

HR 4413

Customer Protection and End User Relief Act

Congress: 113 (2013–2015, Ended)

Chamber: House

Policy Area: Finance and Financial Sector

Introduced: Apr 7, 2014

Current Status: Received in the Senate and Read twice and referred to the Committee on Agriculture, Nutrition, and F

Latest Action: Received in the Senate and Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry. (Jun 25, 2014)

Official Text: <https://www.congress.gov/bill/113th-congress/house-bill/4413>

Sponsor

Name: Rep. Lucas, Frank D. [R-OK-3]

Party: Republican • State: OK • Chamber: House

Cosponsors (3 total)

Cosponsor	Party / State	Role	Date Joined
Rep. Conaway, K. Michael [R-TX-11]	R · TX		Apr 7, 2014
Rep. Peterson, Collin C. [D-MN-7]	D · MN		Apr 7, 2014
Rep. Scott, David [D-GA-13]	D · GA		Apr 7, 2014

Committee Activity

Committee	Chamber	Activity	Date
Agriculture Committee	House	Reported By	Jun 5, 2014
Agriculture, Nutrition, and Forestry Committee	Senate	Referred To	Jun 25, 2014

Subjects & Policy Tags

Policy Area:

Finance and Financial Sector

Related Bills

Bill	Relationship	Last Action
113 HR 5471	Related bill	Dec 10, 2014: Referred to the Committee on Agriculture, Nutrition, and Forestry.
113 S 2976	Related bill	Dec 4, 2014: Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry.
113 HR 5405	Related bill	Sep 17, 2014: Received in the Senate and Read twice and referred to the Committee on Banking, Housing, and Urban Affairs.
113 HRES 629	Procedurally related	Jun 19, 2014: Motion to reconsider laid on the table Agreed to without objection.
113 S 2330	Related bill	May 13, 2014: Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry. (text of measure as introduced: CR S2955-2957)
113 HR 4330	Related bill	Apr 22, 2014: Referred to the Subcommittee on General Farm Commodities and Risk Management.
113 HR 4392	Related bill	Apr 22, 2014: Referred to the Subcommittee on General Farm Commodities and Risk Management.
113 S 1802	Related bill	Dec 11, 2013: Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry.
113 HR 1038	Related bill	Jun 13, 2013: Received in the Senate and Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry.
113 HR 1256	Related bill	Jun 13, 2013: Received in the Senate and Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry.

Customer Protection and End User Relief Act - **Title I: Customer Protections** - Futures Customer Protection Act - (Sec. 102) Amends the Commodity Exchange Act (CEA) to direct registered futures associations to require their futures commission merchant members to: (1) maintain written policies and procedures governing maintenance of members' specified residual interests in customer segregated funds accounts, including cleared swaps customer collateral accounts; and (2) establish rules governing the withdrawal, transfer, or disbursement of a member's residual interest in customer segregated funds, in foreign futures and foreign options customer secured amount funds, and from a cleared swaps customer collateral.

(Sec. 106) Authorizes the Commodity Futures Trading Commission (CFTC) to require that property of the bankruptcy estate, including trading or operating accounts and commodities held in inventory, of a commodity broker who is a Chapter 7 debtor in bankruptcy be included in customer property, subject to any otherwise unavoidable security interest, or otherwise unavoidable contractual offset or netting rights of creditors in respect of such property, but only to the extent that such property is insufficient to satisfy the net equity claims of the broker's public customers.

(Sec. 107) Directs the CFTC to examine the effect of high-frequency trading upon markets under its jurisdiction, particularly whether such trading increases market volatility, including short term market swings.

Title II: Commodity Futures Trading Commission Reforms - Commodity Futures Trading Commission Reform Act - (Sec. 203) Extends authority for CFTC operations. Amends the Commodity Exchange Act (CEA) to revise the requirement that the CFTC, before promulgating a regulation or issuing an order, consider the costs and benefits of the action. Requires the CFTC, through the Office of the Chief Economist (established by this Act), to: (1) assess and publish the costs and benefits, both qualitative and quantitative, of the proposed regulation; and (2) require the proposed regulation or order to state its statutory justification.

Requires a court to affirm a CFTC assessment of costs and benefits, unless it finds the assessment to be an abuse of discretion.

