

ASSET-BACKED MARKET STABILIZATION ACT OF 2011

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AUGUST 12, 2011.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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Mr. BACHUS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1539]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1539) to repeal section 939G of the Dodd-Frank Wall Street Reform and Consumer Protection Act and to restore Securities and Exchange Commission Rule 436(g) repealed by such section, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1539, the “Asset-Backed Market Stabilization Act of 2011,” repeals Section 939G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203), which in turn repealed Securities and Exchange Commission (SEC) Rule 436(g). SEC Rule 436(g) provided that a credit rating from a Nationally Recognized Statistical Rating Organization (NRSRO) assigned to a public offering registered under the Securities Act of 1933 was not considered an expert-certified part of the registration statement or prospectus, as defined by Sections 7 and 11 of the ’33 Act. Repeal of Rule 436(g) prompted severe dislocation in the trillion dollar asset-backed securities market, requiring SEC intervention to ensure that the market remained open and functioning. By restoring Rule 436(g), H.R. 1539 provides certainty to the vitally important securitization market, which increases the availability and afford-

ability of credit to businesses, consumers, students, and homeowners in the United States.

BACKGROUND AND NEED FOR LEGISLATION

On July 22, 2010, the day the repeal of Rule 436(g) went into effect under the Dodd-Frank Act, the NRSROs refused to consent to including their ratings in prospectuses. Because SEC rules require that ratings be included in prospectuses, issuers of asset-backed securities had no choice but to postpone their offerings, which disrupted the securitization market for assets other than residential and commercial mortgages. In response, the SEC immediately issued a six-month no-action letter providing relief for registered offerings of asset-backed securities; on November 23, 2010, the SEC extended the no-action letter indefinitely.

The risk of greater liability as a result of subjecting NRSROs to Section 11 could undermine competition if credit rating agencies decide that they are unable to bear the risk of liability and thus exit the ratings business. Similarly, credit rating agencies contemplating entering the ratings business might reconsider this decision because of the increased risk of legal liability. This could have the effect of undermining the goals and purposes of the Credit Rating Agency Reform Act of 2006, which was to increase competition and break the Standard & Poor's and Moody's ratings duopoly. The mere threat of liability may particularly affect smaller, less-established rating agencies that may find it more difficult to negotiate for indemnification or bear the risk of additional liability.

Importantly, H.R. 1539 does nothing to remove the new credit rating agency liability standards added by Section 933 of the Dodd-Frank Act. Section 933 changed the pleading standards for a private action brought against credit rating agencies under the Securities Exchange Act of 1934. For securities fraud lawsuits, it is now sufficient for a plaintiff to allege that a credit rating agency "knowingly or recklessly failed to conduct a reasonable investigation" of facts about the rated debt offering, or knowingly or recklessly failed to obtain reasonable verification that such an investigation was performed by a source independent of the issuer or underwriter.

At a March 16, 2011 hearing of the Subcommittee on Capital Markets and Government Sponsored Enterprises, Tom Deutsch, Executive Director of the American Securitization Forum, explained how Section 939G of the Dodd-Frank Act temporarily shut down portions of the securitization market, and described how "the absence of a properly functioning securitization market, and the funding and liquidity this market has historically provided, adversely impacts consumers, businesses, financial markets and the broader economy." Mr. Deutsch also stated that "an act by Congress to repeal [Section 939G] would provide the most straightforward and effective way to remove a key barrier that remains to resuming the normal flow of credit in America." In an April 28, 2011 letter to Chairman Bachus, Ford Motor Company stated, "We recognize that the provision repealing 436g of the Securities Act created an unintended consequence in the asset-back securities markets. [H.R. 1539] addresses the unintended consequence of the Dodd-Frank Act by allowing the inclusion of these ratings, which are material and need to be disclosed."

In order to ensure that the asset-backed securitization market continues to operate and provide credit to businesses, students, consumers, and homeowners, Representative Steve Stivers introduced H.R. 1539 on April 14, 2011.

HEARINGS

On March 16, 2011, the Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing entitled “Legislative Proposals to Promote Job Creation, Capital Formation, and Market Certainty,” to consider H.R. 1539 and four other bills.

