CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 4, 2012

H.R. 1838
Swaps Bailout Prevention Act

As ordered reported by the House Committee on Financial Services on February 16, 2012

H.R. 1838 would allow certain financial firms to retain their financial portfolios containing swaps and remain eligible for assistance from the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC). A swap is a contract between two parties to exchange payments based on the price of an underlying asset or change in reference rate. Swaps can be used to hedge or mitigate certain risks associated with a firm's traditional activities, such as interest rate risk, or to speculate based on expected changes in prices and rates.

CBO estimates that enacting this legislation would not have a significant impact on the net cash flows of the Federal Reserve or the FDIC over the next 10 years. Enacting this legislation could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be insignificant over the next 10 years.

H.R. 1838 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act denies federal assistance from the Federal Reserve (with some exception) and the FDIC to any swap dealer or major swap participant registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission. This prohibition does not apply to a major swap participant that is an insured depository institution (IDI) or an IDI acting as a swaps dealer for hedging purposes or for swaps involving bank-permissible securities. (Bank-permissible swaps include those that reference interest rates, currencies, government securities, and precious metals but not other commodities or equities.) Under current law, IDIs must divest of swaps that do not fall into those categories to an affiliate if the firm is part of a financial holding company or cease those activities altogether. (Commercial banks with retail operations in the United States are required to be federally insured; thus, losing access to FDIC assistance is not an option for those institutions.)

Similar to the exemption granted to IDIs, H.R. 1838 would allow an uninsured U.S. branch or agency of a foreign bank to engage in certain permissible swap activities and to divest of others to an affiliate without jeopardizing access to federal assistance. In addition, the legislation would expand permissible swap activities to only exclude swaps based on asset-backed securities that are unregulated or not of a credit quality established by regulation. Finally, H.R. 1838 would exempt swap activities of foreign entities conducted outside of the United States with non-U.S. counterparties.

CBO expects that enacting this legislation would have no measurable impact on advances made by the Federal Reserve or on the future cost of efforts by the FDIC to resolve failed IDIs. As such, CBO estimates no significant change in the net cash flows of either entity, resulting in no significant net effect on the federal budget over the next 10 years.

The CBO staff contacts for this estimate are Daniel Hoople and Barbara Edwards. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.