Reserve	*	*	*	*	*	*	*	*	*	*	*	0.1
Credit Rating Agency Board	*	*	*	*	*	*	*	*	*	*	0.1	0.1
Total Change in the Budget Deficit	1.7	4.0	2.6	2.3	2.3	2.1	1.4	0.8	1.1	1.5	12.9	19.7
CHANGES IN REVENUES												
Orderly Liquidation Authority [b]	0	*	0.2	0.3	0.4	0.6	0.8	1.0	1.2	1.4	0.9	6.0
Securities and Exchange Commission Regulation	1.8	1.9	2.1	2.2	2.3	2.5	2.7	2.9	2.9	3.0	10.3	24.4
Consumer Financial Protection	0	0	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.4	1.2
Changes Among Financial Regulators	0	*	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.6
Derivatives Regulation	0	-0.1	-0.2	-0.2	-0.2	-0.2	-0.1	-0.1	-0.1	-0.1	-0.7	-1.3
Other Financial Oversight and Protection	0	*	*	*	*	0.1	0.1	0.2	0.2	0.2	0.1	0.8
Financial Stability Oversight	0	0	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.5
Other Provisions Affecting the Federal Reserve	*	*	*	*	*	*	*	*	*	*	*	-0.1
Credit Rating Agency Board	*	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.7	1.4
Total Changes in Revenues	1.8	2.1	2.5	2.7	3.0	3.4	4.0	4.4	4.7	4.9	12.1	33.5

Continued

TABLE 2. Continued

	By Fiscal Year, in Billions of Dollars											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011-2015	2011-2020
CHANGES IN DIRECT SPENDING												
Orderly Liquidation Authority												
Estimated Budget Authority	2.4	4.4	3.1	2.3	2.4	2.5	2.2	1.8	2.3	2.9	14.6	26.3
Estimated Outlays	2.4	4.4	3.1	2.3	2.4	2.5	2.2	1.8	2.3	2.9	14.6	26.3
Securities and Exchange Commission Regulation												
Estimated Budget Authority	1.5	1.5	1.7	1.8	1.9	2.1	2.3	2.4	2.5	2.5	8.3	20.1
Estimated Outlays	1.1	1.5	1.6	1.7	1.9	2.0	2.2	2.4	2.5	2.5	7.8	19.4
Consumer Financial Protection												
Estimated Budget Authority	0.1	0.1	0.3	0.6	0.6	0.6	0.6	0.6	0.6	0.6	1.5	4.6
Estimated Outlays	*	0.1	0.2	0.5	0.6	0.6	0.6	0.6	0.6	0.6	1.4	4.5
Emergency Financial Stability												
Estimated Budget Authority	-0.1	-0.3	-0.4	-0.3	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-1.2	-2.1
Estimated Outlays	-0.1	-0.3	-0.4	-0.3	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-1.2	-2.1
Changes Among Financial Regulators												
Estimated Budget Authority	*	0.1	0.1	*	*	*	*	*	*	*	0.2	0.3
Estimated Outlays	*	0.1	0.1	*	*	*	*	*	*	*	0.2	0.3
Derivatives Regulation												
Estimated Budget Authority	*	*	*	*	*	*	*	*	*	*	0.1	0.2
Estimated Outlays	*	*	*	*	*	*	*	*	*	*	0.1	0.2
Other Financial Oversight and Protection												
Estimated Budget Authority	*	0.1	0.1	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.8	2.2
Estimated Outlays	*	0.1	0.1	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.8	2.2
Financial Stability Oversight												
Estimated Budget Authority	*	0.1	0.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.5	0.9
Estimated Outlays	*	*	0.1	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.5	0.9
Credit Rating Agency Board												
Estimated Budget Authority	*	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.8	1.5
Estimated Outlays	*	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.8	1.5
Total Changes in Direct Spending												
Estimated Budget Authority	4.0	6.2	5.3	5.0	5.3	5.6	5.5	5.2	5.8	6.4	25.7	54.0
Estimated Outlays	3.6	6.1	5.1	5.0	5.3	5.5	5.4	5.2	5.7	6.4	25.0	53.2

Continued

TABLE 2. Continued

	By Fiscal Year, in Billions of Dollars											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011-2015	2011-2020
MEMORANDUM:												
CHANGES IN DIRECT SPENDING CONTINGENT ON FUTURE LEGISLATION[c]												
Emergency Financial Stability												
Estimated Budget Authority	0.1	0.4	0.5	0.3	0.3	0.3	0.3	0.3	0.3	0.2	0.2	2.9
Estimated Outlays	0.1	0.4	0.5	0.3	0.3	0.3	0.3	0.3	0.3	0.2	0.2	2.9

Note:. *= between -$50 million and $50 million. Components may not sum to totals because of rounding.

a. Positive numbers indicate increases in deficits; negative numbers indicate decreases in deficits.

b. The legislation could affect federal tax receipts under the Internal Revenue Code. However, there are a number of uncertainties regarding potential effects of the use of a bridge financial company by the Federal Deposit Insurance Corporation on the tax attributes of a failed financial institution. It is not possible to determine whether the use of a bridge financial company would provide a tax result that is more or less favorable than bankruptcy, which is the current-law alternative. Therefore, the staff of the Joint Committee on Taxation is not currently able to estimate the changes in tax revenue that would result from this provision of the act.

c. While the legislation would expand the authorities of the FDIC, the use of that new authority would be contingent on the enactment of future legislation. The resulting costs of triggering the use of the new authority are shown here.

CBO estimates that enacting the legislation would increase direct spending by $53.2 billion over the 2011-2020 period. About $19.4 billion of that amount would result from allowing the SEC to spend certain fees without annual appropriation action. Additional costs would be incurred to establish the BCFP, the Financial Stability Oversight Council, and the OFR; broaden the regulatory duties of the PCAOB; increase the amount the SIPC may borrow from the Treasury; authorize the FDIC to provide loan guarantees to financial institutions; and create programs to make awards to individuals providing certain information to the SEC and the CFTC.

