CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

June 8, 2010

H.R. 3817
Investor Protection Act of 2009

As ordered reported by the House Committee on Financial Services on November 14, 2009

SUMMARY

H.R. 3817 would expand the authority of the Securities and Exchange Commission (SEC) to oversee the activities of investment companies and advisers as well as securities brokers and dealers that are registered with the agency. The bill also would increase the amount that the Securities Investor Protection Corporation (SIPC) would be authorized to borrow from the Treasury, expand the authority of the Public Company Accounting Oversight Board (PCAOB), and establish a program whereby the SEC would pay awards to individuals who provide information about violations of securities laws. Finally, the bill would authorize appropriations for the SEC through fiscal year 2015 and establish a program to make grants to states to protect elderly citizens from misleading marketing of financial products.

Based on information from the SEC and other affected agencies, CBO estimates that enacting H.R. 3817 would increase direct spending by $1.7 billion over the 2011-2020 period and increase revenues by about $1.5 billion over the same period. Because enacting the legislation would affect direct spending and revenues, pay-as-you-go procedures would apply. In total, CBO estimates that those changes would increase budget deficits by $0.3 billion over the 2011-2020 period.[1] In addition, CBO estimates that implementing the bill would increase spending subject to appropriation by $8.5 billion over the 2011-2015 period.

H.R. 3817 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on entities that engage in financial activities. Because of the small number of public entities that would be affected by the reporting requirements in the bill, CBO estimates that the aggregate cost of the mandates on those entities would be small and would fall well below the annual threshold established in UMRA for intergovernmental mandates ($70 million in 2010, adjusted annually for

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1. Over the 2010-2014 period, CBO estimates that enacting the bill would increase direct spending by $349 million, revenues by $312 million, and budget deficits by $37 million. Over the 2010-2019 period, CBO estimates that enacting the bill would increase direct spending by $1,500 million, revenues by $1,182 million, and budget deficits by $318 million.

inflation). Based on information from the SEC and industry sources, CBO estimates that the aggregate cost of the mandates on private entities would exceed the annual threshold established in UMRA for private-sector mandates ($141 million in 2010, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3817 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

TABLE 1. ESTIMATED BUDGETARY IMPACT OF H.R. 3817, THE INVESTOR PROTECTION ACT OF 2009

	By Fiscal Year, in Millions of Dollars											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011-2015	2011-2020
CHANGES IN DIRECT SPENDING												
SIPC Borrowing Authority												
Estimated Budget Authority	0	0	0	150	150	150	150	150	150	150	300	1,050
Estimated Outlays	0	0	0	135	150	150	150	150	150	150	285	1,035
Whistleblower Program												
Estimated Budget Authority	0	50	50	50	50	50	50	50	50	50	200	450
Estimated Outlays	0	50	50	50	50	50	50	50	50	50	200	450
Expansion of PCAOB Authority												
Estimated Budget Authority	5	15	25	30	30	30	30	30	30	30	105	255
Estimated Outlays	4	10	20	30	30	30	30	30	30	30	94	244
Total Changes												
Estimated Budget Authority	5	65	75	230	230	230	230	230	230	230	605	1,755
Estimated Outlays	4	60	70	215	230	230	230	230	230	230	579	1,729
CHANGES IN REVENUES												
Investment Advisor Fees	30	70	80	80	90	90	90	100	100	110	350	840
Additional PCAOB and SIPC Fees	2	10	20	20	20	50	80	110	140	170	72	622
Total Revenues	32	80	100	100	110	140	170	210	240	280	422	1,462
NET CHANGE IN THE BUDGET DEFICIT FROM CHANGES IN DIRECT SPENDING AND RECEIPTS												
Impact on Deficit [a]	-28	-20	-30	115	120	90	60	20	-10	-50	157	267
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	1,308	1,508	1,758	2,008	2,258	2,335	2,418	2,507	2,600	2,700	8,840	21,400
Estimated Outlays	1,106	1,473	1,720	1,970	2,221	2,323	2,406	2,494	2,586	2,686	8,489	20,983

Note: Components may not sum to totals because of rounding; SIPC = Securities Investor Protection Corporation; PCAOB = Public Company Accounting Oversight Board.

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

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 3817 will be enacted in 2010, that the necessary amounts will be appropriated each year, and that spending will follow historical patterns for programs in each affected agency.

Direct Spending

CBO estimates that enacting H.R. 3817 would increase direct spending by $1.7 billion over the 2011-2020 period. More than half of that increase would stem from the bill's increase in the borrowing authority of the Securities Investor Protection Corporation.