(Sec. 204) States that the heads of CFTC units (division directors) shall serve at the pleasure of the Commission, report directly to it, and perform such functions and duties as the Commission may prescribe.

(Sec. 205) Establishes within the CFTC the Office of the Chief Economist.

(Sec. 206) Directs the CFTC to develop and publish internal procedures governing the issuance of any CFTC response to a formal, written request or petition from any member of the public for an exemptive, a no-action, or an interpretive letter.

Requires such procedures to require that the CFTC be provided with the final version of the matter to be issued in the response with sufficient notice to review it thoroughly before its issuance.

(Sec. 207) Requires the CFTC to submit every five years to certain congressional committees a detailed strategic technology plan focused upon its acquisition and use of technology. Prescribes plan contents.

(Sec. 208) Requires the CFTC to develop comprehensive internal risk control mechanisms to safeguard and govern the storage of all market data, including CFTC market data sharing agreements, and academic research performed at the CFTC using market data.

Requires the CFTC to submit to certain congressional committees two status reports regarding implementation of specified internal risk controls.

(Sec. 209) Requires a CFTC order authorizing the issuance of a subpoena in an investigation to state: (1) the legitimate purpose of the investigation, and (2) the information sought that will be reasonably relevant to that purpose.

Prohibits the issuance of such an order for an indefinite duration, and permits it to be renewed only by CFTC action.

(Sec. 210) Requires CFTC staff to develop and publish in any proposed rule a plan for: (1) when and for how long the proposed rule will be subject to public comment, and (2) a deadline for compliance with the final rule.

(Sec. 211) Applies certain notice and comment requirements of the Administrative Procedure Act to guidance issued by the CFTC.

(Sec. 212) Prescribes procedures for judicial review of CFTC rules.

(Sec. 213) Directs the Comptroller General (GAO) to: (1) study and report to certain congressional committees whether CFTC resources are sufficient to enable the CFTC to carry out its duties effectively; and (2) examine prior CFTC expenditures on hardware, software, and analytical processes to protect customers in the areas of market surveillance and risk detection, and market data collection, aggregation, interpretation, standardization, harmonization, and streamlining.

(Sec. 214) Prohibits compulsory CFTC disclosure of proprietary information provided to it; but denies any authorization for the CFTC to withhold information from Congress, upon an agreement of confidentiality.

States this prohibition does not prevent:

- CFTC compliance with a request for information from any federal agency or state, local, or foreign governmental entity requesting it for purposes within the scope of its jurisdiction, upon an agreement of confidentiality to protect the information; or
- CFTC disclosure pursuant to a court order in connection with an administrative or judicial proceeding brought under this Act, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this Act, or in any bankruptcy proceeding in which the CFTC has either intervened or in which it has the right to appear and be heard.

Subjects proprietary information of a commodity trading advisor or commodity pool operator ascertained via specified CFTC forms to the same limitations on public disclosure as any facts ascertained during an investigation. States that the CFTC, however, shall not be precluded from publishing aggregate information compiled from such forms, to the extent such aggregate information does not identify any individual person or firm, or such person's proprietary information.

(Sec. 215) Directs GAO to study how to achieve efficiencies in leasing and rental costs at the CFTC.

Requires the CFTC Chairman to report to certain congressional committees as to whether he or she accepts or rejects the GAO recommendations.

Title III: End-User Relief and Market Certainty Act - End-User Relief and Market Certainty Act - Subtitle A: End-User Exemption From Margin Requirements - (Sec. 311) Amends the CEA to exempt from prudential rules governing initial and variation margin requirements those swaps in which one of the counterparties: (1) is eligible for an exception from

clearing requirements for certain significant price discovery agreements, contracts, or transactions in a commodity exempt from regulation by the CFTC, or an exemption from certain clearing requirements for cooperative entities; or (2) satisfies certain criteria for the treatment of affiliates.

Amends the Securities Exchange Act of 1934 (Act) to exempt from prudential regulator and CFTC margin requirements for security-based swap dealers and major security-based swap participants any security-based swap in which a counterparty qualifies for an exception from clearing requirements or satisfies the criteria for an excepted affiliate.

