



**CONGRESSIONAL BUDGET OFFICE  
ESTIMATE OF COSTS  
OF PRIVATE-SECTOR MANDATES**

October 11, 2000

**H.R. 4541  
Commodity Futures Modernization Act of 2000**

*As reported by the House Committee on Commerce on September 6, 2000*

**SUMMARY**

H.R. 4541 would impose several new private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA) on persons or entities subject to the jurisdiction of the Commodity Futures Trading Commission (CFTC), registered futures associations, and electronic trading facilities. CBO cannot determine whether the direct cost of those mandates would exceed the threshold set by UMRA for private-sector mandates (\$109 million in 2000, adjusted annually for inflation).

**PRIVATE-SECTOR MANDATES CONTAINED IN THE BILL**

H.R. 4541 would impose three sets of private-sector mandates. First, it would impose Title V of the Gramm-Leach-Bliley Act, the privacy provisions of that act, on all persons or entities subject to the jurisdiction of the CFTC. Second, under certain circumstances it would require registered futures associations to also become registered national securities associations, and hence subject them to the Securities and Exchange Commission as well as the CFTC. Third, it would authorize the CFTC to require certain electronic trading facilities to disseminate trading data.

**Privacy Provisions**

H.R. 4541 would extend the privacy protection provisions contained in Title V of the Gramm-Leach-Bliley Act to persons or entities whose financial activities are subject to the jurisdiction of the Commodity Futures Trading Commission. CBO cannot estimate the costs of complying with the privacy provisions primarily because of uncertainties about how

consumer privacy protections would apply to the broad categories of entities subject to the jurisdiction of the CFTC and because of the unavailability of information about the privacy protection procedures that those entities now have in place.

In accordance with CFTC implementing regulations, the bill would require affected entities to:

- Develop administrative, technical, and physical safeguards of the nonpublic information they possess concerning their customers;
- Disclose their policies and practices regarding the disclosure of customers' nonpublic personal information to nonaffiliated third parties when customer relationships are initiated and annually thereafter, and give the consumer the option to stop such disclosure to nonaffiliated third parties.

Safeguards. Providing adequate safeguards for customer information could impose several costs on affected entities. The largest of these, perhaps, is ensuring the technical security of customer information. Establishing such safeguards could be quite costly for some entities, particularly the measures needed to protect computer databases. However, the cost may be minimal to entities that already have adequate safeguards in place and would face few additional costs to comply with the requirements. Due to lack of information regarding the existing level of consumer information safeguards, the safeguards that might be required under the legislation and the costs involved in upgrading these safeguards, CBO cannot estimate the cost of those requirements.

Privacy Policy and Disclosure. Developing and disseminating privacy policies, establishing procedures to notify customers of possible information disclosures, and allowing customers to disallow such disclosure would involve a variety of costs. Developing privacy policies may require entities to incur legal costs. After the privacy policy has been adopted, relevant personnel may need training on new procedures. Notifying existing and new customers of the firm's privacy policy would entail printing and mailing costs. And the requirement to notify customers of information disclosures and allow them to opt out might require the development of new databases to track customers' opt-out elections. Furthermore, to the extent that the affected entities have been profiting from the disclosure of consumers' nonpublic personal information, entities may lose revenue if many of their customers opt out of such disclosure.

The total cost of complying with the bill's privacy policy and disclosure requirements is uncertain. Several factors could mitigate the costs of complying with the privacy policy and disclosure requirements. For example, some of the affected entities may only have institutional customers. Entities with no consumer accounts may not incur the costs associated with developing a privacy policy, notifying customers of the privacy policy, and

tracking customers' responses allowing or disallowing disclosure of their information. The cost of complying with the privacy requirements would also be reduced to the extent that the affected entities do not disclose personal information to nonaffiliated third parties—in that case, the privacy policy would be relatively simple, and they would not need to track customers' responses to the policy. Moreover, if the CFTC or industry associations furnish model privacy policies, the cost of developing privacy policies might also be reduced. CBO was unable to obtain data on the extent to which the affected entities disclose customer information to nonaffiliated third parties, or obtain data concerning the possible cost of implementing systems to track delivery of privacy notices and customer opt-out elections.

### **Dual Registration of Registered Futures Associations**

H.R. 4541 would require futures associations registered with the CFTC to register with the Securities and Exchange Commission (SEC) as a national securities association, if any of its members effect trades in the newly authorized security future products. This provision would mandate that the National Futures Association, a self-regulatory organization for the U.S. futures industry, be registered with, and fall under the regulatory scrutiny of the SEC. The National Futures Association and the SEC do not expect this requirement to impose many additional costs since this new regulatory oversight would largely parallel existing supervision by the CFTC.

### **Dissemination of Trading Data by Certain Electronic Trading Facilities**

H.R. 4541 would authorize the CFTC to prescribe rules and regulations to ensure timely dissemination of price, trading volume, and other trading data by electronic trading facilities dealing with transactions in exempt commodities or swaps, should the CFTC determine that the electronic trading facility performs a significant price discovery function for transactions in the cash market for the commodity underlying the contracts being traded on the electronic trading facility. Based on information provided by the CFTC, it is quite possible that the CFTC would not use this authority. If, after a period of time, the CFTC did require such an electronic trading facility to disseminate trading data, the cost to the electronic trading facility would depend upon the specific information to be released, and the type of dissemination that the CFTC required. The costs of disseminating trading data may be small if simply daily dissemination to a public source were required, but would be higher if continuous, real-time dissemination were required.

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