Orderly Liquidation Authority. Title II would create new government mechanisms for liquidating systemically important financial firms that are in default or in danger of default. CBO estimates that implementing those provisions would, on balance, increase the deficit by $20.3 billion over the 2011-2020 period.

Under conditions outlined in the act, the FDIC would be authorized to enter into various arrangements necessary to liquidate such firms, including organizing bridge banks that would be exempt from federal and state taxation. The FDIC would be authorized to borrow funds from the Treasury to finance those transactions. Amounts borrowed would be based on a formula tied to the value of the assets of the liquidated firms and would be repaid with interest through future assessments on large bank holding companies and financial firms.

CBO's estimate of the cost of the resolution authorities provided under the act represents the difference between the expected values of spending by the OLF to resolve insolvent firms and assessments collected by the OLF. Those expected values represent a weighted average of various scenarios regarding the potential frequency and magnitude of systemic financial problems. Although the estimate reflects CBO's best judgment on the basis of historical experience, the cost of the program would depend on future economic and financial events that are inherently unpredictable. Moreover, the timing of the cash flows associated with resolving insolvent firms is also difficult to predict. It might take several years, for example, to recoup the funds spent to liquidate a complex financial institution. As a result, some of the proceeds from asset sales or cost-recovery fees related to financial problems emerging in any 10-year period might be collected beyond that period. All told, actual spending and assessments in each year would probably vary significantly from the estimated amounts—either higher or lower than the expected-value estimate provided for each year.

Although the probability that the federal government would have to liquidate a financial institution in any year is small, the potential costs of such a liquidation could be large. On an expected-value basis, CBO estimates that net direct spending for potential liquidation activities, which includes recoveries from the sale of assets acquired from liquidated institutions but excludes revenues from assessments, would be $26.3 billion through 2020. CBO estimates that revenues from assessments paid to cover any losses would total about $6.0 billion through 2020, net of effects on payroll and income taxes.[2]

Securities and Exchange Commission Regulation. Titles IV, VII, and IX would change and expand the regulatory activities of the SEC. The act also would grant that agency permanent authority to collect and spend certain fees; under current law, this authority is provided in annual appropriation acts. Based on information from the agency, CBO estimates that enacting those provisions would increase direct spending by $19.4 billion over the 2011-2020 period. Of that amount, CBO estimates that $16.9 billion would support the agency's current activities. The balance, $2.5 billion, would be incurred to carry out the new and expanded authorities under the act. CBO estimates that enacting the provisions also would increase revenues by $24.4 billion over the 2011-2020 period. Taken together, CBO estimates that the provisions would decrease deficits by $4.9 billion over the 2011-2020 period.

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2. The total amount collected from assessments is estimated to be about $8 billion through 2020. But such assessments would become an additional business expense for companies required to pay them. Those additional expenses would result in decreases in taxable income somewhere in the economy, which would produce a loss of government revenue from income and payroll taxes (estimated to total about 25 percent) that would partially offset the revenue collected from the assessment itself.

Most of that decrease in the deficit—about $4.3 billion—would be from fees collected that would be unavailable to the agency for spending. The reduction in budget deficits from changes in direct spending and revenues would probably be accompanied by increases in discretionary spending, as discussed later in this estimate.

*Reclassification of Fees***.** Under the act, the SEC's authority to collect fees would be permanent rather than being provided through annual appropriation action as is the case under current law. The act would authorize the SEC to assess fees for securities trading activities sufficient to cover the agency's annual operating expenses, plus an additional amount to maintain a reserve that would be limited to 25 percent of the following year's budget. The act also would authorize the SEC to collect fees to register securities in amounts sufficient to meet targets set in the legislation. Those collections would be recorded in the budget as revenues; amounts collected by the SEC that exceed annual spending limits plus the reserve amount would not be available for the agency to spend. CBO assumes that the agency would set fees at levels sufficient to meet its budgetary, statutory, and reserve requirements each year.

Additional Regulatory Authority. The act also would broaden the SEC's authority to regulate activities and entities associated with the securities markets. Among other things, the act would require advisers to private funds and organizations that trade in or facilitate certain derivatives transactions to register with the SEC, and it would broaden the SEC's oversight of credit rating agencies and advisers for municipal issues. CBO estimates that those additional activities would cost about $2.5 billion over the 10-year period.

CBO estimates that more than 800 staff positions would be added over several years to meet the agency's additional regulatory authority (a 22 percent increase over current staffing levels). This estimate assumes that the SEC generally would follow its regular examination cycle and established examination procedures for regulating advisers to private funds.

Consumer Financial Protection. Title X would establish the Bureau of Consumer Financial Protection as an autonomous entity within the Federal Reserve. The bureau would enforce federal laws related to consumer financial protection by establishing rules and issuing orders and guidance. CBO estimates that creating the BCFP would increase budget deficits by $3.2 billion over the 2011-2020 period.

The bureau would be authorized to:

- Examine and regulate insured depository institutions and credit unions with more than $10 billion in assets;

- Request reports from insured depository institutions and credit unions with $10 billion in assets or less, and participate in the examinations performed by the regulators of those institutions; and

- Supervise large nondepository institutions, mortgage lenders, brokers, and financial service providers.

The bureau would coordinate examinations with other federal or state regulators of the institutions. Similar functions and the personnel who now perform those duties at federal agencies and the Federal Reserve would be transferred to the new bureau.