Subtitle B: Inter-Affiliate Swaps - (Sec. 321) Amends the CEA and the Act to revise the treatment of affiliate transactions that may be exempt from clearing requirements to authorize such an exemption only if the affiliate enters into the swap to hedge or mitigate the commercial risk of the person that is not a financial entity (as under current law), provided that an appropriate credit support measure or other mechanism is used if the transfer of commercial risk is addressed by entering into: (1) a swap with either a swap dealer or major swap participant, or (2) a security-based swap with a security-based swap dealer or major security-based swap participant.

Applies this subtitle only to swaps or security-based swaps entered into after enactment of this Act.

Subtitle C: Indemnification Requirements Related to Swap Data Repositories - (Sec. 331) Amends the Act and the CEA to require that the CFTC, swap-data repositories, and security-based swap-data repositories, before sharing information with specified federal and foreign entities, receive a written agreement from each such entity stating that it will abide by specified confidentiality requirements regarding the information provided on their swap transactions.

Subtitle D: Relief for Municipal Utilities - (Sec. 341) Amends the CEA to prescribe reporting requirements for transactions in utility operations-related swaps.

Requires the CFTC, in determining whether to exempt an entity that engages in a de minimis quantity of swap dealing, to treat a utility operations-related swap entered into with a utility special entity as if the entity were not a special entity.

Subtitle E: End-User Regulatory Relief - (Sec. 351) Excludes from the definition of financial entity subject to clearing requirements specified entities that are not supervised by a prudential regulator, yet are commercial market participants deemed to be a financial entity because they: (1) predominantly engage in physical delivery contracts; or (2) enter into swaps, contracts for future delivery, and other derivatives on behalf of, or to hedge or mitigate the commercial risk of affiliates that are not so supervised or described.

(Sec. 352) Directs the CFTC to: (1) provide by rule for the public reporting of swap transactions in illiquid markets that are not cleared and entered into by a non-financial entity that is hedging or mitigating commercial risk; and (2) ensure that certain swap transaction information is publicly available no sooner than 30 days after the swap transaction has been executed, or at a later date appropriate to protect the identity of participants and positions in illiquid markets and to prevent the elimination or reduction of market liquidity.

Defines "illiquid market" as any market in which the volume and frequency of trading in swaps is at such a level as to allow identification of individual market participants.

(Sec. 353) Sets forth recordkeeping requirements for a member of a designated contract market or a swap execution facility that is neither registered with the CFTC nor required to be registered.

(Sec. 354) Excludes from the definition of "swap" any purchase or sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled (as under current law),

including any stand-alone or embedded option: (1) for which exercise results in a physical delivery obligation, (2) which cannot be severed or marketed separately from the overall transaction for the purpose of financial settlement, and (3) in which both parties are commercial market participants.

(Sec. 355) Requires a new affirmative CFTC rule or regulation in order to amend or reduce the *de minimis* quantity of swap dealing that is currently set at \$8 billion.

(Sec. 356) Directs the CFTC, in consultation with the prudential regulators and the Securities and Exchange Commission (SEC), to the extent that swap dealers and major swap participants that are banks are permitted to use approved financial models to calculate minimum capital requirements (including minimum initial and variation margin requirements and non-cash collateral) to permit the use of comparable financial models by swap dealers and major swap participants that are not banks.

Amends the Act to require the SEC, in consultation with the CFTC, to do the same with respect to security-based swap dealers and major security-based swap participants.

(Sec. 357) Directs the CFTC to revise regulations regarding criteria that qualify certain registered commodity pool operators for exemption from requirements for specified risk disclosures, performance disclosures, periodic reporting, annual reporting, and recordkeeping.

Alters one criterion for qualification for such exemptions currently granted to: (1) registered commodity pool operators who sell participations in a pool solely to qualified eligible persons in an offering which qualifies for exemption from the registration requirements of the Securities Act, and (2) certain banks registered as commodity pool operators in connection with a pool that is a collective trust fund whose securities are exempt from registration under the Securities Act.

(Sec. 358) Authorizes the CFTC to define a bona fide hedging transaction, consistent with certain CEA requirements.

(Sec. 359) Directs the SEC and the CFTC jointly to issue rules setting forth the application of United States swaps requirements for cross-border swaps and security-based swaps transactions involving U.S. persons or non-U.S. persons.

(Sec. 360) Directs the CFTC to report to certain congressional committees on the standards and rules of foreign boards of trade with respect to the physical delivery of base metals, including warehousing facilities, as compared to the standards and rules for domestic designated contract markets and related warehouses for base metals.

