

HR 3890

Accountability and Transparency in Rating Agencies Act

Congress: 111 (2009–2011, Ended)

Chamber: House

Policy Area: Finance and Financial Sector

Introduced: Oct 21, 2009

Current Status: Placed on the Union Calendar, Calendar No. 406.

Latest Action: Placed on the Union Calendar, Calendar No. 406. (Dec 17, 2010)

Official Text: <https://www.congress.gov/bill/111th-congress/house-bill/3890>

Sponsor

Name: Rep. Kanjorski, Paul E. [D-PA-11]

Party: Democratic • **State:** PA • **Chamber:** House

Cosponsors (4 total)

| Cosponsor | Party / State | Role | Date Joined |
|-----------------------------------|---------------|------|--------------|
| Rep. Capuano, Michael E. [D-MA-8] | D · MA | | Oct 21, 2009 |
| Rep. Cleaver, Emanuel [D-MO-5] | D · MO | | Oct 21, 2009 |
| Rep. Kilroy, Mary Jo [D-OH-15] | D · OH | | Oct 21, 2009 |
| Rep. Kosmas, Suzanne M. [D-FL-24] | D · FL | | Oct 21, 2009 |

Committee Activity

| Committee | Chamber | Activity | Date |
|------------------------------|---------|-----------------|--------------|
| Financial Services Committee | House | Reported By | Dec 17, 2010 |
| Judiciary Committee | House | Discharged From | Dec 17, 2010 |

Subjects & Policy Tags

Policy Area:

Finance and Financial Sector

Related Bills

No related bills are listed.

Accountability and Transparency in Rating Agencies Act - (Sec. 2) Amends the Securities Exchange Act of 1934 to direct the Securities and Exchange Commission (SEC) to review credit ratings issued by each nationally recognized statistical rating organization (NRSRO) to ensure that the NRSRO has established and documented internal processes for determining credit ratings consistent with SEC rules.

Requires each NRSRO to make available and maintain such records and information as the SEC may prescribe. Requires specified NRSRO disclosures about procedures and methodologies used to determine credit ratings for structured securities.

Requires SEC rules and regulations to require each NRSRO to establish, on a publicly accessible Internet site, a facility to disclose, in a central database, the historical default rates of all classes of financial products it has rated.

Modifies SEC powers to impose fines and censure a noncompliant NRSRO, including NRSRO failure to: (1) guard against certain violations; and (2) conduct sufficient surveillance to ensure that credit ratings remain current and reliable.

Prescribes rules for NRSRO corporate governance, organization, and management of conflicts of interest.

Requires the SEC to issue specified rules governing management and disclosure of conflicts of interest regarding credit ratings issued by an NRSRO, including a one-year look-back requirement to determine whether a conflict of interest exists among employees of entities subject to credit ratings who were NRSRO employees during the one-year period preceding the rating date. Requires the SEC to conduct periodic reviews of NRSRO compliance with the look-back requirement.

Requires an NRSRO to report to the SEC any case where it can reasonably be expected to know that a former senior officer obtained employment with any issuer, underwriter, or sponsor of an instrument for which the NRSRO issued a credit rating during the 12-month period prior to such employment. Directs the SEC to make such information publicly available.

Requires each NRSRO to designate an individual to serve as a compliance officer.

Directs the SEC to: (1) establish an office that administers SEC rules governing NRSRO practices, (2) require each NRSRO to disclose publicly information on initial ratings and subsequent changes to such ratings, and (3) prescribe rules requiring each NRSRO to adopt certain credit ratings methodologies that include risk assessment and the assumptions underlying the procedures and methodologies used to determine a credit rating.

Prohibits NRSROs (or affiliates or associated persons) from engaging in specified rating services for which additional compensation is paid to an issuer, underwriter, or placement agent of a security, including: (1) risk management advisory services; (2) consulting services regarding any merger, sales, or disposition of the assets of an issuer; and (3) ancillary assistance, advice, or consulting services unrelated to any specific credit rating issuance.