The act would require the Board of Governors of the Federal Reserve to fund the BCFP through transfers from the earnings of the Federal Reserve. The amounts transferred would be limited to a percentage, starting at 10 percent in 2011 and increasing to 12 percent in 2013 and thereafter, of the 2009 total operating expenses of the Federal Reserve, adjusted annually for inflation. In CBO's judgment, the costs of the BCFP should be reported as expenditures in the federal budget (rather than a reduction in revenues) because the BCFP would be independent of the Federal Reserve and its activities would be separate and distinct from the Federal Reserve's responsibilities for monetary policy and financial regulation. Therefore, CBO estimates that the provisions of title X would increase direct spending by $4.5 billion over the 2011-2020 period. That estimate is based on the Federal Reserve's reported 2008 operating expenses, the most recent information available.

Based on information from the Federal Reserve, CBO estimates that about 515 staff positions would be transferred from the Federal Reserve to the BCFP to carry out the new regulatory authorities. CBO estimates that this transfer of staff would reduce the Federal Reserve's operating expenses by $1.2 billion over the 2011-2020 period, increasing remittances from the Federal Reserve to the Treasury (which are recorded in the federal budget as revenues) by that amount.

Emergency Financial Stability. In 2008, the FDIC established a temporary program to guarantee certain obligations of insured depository institutions, holding companies that include insured depository institutions, and some affiliates of those firms. Title XI would repeal the FDIC's existing statutory authority for such assistance and provide a new framework for similar, but potentially much broader assistance. Use of those new authorities, however, would be contingent on the enactment of subsequent legislation. As a result, the estimated budgetary impact of enacting those provisions reflects the effects of eliminating the FDIC's existing authority but does not include the estimated cost of the new program. CBO estimates that enacting title XI would reduce net direct spending by the FDIC about $2 billion over the 2011-2020 period, relative to current law.

CBO expects that if H.R. 4173 were not enacted, the FDIC would respond to any future liquidity crises by implementing guarantee programs similar to those it adopted in 2008. That program provided two types of guarantees: one for newly issued, senior unsecured debt, and the other for amounts in certain non-interest-bearing accounts. The costs of such guarantees, like those that would result from implementing the liquidation authorities in title II, would depend on circumstances that are difficult to predict. In addition, cash flows over the 10-year period would depend, as for title II, on the lag between potential spending for losses and the collection of fees to offset those costs. Therefore, while this estimate reflects CBO's best judgment regarding expected costs, the actual costs would probably vary significantly from the amount estimated for any given year. Based on historical experience, we expect that the probability of systemic liquidity problems in any year is small.

As displayed in the Memorandum to Table 2, CBO estimates that if future legislation triggered the FDIC's use of the authority to guarantee certain obligations of financial institutions as provided in H.R. 4173, costs would total $2.9 billion over the 2011-2020 period. That estimated cost reflects the expected budgetary impact of restoring the FDIC's existing program as well as the effects of the programmatic changes made by the act. For example, although the types of firms eligible to participate would be similar to those eligible under the existing FDIC program, the act would not limit the types or duration of financial obligations that could be guaranteed. Firms would be required to pay an upfront fee for the guarantees as currently required by the FDIC, but any shortfall would be recovered solely from program participants rather than all FDIC-insured institutions. In addition, any excess fees would be deposited in the U.S. Treasury and would not be available for spending.

Changes Among Financial Regulators. Title III would change the regulatory regime for supervising banks, thrifts, and related holding companies. It would transfer the functions of the Office of Thrift Supervision (OTS) to the Office of the Comptroller of the Currency (OCC), the FDIC, or the Federal Reserve, depending on each firm's charter. Other provisions would direct agencies to complete the transition within 18 months of enactment; authorize spending of unobligated balances held by the OTS for transition and other activities; and allow the OCC to enter into agreements without regard to existing laws governing the disposition of real or personal property. Finally, the act would direct the Federal Reserve to charge fees to cover expenses incurred in supervising firms with consolidated assets of more than $50 billion.

CBO estimates that implementing those provisions would reduce the deficit by an estimated $0.3 billion over the next 10 years. The net budgetary impact of this title would result from:

- Changing the workload and net income of the Federal Reserve, which CBO estimates would reduce budget deficits (by increasing the amounts transmitted to the Treasury from the Federal Reserve) by $0.6 billion over the 2011-2020 period;

- Spending of the unobligated balances held by the OTS over the 2011-2020 period, which CBO estimates would total about $150 million, net of certain existing liabilities; and

- Financing the acquisition of buildings and other property for OCC operations, which CBO estimates would result in a net increase in direct spending of $150 million over the next 10 years.

This title would change direct spending and revenues because of the way banking agencies are funded. Under current law, costs incurred by the OCC, OTS, and FDIC are recorded in the budget as direct spending and are offset by receipts from annual fees or insurance premiums. The budgetary effects of the Federal Reserve's activities are recorded as changes in revenues (governmental receipts).

Derivatives Regulation. The act would require that certain derivative transactions be traded on or subject to the rules of a securities exchange or board of trade and all activities related to those transactions be processed by an organization regulated by the federal government. The act also would establish a program at the CFTC to give awards to individuals who provide information about violations of commodities trading laws. CBO estimates that those two provisions, taken together, would increase budget deficits by $1.5 billion over the 2011-2020 period.

By requiring derivatives to be subject to registered boards of trade or exchanges and centrally cleared by a registered clearing agency, CBO and JCT expect that some taxpayers would take the position that such derivatives are subject to section 1256 of the Internal Revenue Code. That section specifies an alternative method for allocating gains and losses between short- and long-term sources, and requires gains and losses on any contract held at the end of the taxable year to be included as taxable income. Because the individual tax rates on short- and long-term gains and losses differ, and the timing of the taxation of gains and losses would change, those provisions would affect revenues. Assuming that the Treasury issues guidance that narrowly interprets the scope and application of section 1256 with regard to derivatives contracts, JCT estimates that those provisions would reduce revenues by about $1.3 billion over the 2011-2020 period.