(Sec. 361) Excludes from the definition of "commodity pool operator" a person who serves as an investment adviser to a registered investment company (or its subsidiary) that invests, reinvests, owns, holds, or trades in commodity interests limited to only financial commodity interests.

Excludes from the definition of "commodity trading advisor" a person who serves as an investment adviser to a registered investment company or its subsidiary, if the commodity trading advice relates only to a financial commodity interest.

Defines "financial commodity interest" as a futures contract, an option on a futures contract, or a swap involving a commodity that is not an exempt commodity or an agricultural commodity, including any index of financial commodity interests, whether cash settled or involving physical delivery.

Subtitle F: Effective Date - (Sec. 371) Makes enactment of this Act retroactive to July 21, 2010 (the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act).

Actions Timeline

- **Jun 25, 2014:** Received in the Senate and Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry.
- **Jun 24, 2014:** Considered as unfinished business. (consideration: CR H5659-5665)
- **Jun 24, 2014:** The House resolved into Committee of the Whole House on the state of the Union for further consideration.
- **Jun 24, 2014:** UNFINISHED BUSINESS - The Chair announced that, pursuant to clause 6 of Rule XVIII, the unfinished business was the question of adoption of amendments which had been debated earlier and on which further proceedings had been postponed.
- **Jun 24, 2014:** The House rose from the Committee of the Whole House on the state of the Union to report H.R. 4413.
- **Jun 24, 2014:** The previous question was ordered pursuant to the rule. (consideration: CR H5663)
- **Jun 24, 2014:** The House adopted the amendment in the nature of a substitute as agreed to by the Committee of the Whole House on the state of the Union.
- **Jun 24, 2014:** Ms. Kuster moved to recommit with instructions to the Committee on Agriculture. (consideration: CR H5663-5665; text: CR H5663)
- **Jun 24, 2014:** DEBATE - The House proceeded with 10 minutes of debate on the Kuster motion to recommit with instructions. The instructions contained in the motion seek to require the bill to be reported back to the House with an amendment to ensure that the Commodity Futures Trading Commission would: (1) immediately curb the role of excessive speculation in any designated facility within its jurisdiction through which oil and gasoline futures or swaps are traded to eliminate excessive speculation, price distortion, or sudden or unreasonable fluctuations or unwarranted changes in prices; (2) investigate the number of swap and security-based swap market participants that have moved their headquarters or operations out of the United States in order to avoid compliance with United States swap requirements; and (3) require overseas derivatives users to obey American laws prohibiting fraud and manipulation of American markets, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- **Jun 24, 2014:** The previous question on the motion to recommit with instructions was ordered without objection. (consideration: CR H5664-5665)
- **Jun 24, 2014:** On motion to recommit with instructions Failed by recorded vote: 191 - 220 (Roll no. 348). (consideration: CR H5665)
- **Jun 24, 2014:** Passed/agreed to in House: On passage Passed by recorded vote: 265 - 144 (Roll no. 349).
- **Jun 24, 2014:** On passage Passed by recorded vote: 265 - 144 (Roll no. 349).
- **Jun 23, 2014:** The Clerk was authorized to correct section numbers, punctuation, and cross references, and to make other necessary technical and conforming corrections in the engrossment of H.R. 4413.
- **Jun 23, 2014:** Considered under the provisions of rule H. Res. 629. (consideration: CR H5612-5638; text of measure as reported in House: CR H512-5629)
- **Jun 23, 2014:** Rule provides for consideration of H.R. 4413 with 1 hour of general debate. Motion to recommit with or without instructions allowed. The rule makes in order as original text for the purpose of amendment an amendment in the nature of a substitute consisting of the text of Rules Committee Print 113-47.
- **Jun 23, 2014:** House resolved itself into the Committee of the Whole House on the state of the Union pursuant to H. Res. 629 and Rule XVIII.
- **Jun 23, 2014:** The Speaker designated the Honorable Rob Bishop to act as Chairman of the Committee.
- **Jun 23, 2014:** GENERAL DEBATE - The Committee of the Whole proceeded with one hour of general debate on H.R. 4413.
- **Jun 23, 2014:** DEBATE - Pursuant to the provisions of H. Res. 629, the Committee of the Whole proceeded with 10 minutes of debate on the DeFazio amendment No. 1.
- **Jun 23, 2014:** DEBATE - Pursuant to the provisions of H. Res. 629, the Committee of the Whole proceeded with 10 minutes of debate on the Jackson Lee amendment No. 2.
- **Jun 23, 2014:** POSTPONED PROCEEDINGS - At the conclusion of debate on the Jackson Lee amendment No. 2, the Chair put the question on adoption of the amendment and by voice vote, announced that the noes had prevailed. Ms. Jackson Lee demanded a recorded vote and the Chair postponed further proceedings on the question of adoption of the amendment until a time to be announced.
- **Jun 23, 2014:** DEBATE - Pursuant to the provisions of H. Res. 629, the Committee of the Whole proceeded with 10 minutes of debate on the DelBene amendment No. 3.
- **Jun 23, 2014:** DEBATE - Pursuant to the provisions of H. Res. 629, the Committee of the Whole proceeded with 10 minutes of debate on the Waters amendment No. 4.