(Sec. 3) Revises requirements for the pleading of particular facts about state of mind in a private action for money damages against an NRSRO with respect to securities fraud. Makes it sufficient for pleading any required state of mind that the complaint state with particularity facts giving rise to a strong inference that the NRSRO knowingly or recklessly violated the securities laws. Requires the same pleading standard with respect to knowledge and recklessness to apply to an NRSRO as would apply to any other person in the same or a similar private right of action.

(Sec. 4) Directs the SEC to require issuers to disclose preliminary credit ratings received from NRSROs on structured products and all forms of corporate debt.

(Sec. 7) Requires revision of a specified regulation requiring public disclosure by an issuer of any material nonpublic information it has disclosed to any person outside the issuer who is a broker or dealer, an investment adviser, an investment company, a holder of the issuer's securities, or any person associated or affiliated with such persons.

Directs the SEC to remove from the regulation the exemption for entities whose primary business is the issuance of credit ratings, thus subjecting credit rating issuers to the regulation's requirements and prohibitions regarding mandatory public disclosure of certain material nonpublic information.

(Sec. 8) Directs the SEC to establish a Credit Ratings Agency Advisory Board.

(Sec. 9) Makes conforming amendments to the Federal Deposit Insurance Act, the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Investment Company Act of 1940, the Revised Statutes of the United States, as well as the Securities Exchange Act of 1934.

(Sec. 10) Requires the SEC, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision, Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve, the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency each to review its policies, practices, and regulations to assess the creditworthiness of a security or money market instrument. Requires the Comptroller General to review the use of credit ratings by other federal agencies.

(Sec. 11) Directs the SEC to revise certain rules in order to require that the random sample of ratings histories of credit ratings required under such rules to be disclosed on an NRSRO's website also be provided to the SEC in a format consistent with SEC publication on the EDGAR system.

(Sec. 12) Nullifies Rule 436(G), promulgated under the Securities Act of 1933, which exempts NRSROs from liability for material misstatements or omissions when their credit ratings are included in securities issuer registration statements filed under that Act. (Thus subjects NRSROs to the same liability as non-NRSROs for material misstatements or omissions in securities issuer registration statements, and in effect requires securities issuers to obtain an NRSRO's written consent before including the NRSRO's credit rating in a registration statement.)

(Sec. 13) Directs the Comptroller General to study: (1) the implementation of this Act by the SEC; (2) the appropriateness of relying on ratings for use in federal, state, and local securities and banking regulations, including for determining capital requirements; (3) the effect of liability in private actions arising under the Securities Exchange Act of 1934; (4) alternative means for compensating credit rating agencies that would create incentives for accurate credit ratings and what, if any, related statutory changes would be required; and (5) alternative methodologies to assess credit risk, including market-based measures.

Directs the SEC to study: (1) whether to create a system that assigns NRSROs on a rotating basis to issuers seeking a credit rating, (2) the effect of this Act on credit rating agencies seeking to register as NRSROs; (3) the treatment of different classes of bonds (municipal versus corporate) by the NRSROs; (4) the feasibility and desirability of implementing a standardized rating system whereby ratings symbols contain multiple characters, each representing a range of default probabilities and loss expectations under standardized and increasingly severe levels of market stress; and (5) the feasibility and desirability of standardizing credit ratings terminology and the market stress conditions under which ratings are evaluated.

Actions Timeline

- **Dec 17, 2010:** Committee on Judiciary discharged.
- **Dec 17, 2010:** Placed on the Union Calendar, Calendar No. 406.
- **Dec 16, 2010:** Reported (Amended) by the Committee on 111-685, Part I.
- **Dec 16, 2010:** Referred sequentially to the House Committee on the Judiciary for a period ending not later than Dec. 17, 2010 for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k) of rule X.
- **Oct 28, 2009:** Committee Consideration and Mark-up Session Held.
- **Oct 28, 2009:** Ordered to be Reported by the Yeas and Nays: 49 - 14.
- **Oct 21, 2009:** Introduced in House
- **Oct 21, 2009:** Referred to the House Committee on Financial Services.