The act also would establish a whistleblower program at the CFTC to award a portion of penalties collected in certain proceedings brought for violation of commodity trading laws to individuals providing information leading to the imposition of the penalties. Based on information from the CFTC, CBO estimates that this program would cost less than $50 million per year once the regulations are in place. Over the 2011-2020 period, CBO estimates that the CFTC whistleblower program would increase direct spending by $0.2 billion.

Other Financial Oversight and Protections. The act would change the authorities of the PCAOB and SIPC, which provide oversight and various protections in the financial markets. The act also would establish a program to give awards to individuals who provide information to the SEC about violations of securities laws. CBO estimates that taken together, those provisions would increase budget deficits by $1.3 billion over the 2011-2020 period.

In particular, the act would establish a whistleblower program at the SEC that would award a portion of penalties collected in certain proceedings brought for violation of securities laws to individuals providing information leading to the imposition of the penalties. Based on information from the SEC, CBO estimates that this program would cost about $100 million per year once the regulations are in place. We estimate that enacting the award program would increase direct spending by $0.9 billion over the 2011-2020 period.

The act would expand the authority of the PCAOB to oversee the auditors of brokers and dealers that are registered with the SEC; those provisions also would increase fees collected by the PCAOB to support examination activities. Based on information from the PCAOB, CBO estimates that the additional oversight and examination requirements would increase the agency's costs by about $25 million per year and that the agency would increase fees charged to brokers and dealers to cover those additional costs. CBO estimates that enacting the PCAOB provisions would increase direct spending by $0.2 billion over the 2011-2020 period and increase revenues, net of income and payroll tax offsets, by a similar amount over the same period. The net effect on the deficit as a result of the PCAOB provisions would be less than $0.1 billion over that period.

H.R. 4173 would raise the amount that SIPC would be authorized to borrow from the Treasury. Under current law, SIPC makes payments from fee collections and reserves to investors that are harmed when a brokerage firm fails and customers' assets are missing. In the event collections and reserves are insufficient to cover the losses, SIPC is authorized to borrow up to $1 billion from the Treasury; the act would raise that borrowing limit to $2.5 billion. SIPC would repay any amounts borrowed by raising fees paid by brokers and dealers that are registered with the SEC; such fees are recorded in the budget as revenues.

Based on information from SIPC, CBO estimates that the agency would probably exercise some of the additional borrowing authority provided in this title during the next 10 years. We estimate that borrowing additional funds would increase direct spending by $1.0 billion over the 2011-2020 period. Further, we estimate that SIPC would recover that cost by raising fees, thus increasing revenues over the same period by $0.7 billion; CBO estimates that the net effect of this provision would be to raise budget deficits by $0.3 billion over the 2011-2020 period.

Financial Stability Oversight. Title I would establish a new council and office in the Department of the Treasury to oversee the financial markets. The Financial Stability Oversight Council, led by the Secretary of the Treasury, would be responsible for identifying risks to the financial stability of the United States, facilitating information sharing and setting oversight priorities among regulators, and potentially directing the Federal Reserve to supervise additional financial institutions that it does not currently regulate. The council would rely upon the OFR, also established in the act, to collect information on financial markets and to provide independent research.

Based on amounts spent by other councils and agencies that provide similar levels of analysis and support, CBO estimates that that those new functions would cost about $75 million annually. We expect that the office would steadily expand its staff and budget over a three- to four-year period before it reached that level of effort. We estimate that those functions would cost $0.7 billion over the 2011-2020 period.

Title I also would allow the OFR to enter into enhanced-use lease arrangements with nonfederal partners to acquire new facilities. Based on the experience of other agencies with similar authorities, CBO expects that such leases would involve significant federal commitments. We estimate that the OFR would use its enhanced-use leasing authorities to build one general-purpose office building at a net cost of $0.2 billion over the 2011-2020 period. CBO expects that the remaining construction costs would be covered by fee collections after 2020.

To fund the OFR and the council, the legislation would establish a Financial Research Fund within the Treasury. For the first two years after enactment, the costs of the council and the OFR would be paid by the Federal Reserve. In CBO's judgment, those costs should be recorded as expenditures in the federal budget because, like the BCFP, the council and the OFR would be independent of the Federal Reserve and their activities would be distinct from the Federal Reserve's responsibilities for monetary policy and financial regulation. Starting in 2013, the Secretary of the Treasury would collect an assessment from certain bank holding companies and nonbank financial companies supervised by the Federal Reserve that would be sufficient to cover the operating expenses of the OFR and the council.

CBO estimates that collecting the assessment, net of income and payroll tax offsets, would increase revenues by $0.5 billion over the 2011-2020 period. On balance, we estimate that enacting title I would increase budget deficits by $0.4 billion over the 2011-2020 period.

Other Provisions Affecting the Federal Reserve. CBO estimates that the requirements in a number of titles would result in incremental costs to the Federal Reserve, thereby reducing remittances to the Treasury (which are recorded in the budget as revenues). Based on information from the Federal Reserve, CBO estimates that those provisions would reduce revenues by about $0.1 billion over the 2011-2020 period. CBO expects the costs under title I to occur only in the first few years; in all other cases, the costs are expected to be ongoing. The key provisions with such ongoing costs are:

- The Chairman of the Board of Governors would be a member of the Financial Stability Oversight Council, and Federal Reserve staff could be assigned to support the work of the council.

- Under title VI, the Federal Reserve would incur costs to supervise any qualifying securities holding companies that elect to be supervised by the Federal Reserve. Additionally, the Federal Reserve would develop, in conjunction with other federal banking agencies, the regulations to implement restrictions regarding investments by banking organizations in private equity funds and hedge funds and the proprietary trading activities of banking organizations.