Witnesses included:

- Mr. Kenneth A. Bertsch, President and CEO, Society of Corporate Secretaries & Governance Professionals
- Mr. Tom Deutsch, Executive Director, American Securitization Forum
- Ms. Pam Hendrickson, Chief Operating Officer, The Riverside Company
- Mr. Damon Silvers, Policy Director and Special Counsel, AFL-CIO
- Mr. David Weild, Senior Advisor, Grant Thornton, LLP
- Mr. Luke Zubrod, Director, Chatham Financial

COMMITTEE CONSIDERATION

The Subcommittee on Capital Markets and Government Sponsored Enterprises met in open session on May 3 and 4, 2011, and ordered H.R. 1539 favorably reported to the full Committee by a record vote of 18 yeas and 14 nays (Record vote no. CM–29).

The Committee on Financial Services met in open session on July 20, 2011 and ordered H.R. 1539 favorably reported to the House by a record vote of 31 yeas and 19 nays (Record vote no. FC–50).

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Chairman Bachus to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 31 yeas and 19 nays (Record vote no. FC–50). The names of Members voting for and against follow:

RECORD VOTE NO. FC–50

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus	X	.....	.....	Mr. Frank (MA) .....	.....	X	.....
Mr. Hensarling .....	.....	.....	.....	Ms. Waters .....	.....	.....	.....
Mr. King (NY)	X	.....	.....	Mrs. Maloney .....	.....	X	.....
Mr. Royce	X	.....	.....	Mr. Gutierrez .....	.....	.....	.....
Mr. Lucas	X	.....	.....	Ms. Velázquez .....	.....	X	.....
Mr. Paul	X	.....	.....	Mr. Watt .....	.....	.....	.....
Mr. Manzullo	X	.....	.....	Mr. Ackerman .....	.....	X	.....
Mr. Jones	X	.....	.....	Mr. Sherman .....	.....	X	.....
Mrs. Biggert	X	.....	.....	Mr. Meeks .....	.....	X	.....
Mr. Gary G. Miller (CA)	X	.....	.....	Mr. Capuano .....	.....	.....	.....
Mrs. Capito	X	.....	.....	Mr. Hinojosa .....	.....	X	.....
Mr. Garrett	X	.....	.....	Mr. Clay .....	.....	X	.....
Mr. Neugebauer	X	.....	.....	Mrs. McCarthy (NY) .....	.....	X	.....

RECORD VOTE NO. FC-50—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. McHenry	X	.....	.....	Mr. Baca .....	.....	X	.....
Mr. Campbell	X	.....	.....	Mr. Lynch .....	.....	.....	.....
Mrs. Bachmann .....	.....	.....	.....	Mr. Miller (NC) .....	.....	X	.....
Mr. McCotter	X	.....	.....	Mr. David Scott (GA) .....	.....	X	.....
Mr. McCarthy (CA) .....	.....	.....	.....	Mr. Al Green (TX) .....	.....	X	.....
Mr. Pearce	X	.....	.....	Mr. Cleaver .....	.....	.....	.....
Mr. Posey	X	.....	.....	Ms. Moore .....	.....	.....	.....
Mr. Fitzpatrick	X	.....	.....	Mr. Ellison .....	.....	.....	.....
Mr. Westmoreland	X	.....	.....	Mr. Perlmutter .....	.....	X	.....
Mr. Luetkemeyer	X	.....	.....	Mr. Donnelly .....	.....	X	.....
Mr. Huizenga	X	.....	.....	Mr. Carson .....	.....	X	.....
Mr. Duffy	X	.....	.....	Mr. Himes .....	.....	X	.....
Ms. Hayworth	X	.....	.....	Mr. Peters .....	.....	X	.....
Mr. Renacci	X	.....	.....	Mr. Carney .....	.....	X	.....
Mr. Hurt	X	.....	.....		
Mr. Dold	X	.....	.....		
Mr. Schweikert	X	.....	.....		
Mr. Grimm	X	.....	.....		
Mr. Canseco	X	.....	.....		
Mr. Stivers	X	.....	.....		
Mr. Fincher	X	.....	.....		