SIPC Borrowing Authority. The bill 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 that collections and reserves are insufficient to cover the losses, SIPC is authorized to borrow up to $1 billion from the Treasury; the bill 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 the bill during the next 10 years. We estimate that borrowing additional funds would increase direct spending by $1.0 billion over the 2011-2020 period. A portion of that increased spending would be covered, net of income and payroll taxes, over the same period. That offset is included in the revenues discussed below.

Whistleblower Program. H.R. 3817 would establish a 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 those penalties. Based on information from the SEC, CBO estimates that this program would cost about $50 million per year once regulations were finalized. We estimate that enacting the award program would increase direct spending by $0.5 billion over the 2011-2020 period.

Expansion of PCAOB Authority. H.R. 3817 would expand the authority of the Public Company Accounting Oversight Board to oversee the auditors of brokers and dealers that are registered with the SEC. 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 those provisions would increase direct spending by $244 million over the 2011-2020 period, with a portion of those costs offset by the revenue collections discussed below.

Revenues

CBO estimates that the total amount collected from additional fees under H.R. 3817 would be $1.9 billion over the 2011-2020 period. Of that amount, about $1.1 billion would be generated by fees paid by investment advisors; the balance, about $0.8 billion, comes from additional fees charged by the PCAOB and SIPC to cover higher operating costs. Such fees 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 that would partially offset the revenue collected from the fees themselves. As a result, CBO estimates that enacting H.R. 3817 would increase revenue, net of those offsets, by about $1.5 billion over the same 10-year period.

Investment Advisor Fees. H.R. 3817 would authorize the SEC to charge fees to investment advisors to recover the cost of inspections and examinations of advisors that are registered with the agency. Based on information from the SEC, CBO estimates that the SEC spends about $90 million each year to examine the activities of registered advisors and that the agency would assess fees in an amount sufficient to cover costs incurred. We estimate that the additional fees would increase revenues, net of income and payroll tax offsets, by $840 million over the 2011-2020 period.

Additional PCAOB and SIPC Fees. Under current law, both the PCAOB and SIPC charge fees to recover the agencies' operational costs. H.R. 3817 would authorize the PCAOB to charge fees to brokers and dealers that are registered with the SEC for the additional costs the agency would incur to expand its examination activities. Under current law, SIPC is authorized to increase fees to repay amounts borrowed from the Treasury. Based on information from both agencies, CBO expects that the agencies would increase fee collections to recover the additional costs incurred as the result of enacting H.R. 3817; we expect that fee increases related to SIPC's additional borrowing authority would not start until the second year after the authority is first exercised. CBO estimates that those additional revenues would total $620 million over the 2011-2020 period, net of income and payroll tax offsets.

Spending Subject to Appropriation

The bill would authorize the appropriation of $8.8 billion over the 2011-2015 period to carry out the functions of the Securities and Exchange Commission. Based on historical spending patterns for the agency, CBO estimates that implementing this provision would increase spending subject to appropriation by $8.5 billion over the 2011-2015 period (see Table 2).

TABLE 2. CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 3817

	By Fiscal Year, In Millions of Dollars					
	2011	2012	2013	2014	2015	2011-2015
Securities and Exchange Commission						
Authorization Level	1,300	1.500	1,750	2,000	2,250	8,800
Estimated Outlays	1,105	1,470	1,713	1,963	2,213	8,463
Grants to Prevent Misleading Marketing						
Authorization Level	8	8	8	8	8	40
Estimated Outlays	1	3	7	7	8	26
Total Changes						
Authorization Level	1,308	1,508	1,758	2,008	2,258	8,840
Estimated Outlays	1,106	1,473	1,720	1,970	2,221	8,489

H.R. 3817 also 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, assuming appropriation of the specified 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.

TABLE 3. CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3817 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON NOVEMBER 14, 2009

	By Fiscal Year, in Millions 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	-28	-20	-30	115	120	90	60	20	-10	-50	157	267

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

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 3817 would impose intergovernmental and private-sector mandates, as defined in UMRA, on entities that engage in financial activities. Based on data from industry sources, CBO assumes that only a small number of public entities would be affected by the reporting requirements in the bill; we estimate that the cost of the mandates on those entities would be small and would fall well below the annual threshold established in UMRA for intergovernmental mandates ($70 million in 2010, adjusted annually for inflation). Based on information from the SEC and industry sources, CBO estimates that the aggregate cost of the mandates on private entities would exceed the annual threshold established in UMRA for private-sector mandates ($141 million in 2010, respectively, adjusted annually for inflation).