- Title VII would expand the rulemaking requirements for the Federal Reserve related to capital and margin requirements for swap dealers and major swap participants that are banks.

- Title VIII would likely increase the workload of the Federal Reserve to supervise systemically important entities that are involved in settling payments between financial institutions.

Credit Rating Agency Board. The act would direct the SEC to establish a new entity, the Credit Rating Agency Board (the Board); the Board would designate qualified agencies to provide credit ratings on new issues of certain asset-backed securities. Issuers of such securities would be required to obtain an initial credit rating from a qualified agency selected by the Board. To fund its operations, the Board would be authorized to collect fees from issuers and credit rating agency; additionally, the Board would be authorized set reasonable fees that the selected credit rating agencies would charge to produce ratings. Because the Board would be established by the SEC and would not only select credit rating agencies to produce individual ratings but also set fees that the agencies could charge for that activity, CBO believes that the Board should be classified as a governmental entity and that cash flows related to the Board (including amounts collected and spent for providing the credit ratings) should appear in the budget as revenues and direct spending.

Based on information from the SEC and from representatives of the credit rating industry, CBO estimates that enacting these provisions would increase direct spending by $1.5 billion over the 2011-2020 period. Of that amount, $0.5 billion would be spent by the Board for operating costs; the remainder, $1.0 billion, represents the costs that would be incurred by the credit rating agencies to produce the ratings.

CBO estimates that enacting these provisions also would increase revenues by $1.4 billion over the 2011-2020 period. About $0.4 billion of that amount would be generated by new fees assessed on issuers and credit rating agencies to cover the Board's operating costs.[3] The balance, $1.0 billion over the 2011-2020 period, would be generated by fees paid by the issuers to the credit rating agencies to produce the initial ratings.

Spending Subject to Appropriation

CBO estimates that implementing the legislation would increase spending subject to appropriation by about $4.6 billion over the 2011-2015 period (see Table 3). As noted earlier (and shown in Table 1), CBO estimates that discretionary costs would total $13.2 billion through 2020. Most of this additional spending would result from the proposed reclassification of fees and spending by the SEC, leading to a reduction in discretionary spending by the SEC and a greater reduction in discretionary offsetting collections from SEC fees.

Reclassification of SEC Fees and Spending. Enacting H.R. 4173 would change the budgetary classification of fees collected by the SEC from offsetting collections (amounts netted against discretionary appropriations) to revenues. In addition, because the legislation would authorize the SEC to spend all the fees it collects without further appropriation, the need to appropriate funds for the SEC's operations would be eliminated. Historically, fees collected by the SEC have exceeded the agency's authorized spending limits.

3. CBO estimates that the total amount assessed by the Board would be $0.5 billion over the 2011-2020 period; such assessments would become an additional business expense for the companies required to pay them, resulting in decreases in taxable income somewhere in the economy. The decreases in taxable income would produce a loss of government revenue from income and payroll taxes (estimated to total about 25 percent) that would partially offset the revenue collected from the assessment itself.

TABLE 3. CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 4173, THE RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

	By Fiscal Year, in Millions of Dollars					
	2011	2012	2013	2014	2015	2011-2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Reclassification of SEC Fees and Spending						
Spending						
Estimated Authorization Level	-1,117	-1,139	-1,167	-1,198	-1,233	-5,854
Estimated Outlays	-949	-1,136	-1,163	-1,193	-1,228	-5,669
Offsetting Collections						
Estimated Authorization Level	1,733	1,733	1,885	2,052	2,235	9,638
Estimated Outlays	1,733	1,733	1,885	2,052	2,235	9,638
Total Reclassification of SEC Fees and Spending						
Estimated Authorization Level	616	594	718	854	1,002	3,784
Estimated Outlays	784	597	722	859	1,007	3,969
Regulation of Over-the-Counter Derivatives						
Estimated Authorization Level	18	55	75	76	77	301
Estimated Outlays	16	51	73	76	77	293
Access to Mainstream Financial Institutions						
Estimated Authorization Level	57	57	58	59	60	291
Estimated Outlays	15	57	58	59	59	248
Federal Insurance Office						
Estimated Authorization Level	2	2	2	2	2	10
Estimated Outlays	1	2	2	2	2	9
Grants to Prevent Misleading Marketing						
Authorization Level	8	8	8	8	8	40
Estimated Outlays	1	3	7	7	8	26
Reports						
Estimated Authorization Level	8	3	1	1	1	14
Estimated Outlays	7	4	1	1	1	14
Total Changes						
Estimated Authorization Level	709	719	862	1,000	1,150	4,440
Estimated Outlays	824	714	862	1,004	1,154	4,558

Note: Components may not sum to totals because of rounding.

CBO estimates that the proposed reclassification of fees and spending would reduce discretionary spending by $5.7 billion over the 2011-2015 period and reduce offsetting collections by $9.6 billion over the same period. Taken together, those reductions would increase net spending subject to appropriation by about $4.0 billion over the 2011-2015 period and by $11.8 billion over the 2011-2020 period because the reduction in amounts that offset spending would exceed the reduction in authorized spending levels. (As described on page 10, the new permanent authority to levy fees and spend the proceeds would decrease deficits by an estimated $2.5 billion over the 2011-2015 period and by $4.9 billion over the 2011-2020 period.)

Regulation of Over-the-Counter Derivatives. Title VII would require certain derivatives transactions to take place on registered exchanges and would place new registration and reporting requirements on entities that trade in or facilitate such transactions. This title would broaden the authority of the CFTC to regulate entities and activities related to those transactions.