During the Committee consideration of H.R. 1539, the following amendment was considered:

1. An amendment offered by Mr. Ackerman, no. 1, to require the Securities and Exchange Commission to prohibit the inclusion of ratings provided by a NRSRO in a prospectus or other offering material provided by an issuer, was not agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance-related goals and objectives for this legislation:

The objective for H.R. 1539 is to restore SEC Rule 436(g) which was repealed by section 939G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203). SEC Rule 436(g) provided that a credit rating from a Nationally Recognized Statistical Rating Organization (NRSRO) assigned to a public offering registered under the Securities Act of 1933 was not considered an expert-certified part of the registration statement or prospectus, as defined by Sections 7 and 11 of the '33 Act. Repeal of Rule 436(g) prompted severe dislocation in the trillion dollar asset-backed securities market, requiring SEC intervention to ensure that the market remained open and functioning. By restoring Rule 436(g), H.R. 1539 provides certainty to the vitally important securitization market, which increases the availability and affordability of credit to businesses, consumers, students, and homeowners in the United States.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

AUGUST 8, 2011.

Hon. SPENCER BACHUS,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1539, the Asset-Backed Market Stabilization Act of 2011.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1539—Asset-Backed Market Stabilization Act of 2011

H.R. 1539 would reinstate a rule developed by the Securities and Exchange Commission (SEC) that exempts ratings provided by certain credit rating agencies, known as nationally recognized statistical rating organizations or NRSROs, from being considered part of the registration statement for new issuances of asset-backed securities (ABS). That rule was repealed by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under current law, registration statements for ABS must include the assignment of a rating by one or more rating agencies. In reinstating the rule, the bill would exempt NRSROs from liability if the information provided in the offering statement is found to be untrue.

Based on information from the SEC, CBO estimates that implementing H.R. 1539 would not significantly affect spending subject to appropriation because the SEC has already taken steps to limit enforcement of the requirement that ratings be included in registration statements for new issuances of ABS. Enacting H.R. 1539 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1539 would impose a mandate, as defined in the Unfunded Mandates Reform Act, on both public and private investors by protecting NRSROs from liability if the ratings information provided in an offering statement for a security is found to be untrue. Under current law, investors have a right to seek compensation if they are harmed by a material omission or misstatement that is provided by an NRSRO and included in an offering statement. However, industry sources indicate that NRSROs do not allow their ratings to appear in offering statements, and the SEC has limited enforcement of the requirement on issuers to include such ratings. Consequently, under current law, no entity would have grounds to sue an NRSRO, and CBO estimates that the mandate would impose no costs on intergovernmental or private-sector entities.

The CBO staff contact for this estimate is Susan Willie (for federal costs), Elizabeth Cove Delisle (for intergovernmental mandates) and Paige Piper/Bach and Sam Wice (for private-sector mandates). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1539 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides a short title to the bill by citing it as the “Asset-Backed Market Stabilization Act of 2011.”

Section 2. Restoration of rule relating to a certain exemption for rating agencies

This section repeals Section 939G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203), and provides that the regulation repealed by such section is restored or revived as if such section had not been enacted.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

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TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

* * * * *

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

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[SEC. 939G. EFFECT OF RULE 436(G).

【Rule 436(g), promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect.】

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MINORITY VIEWS

The credit rating agencies repeated glaring inaccuracies were one of the leading causes of the financial crash. The Wall Street Reform and Consumer Protection Act provided several reforms to the ratings industry, including a repeal of a Securities and Exchange Commission rule that provided rating agencies an exemption from liability for misstatements and omissions under Section 11 of the Securities Act of 1933 when their ratings appeared in the prospectus of a security offering. If ratings appear in a prospectus, investors today can hold rating agencies accountable to the same standards that apply to other experts, such as auditors, giving opinions in the legal documents of security offerings. H.R. 1539 restores that exemption, which both makes it harder for a purchaser of a mis-rated security to get into court and requires the purchaser to meet a much higher standard to prevail—for example, blatant misstatements would not be sufficient. We believe that reducing the increased liability the Act imposes on rating agencies is a grave error.

BARNEY FRANK.
EMANUEL CLEAVER.
MAXINE WATERS.
LUIS V. GUTIERREZ.
JOE DONNELLY.
GARY L. ACKERMAN.
MELVIN L. WATT.
WM. LACY CLAY.
STEPHEN F. LYNCH.
CAROLYN B. MALONEY.
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