Mandates that Apply to both Public and Private Entities

Directors, officers, and principal stockholders (including mutual funds and public and private pension funds) are currently required to notify the SEC within 10 days of gaining such status. H.R. 3817 would authorize the SEC to shorten that period. CBO estimates that if the SEC mandates a shorter reporting timeframe, there would be little or no cost to public and private entities.

Mandates that Only Apply to Private Entities

Fees. The bill would authorize the SEC to impose a new user fee on investment advisers to offset the costs to the SEC associated with work related to the inspection and examination of registered investment advisers. Based on information from the SEC and industry sources, CBO estimates that the cost of the mandate would be about $440 million over the first five years that the mandate would be in effect.

In addition, the bill would increase the amount that SIPC could borrow from the Treasury. SIPC would repay any amounts borrowed by raising fees paid by SIPC members. CBO estimates that SIPC would probably use the new authority to borrow additional funds over the 2010-2020 period. Further, the bill would increase the minimum assessment that members of the Securities Investor Protection Corporation could pay to the SIPC fund. According to industry sources, few SIPC members would be affected, and the net increase in assessments would be minimal.

Furthermore, H.R. 3817 would subject auditors of nonpublic brokers and dealers to regulatory oversight by PCAOB. Those auditors would have to pay fees to offset the examination costs of PCAOB. Based on information from PCAOB, CBO estimates that those fees would total about $25 million per year starting in 2013.

Mandatory Arbitration. The bill would authorize the SEC to prohibit predispute agreements that require arbitration between investment advisers, brokers, dealers, or municipal financial 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.

Fiduciary Duty for Brokers. The bill would impose the same fiduciary standard of conduct on brokers that provide investment advice as currently applies to investment advisers. Because of limited information about the regulations that would be necessary to implement the new standard for brokers, CBO cannot estimate the cost of this requirement.

Securities Lending. The bill would give the SEC additional authority to regulate securities lending. Currently, the SEC only has the authority to regulate securities borrowing with respect to broker-dealers. Because the costs of the mandate would depend on regulations to be established by SEC, if any, CBO cannot determine the cost of expanding this authority.

Custodial Requirements. The bill would expand the scope of records to be maintained and subject to examination by the SEC to include the records of custodians or others who have custody or use of investments, deposits, or credits of an investment company or of an investment adviser’s clients. Because of limited information about the number of custodians and others that would be affected, CBO cannot estimate the precise cost of this mandate.

The bill also would require the SEC to adopt a rule prohibiting custodial investment advisers registered with the SEC from having custody of more than $10 million of a client’s funds. Based on information from industry sources, CBO estimates that the cost of the mandate would total tens of millions of dollars annually.

Municipal Securities. The legislation would authorize the SEC to regulate municipal financial advisers. Thus, municipal financial advisers would have to register with the SEC. Based on information from the SEC and industry sources, there are only a small number of such financial advisers. CBO estimates that the cost of the mandate thus would be small, relative to the annual threshold established in UMRA. In addition, the bill would require that the composition of the Municipal Securities Rulemaking Board be modified. CBO expects that the cost of that requirement would be minimal.

Other Financial Oversight and Protections CBO estimates that the costs of several private-sector mandates imposed by the bill also would be minimal. For example, the legislation would:

- Authorize the SEC to establish rules requiring certain investment companies to provide summary information about a fund or security at the point of sale;

- Require certain entities registered with the SEC to provide information or documentation to the SEC on request;

- Extend whistleblower protections to financial service employees in nontrading cases and expand existing whistleblower protections to employees of subsidiaries or affiliates of issuers;

- Expand the number of securities that must be reported to the SEC as lost or stolen;

- Require certain securities organizations to fingerprint their employees; and

- Modify the definition of interested person to prevent an investment company from using certain individuals as independent directors.

Other Impacts

The bill would benefit state governments by authorizing grants to develop education programs to combat misleading sales practices for financial products that target seniors and to investigate and prosecute such misleading practices. Any costs to those governments would be incurred voluntarily.

PREVIOUS CBO ESTIMATES

On December 9, 2009, CBO transmitted a cost estimate for H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, as ordered reported by the House Committee on Rules on December 8, 2009. Earlier, on December 4, 2009, CBO transmitted a cost estimate for H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, as introduced on December 2, 2009. Title V of both versions of H.R. 4173 contains provisions that are similar to H.R. 3817. The differences in the cost estimates for H.R. 3817 and the two versions of H.R. 4173 reflect a change in the budget projection periods—the estimate for H.R. 3817 covers the 2010-2020 period, while the estimates for each version of H.R. 4173 cover the 2010-2019 period.

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