Based on information from the CFTC, CBO estimates that implementing those broader authorities would cost $293 million over the 2011-2015 period, assuming appropriation of the necessary amounts. CBO estimates that the agency would add 235 employees by fiscal year 2013 to write regulations and to undertake the additional oversight and enforcement activities required under the act. That would amount to a roughly 40 percent increase over 2010 staffing levels.

Access to Mainstream Financial Institutions. Title XII would authorize the appropriation of such sums as may be necessary to establish several programs aimed at increasing access to and usage of traditional banking services in lieu of alternative financial services such as nonbank money orders and check cashing, rent-to-own agreements, and payday lending. Based on pilot programs operated by the private sector and information collected by the FDIC, CBO estimates that this effort would cost $248 million over the 2011-2015 period, assuming appropriation of the necessary amounts.

Federal Insurance Office. Title V would establish the Federal Insurance Office within the Department of the Treasury to monitor the insurance industry and to coordinate federal policy on insurance issues. The act also would authorize the Secretary of the Treasury to enter into international agreements to harmonize regulations on the insurance industry. Based on information from the Treasury, CBO estimates that implementing those provisions would cost $9 million over the 2011-2015 period, subject to appropriation of the necessary amounts.

Grants to Prevent Misleading Marketing. Title IX would authorize the appropriation of $8 million in each of fiscal years 2011 through 2015 for grants to states to protect elderly citizens from misleading marketing of financial products. CBO estimates that implementing this provision would cost $26 million over the 2011-2015 period.

Reports. The act would require the Government Accountability Office (GAO) to prepare more than 20 reports on a wide range of topics, including financial literacy, oversight of financial planners, and disclosures by issuers of municipal securities. The act also would require GAO to audit the BCFP annually and to audit certain activities of the Federal Reserve that occurred between December 1, 2007, and the date of enactment of H.R. 4173. Based on information from the agency, CBO estimates that each report would cost, on average, $500,000 and would be completed within the time allotted in the act. CBO estimates that implementing the reporting provisions in the act would cost $14 million over the 2011-2015 period, assuming appropriation of the necessary amounts.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for H.R. 4173, the Restoring American Financial Stability Act of 2010, as passed by the Senate on May 20, 2010

	By Fiscal Year, in Billions of Dollars												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-2015	2010-2020
NET INCREASE OR DECREASE (-) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	1.7	4.0	2.6	2.3	2.3	2.1	1.4	0.8	1.1	1.5	12.9	19.7

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The act would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act, on banks and other private and public entities that participate in financial markets. The legislation also would impose intergovernmental mandates by prohibiting states from taxing and regulating certain insurance products issued by companies that are based in other states and by preempting certain state laws. Because the costs of complying with some of the mandates would depend on future regulations that would be established by the act, and because CBO has limited information about the extent to which public entities enter into swaps with unregulated entities, CBO cannot determine whether the aggregate costs of the intergovernmental mandates would exceed the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation). However, CBO estimates that the total amount of fees alone that would be collected from private entities would significantly exceed the annual threshold established in UMRA for private-sector mandates ($141 million in 2010, adjusted annually for inflation).

Mandates that Apply to Both Intergovernmental and Private-Sector Entities

Some mandates in the act would affect both public and private entities, including pension funds and public finance authorities. Unless otherwise noted, the cost of complying with each of the following mandates is uncertain and would depend on the nature of future regulations and the range of entities subject to them.

Consumer Financial Protection. The legislation would authorize the BCFP to regulate banks and credit unions with assets over $10 million, all mortgage-related businesses (housing finance agencies, lenders, servicers, mortgage brokers, and foreclosure operators), and all large nonbank financial companies (such as payday lenders, debt collectors, and consumer reporting agencies). The BCFP, along with the FTC, would enforce federal laws related to consumer protection by establishing rules and issuing orders and guidance. Bank and nonbank entities that offer financial services or products would be required to make disclosures to customers and submit information to the BCFP. The legislation also would require certain financial institutions to maintain records regarding deposit accounts of customers and would prohibit prepayment penalties for residential mortgage loans.

Regulation of Over-the-Counter Derivatives Markets. The act would impose several mandates on public and private entities such as pension funds, swap dealers, and other participants in derivatives markets. For example, the act would place new requirements on derivatives; require reporting by entities that gather trading information about swaps, organizations that clear derivatives, facilities that execute swaps, pension funds, and swap dealers; and establish capital requirements for pension funds, swap dealers and major swap participants.

Regulation of Financial Securities. The act would require entities (including public finance authorities) that sell products such as mortgage-backed securities to hold at least 5 percent of the credit risk of each asset that they securitize. Under the act, the BCFP could exempt classes of assets from the retention requirement. The legislation also would require issuers of securities to disclose information to the SEC about the underlying assets and to analyze the quality of those assets.

Prohibition on Certain Payments. For any consumer credit transaction secured by real property, a loan originator would be prohibited from receiving compensation that is based on the terms of the loan. In addition the act would prohibit a creditor from making such a loan unless they have determined and verified that the consumer has a reasonable ability to repay the loan. The cost to comply with the mandates is uncertain because CBO does not have sufficient information about how these provisions would affect industry practices.

Requirement on Issuers that Seek Credit Ratings. Under current law, issuers of asset-backed securities—including public housing finance agencies and student loan authorities—may apply to one of several rating agencies to rate their securities prior to issuance. The act would require those issuers to use a rating agency assigned by the Credit Rating Agency Board, and authorize the Board to set reasonable fees that the selected credit rating agency could charge to produce the rating.

The cost of the mandate to issuers would be equal to any increase in fees and any change in the cost of borrowing arising from a rating given by an assigned rating agency that differs from one that would have been given by a rating agency chosen by the issuer. Because CBO has limited information about the extent to which issuers would receive higher or lower ratings under the act than they do currently, we have no basis for estimating the cost of the mandates on public or private-sector entities.

Consumer Rights to Access Information. The act would require banks and other users of credit scores to provide consumers, upon request, the credit score used to deny them a loan or employment, or to charge a higher interest rate. Current law allows consumers free access to their credit report each year but does not give them free access to their credit scores. Because the credit scores are readily available to banks and other users of those scores, CBO estimates that the cost of complying with this mandate to public and private entities would be small relative to the annual thresholds.

Mandates that Only Apply to Intergovernmental Entities

Prohibition on Investments by Small Public Entities. The act would impose a mandate on public entities that invest more than $25 million but less than $50 million by prohibiting them from entering into swaps with entities that are not federally regulated. The costs of complying with this mandate would be equal to the difference between the cost of entering into a swap with an unregulated entity and the cost of entering into one with a regulated entity, but because CBO has limited information about the extent to which public entities enter into such arrangements, we have no basis for estimating the cost of complying with this mandate.

Prohibition on Taxation of Surplus Lines. The act would establish national standards for how states may regulate, collect, and allocate taxes for a type of insurance that covers unique or atypical risks—known as surplus lines or nonadmitted insurance. The act also would establish national standards for how states regulate reinsurance. As defined in UMRA, the direct costs of a mandate include any amounts that state and local governments would be prohibited from raising in revenues as a result of the mandate. The direct costs of this mandate would be the amount of taxes on premiums for surplus lines issued by out-of-state brokers that states would be precluded from collecting.

While there is some uncertainty surrounding the amount of tax that states currently collect, the portion of the surplus lines market that would be affected, and the flexibility available to states after enactment of H.R. 4173, CBO estimates that forgone revenues would total less than $50 million, annually, beginning one year after enactment. For the purpose of estimating the direct costs of the mandates, CBO considered only the taxes that industry estimates it is paying and only the revenues that states, as a whole, would no longer be able to collect under H.R. 4173.

Prohibition on Fees for Licensing Brokers. The act would prohibit states from collecting licensing fees from brokers of surplus lines unless states participate in a national database of insurance brokers. CBO estimates that the costs of participating in the database would be small.

Regulation of Reinsurance. H.R. 4173 would prohibit states other than the state where a reinsurer is incorporated and licensed from regulating the financial solvency of that reinsurer, if that state is accredited by the National Association of Insurance Commissioners. The act also would limit the way states regulate insurers that purchase reinsurance. The mandates would impose no direct costs on states.

Preemption of State Laws. The act would preempt state laws that affect the offer, sale, or distribution of swaps as well as consumer protection and insurance laws. The preemptions would be mandates as defined in UMRA, but they would not impose any new costs on states.

Other Impacts on State and Local Governments

H.R. 4173 would allow the Board of Governors of the Federal Reserve to require pre-paid card companies to only charge transaction fees that are proportional to the cost of providing the service. Some state, local, and tribal governments issue pre-paid cards to recipients of benefits such as unemployment benefits. To the extent that credit card companies increase the fees they charge those governments for the use of their cards, those governments would incur higher costs that they do currently. However, those costs would not result from intergovernmental mandates. Rather, the increase in costs would be an indirect effect on state and local governments resulting from the new federal regulations imposed on companies that issue pre-paid cards.

Mandates that Only Apply to Private Entities

Orderly Liquidation Fund. Under H.R. 4173, the FDIC would have the authority to assess the financial industry to recover the costs of liquidating financial institutions that are in default or in danger of default. Measured on an expected-value basis, CBO estimates that the private sector would have to pay approximately $1 billion in assessments during the first five years that the mandate would be in effect.

Security and Exchange Commission Fees. The act would increase the amount of fees collected by the SEC, and such an increase would impose a mandate on participants in securities markets. The cost of the mandate would be the incremental increase in such fees compared to current law. CBO estimates that increase would total at least $650 million over the first five years that the mandate is in effect.

Financial Stability Oversight. The Financial Stability Oversight Council would have the authority to require the Federal Reserve to supervise nonbank companies that may pose risks to the financial stability of the United States. The council also would have the authority to require a large bank holding company that poses a risk to the financial stability of the United States to meet certain conditions and to terminate certain activities. In addition, the Federal Reserve would be required to establish standards for nonbank financial companies and large bank holding companies regarding capital and liquidity requirements, leverage and concentration limits, credit exposure, and remediation. The cost of complying with these mandates is uncertain and would depend on the details of future regulations.

Beginning two years after the legislation's enactment, certain bank holding companies and nonbank financial companies supervised by the Federal Reserve would be required to pay an assessment to the Secretary of the Treasury to cover the operating expenses of the Council and the Office of Financial Research. Based on information from the Treasury Department, CBO estimates that the cost of complying with the mandate would total about $75 million per year.

Regulation of Certain Financial Companies. The regulation of some financial companies (including some banks, thrifts, and related holding companies) would be transferred to different federal agencies including the OCC, the FDIC, or the Federal Reserve, depending on each firm's charter. The act would also require the Federal

Reserve to charge fees to cover expenses incurred in supervising certain firms. CBO estimates that the amount of additional fees paid by those companies would average about $75 million per year in the first five years the mandate is in effect.

Federal regulators would be required to implement rules for banks, their affiliates and bank holding companies, and other financial companies to prohibit proprietary trading, sponsoring, and investing in hedge funds and private equity funds, and limiting relationships with hedge funds and private equity funds. Because the requirements on such companies would depend on future rules and regulations, CBO cannot estimate the cost of complying with the mandates.

Companies supervised by the Federal Reserve also would be prohibited from voting for directors of the Federal Reserve Banks. CBO expects there would be no cost to comply with that mandate.

Requirement on Credit Rating Agencies. By requiring credit rating agencies to register with the Credit Rating Agency Board the act would impose a mandate. The Board would designate qualified credit rating agencies to provide credit ratings on new issues of certain asset-backed securities. The Board also would be authorized to set reasonable fees that the selected credit rating agency would charge to produce the rating. The cost of the mandate to credit rating agencies would be equal to the difference between the fees set by the Board and current market fees and the costs of maintaining registration with the Board, including annual fees of about $50 million per year. The total costs of the mandate would depend on future rules and regulations.

Interchange Transaction Fee. The act would authorize the Federal Reserve Board to establish rules to require any fee that certain issuers or payment card networks charge merchants to be "reasonable and proportional" to the actual cost incurred with respect to an electronic debit transaction. The cost of complying with the mandate would depend on future rules and any fee limits that would be set by the Board.

Regulation of Financial Market Utilities. The legislation would require persons who manage or carry out payment, clearing, and settlement activities among financial institutions to meet uniform standards that would be established by the Federal Reserve regarding the management of risks and clearing and settlement activities. The cost of complying with the standards would depend on those future regulations.

Conflict Minerals. The act would require manufacturers that use certain minerals to disclose where they obtained such minerals and the measures taken to ensure that obtaining the minerals did not benefit any armed groups in the Democratic Republic of Congo or an adjacent country. The cost of the mandate would depend on the information manufacturers would need to collect regarding the origin of the minerals used for production.

Office of National Insurance. The act would require insurance companies to provide data and information to the Office of National Insurance, which would also have subpoena authority. The cost of the mandates would be small.

Regulation of Securities Markets. The act would broaden the SEC's authority to regulate entities and activities associated with securities markets.

Regulation of Advisers to Hedge Funds. H.R. 4173 would require hedge fund advisers that manage over $100 million in assets to register with the SEC. According to industry experts, the expenses for those advisers to prepare for the registration process would probably average less than $30,000 per firm. Based on information from the SEC regarding the number of firms that could be affected by the requirement, CBO estimates that the cost of the mandate would fall below the annual threshold established in UMRA.

Mandatory Arbitration. The act would authorize the SEC to prohibit mandatory predispute arbitration agreements between brokers, dealers, municipal financial advisers, investment advisers and their clients. Based on information from industry sources, CBO expects that if the SEC were to impose such a mandate, the incremental cost to those entities of using the court system instead of arbitration could be significant.

Deficiencies in Regulation. H.R. 4173 would require the SEC to establish regulations to address any deficiencies it finds in the regulation of brokers, dealers, and investment advisers. The cost of the mandates, if any, would depend on future rules and regulations.

Other Financial Oversight and Protections. The cost of each of the following mandates on securities markets would be small, relative to the annual threshold. The act would**:**

- Change the makeup of the Municipal Securities Regulatory Board and require municipal securities advisers to register with the SEC;
- Require auditors of broker-dealers to register with PCAOB and allow it to charge higher regulatory fees;
- Require members of a compensation committee for companies that issue securities to be independent; require companies to provide for an annual non-binding vote on executive pay and disclose to shareholder the relationship between executive pay and performance; require companies to have a compliance officer;
- Place additional requirements on the election of directors to the board of a company; and
- Require credit rating agencies to provide public disclosures about methods used to determine credit ratings and the performance of those ratings; to meet education requirements for analysts; and to institute policies to address conflicts of interest.

PREVIOUS CBO ESTIMATES

CBO has transmitted two cost estimates to Congress for S. 3217, the Restoring American Financial Stability Act of 2010. On April 21, 2010, CBO transmitted a cost estimate for the bill as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on March 22, 2010. On May 3, 2010, CBO transmitted a cost estimate for the bill, including amendment number 3739 in the nature of a substitute for S. 3217. CBO estimated that the amendment in the nature of a substitute to S. 3217 would reduce budget deficits over the 2011-2020 period by $19.5 billion; about $17.6 billion of that reduction would stem from a program to facilitate the resolution of certain financial institutions that are insolvent or in danger of becoming insolvent. Funding for the program would come from fees assessed on large financial companies. Other provisions that contributed to the reduction in budget deficits included reclassifying the collection and spending of fees collected by the SEC and changing the regulatory regime for supervising banks, thrifts, and related holding companies.

S. 3217 was further amended on the floor of the Senate and substituted for the text of H.R. 4173 and passed by the Senate. CBO estimates that the Senate-passed version of H.R. 4173 would increase budget deficits by $19.7 billion over the 2011-2020 period. The differences between the May 3, 2010, estimate of S. 3217 and H.R. 4173 as passed by the Senate arise from the following changes:

- The earlier version of S. 3217 reflected in CBO's May 3 estimate would direct the FDIC to assess upfront fees to establish a fund to liquidate systemically important financial firms that are insolvent or in danger of becoming insolvent. As passed by the Senate, H.R. 4173 would not authorize the FDIC to collect fees prior to incurring a loss, thereby increasing the cost of the program by $37.9 billion over the 2011-2020 period.

- Both S. 3217 and H.R. 4173 also would change the regulatory environment for supervising banks, thrifts, and related holding companies. Under S. 3217, CBO estimates that this provision would reduce the budget deficit by $4.3 billion over the 2010-2020 period. Under H.R. 4173 as passed by the Senate, CBO estimates that those provisions would decrease budget deficits by about $0.3 billion over the 2011-2020 period. The decrease in the deficit is higher under S. 3217 because that version would authorize the Federal Reserve to collect fees from firms it would regulate (which are not collected under current law); such fees would not be authorized by H.R. 4173 as passed by the Senate.

- H.R. 4173 would direct the SEC to establish a new entity that would be responsible for assigning approved credit rating agencies to produce credit ratings for new issuances of a certain class of securities. (This provision was not included in S. 3217). CBO estimates that establishing the new entity would increase budget deficits by $0.1 billion over the 2011-2020 period.

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