- Jun 23, 2014:** POSTPONED PROCEEDINGS - At the conclusion of debate on the Waters amendment No. 4, the Chair put the question on adoption of the amendment and by voice vote, announced that the noes had prevailed. Ms. Waters demanded a recorded vote and the Chair postponed further proceedings on the question of adoption of the amendment until a time to be announced.
- **Jun 23, 2014:** DEBATE - Pursuant to the provisions of H. Res. 629, the Committee of the Whole proceeded with 10 minutes of debate on the Moore amendment No. 5.
 - **Jun 23, 2014:** POSTPONED PROCEEDINGS - At the conclusion of debate on the Moore amendment No. 5, the Chair put the question on adoption of the amendment and by voice vote, announced that the noes had prevailed. Ms. Moore demanded a recorded vote and the Chair postponed further proceedings on the question of adoption of the amendment until a time to be announced.
 - **Jun 23, 2014:** DEBATE - Pursuant to the provisions of H. Res. 629, the Committee of the Whole proceeded with 10 minutes of debate on the Jackson Lee amendment No. 6.
 - **Jun 23, 2014:** POSTPONED PROCEEDINGS - At the conclusion of debate on the Jackson Lee amendment No. 6, the Chair put the question on adoption of the amendment and by voice vote, announced that the noes had prevailed. Ms. Jackson Lee demanded a recorded vote and the Chair postponed further proceedings on the question of adoption of the amendment until a time to be announced.
 - **Jun 23, 2014:** DEBATE - Pursuant to the provisions of H. Res. 629, the Committee of the Whole proceeded with 10 minutes of debate on the Fincher amendment No. 7.
 - **Jun 23, 2014:** DEBATE - Pursuant to the provisions of H. Res. 629, the Committee of the Whole proceeded with 10 minutes of debate on the Garrett amendment No. 8.
 - **Jun 23, 2014:** POSTPONED PROCEEDINGS - At the conclusion of debate on the Garrett amendment No. 8, the Chair put the question on adoption of the amendment and by voice vote, announced that the ayes had prevailed. Mr. Peterson (MN) demanded a recorded vote and the Chair postponed further proceedings on the question of adoption of the amendment until a time to be announced.
 - **Jun 23, 2014:** Mr. Lucas moved that the Committee rise.
 - **Jun 23, 2014:** On motion that the Committee rise Agreed to by voice vote.
 - **Jun 23, 2014:** Committee of the Whole House on the state of the Union rises leaving H.R. 4413 as unfinished business.
 - **Jun 19, 2014:** Rule H. Res. 629 passed House.
 - **Jun 18, 2014:** Rules Committee Resolution H. Res. 629 Reported to House. Rule provides for consideration of H.R. 4413 with 1 hour of general debate. Motion to recommit with or without instructions allowed. The rule makes in order as original text for the purpose of amendment an amendment in the nature of a substitute consisting of the text of Rules Committee Print 113-47.
 - **Jun 5, 2014:** Reported by the Committee on Agriculture. H. Rept. 113-469.
 - **Jun 5, 2014:** Placed on the Union Calendar, Calendar No. 348.
 - **Apr 9, 2014:** Committee Consideration and Mark-up Session Held.
 - **Apr 9, 2014:** Ordered to be Reported by Voice Vote.
 - **Apr 7, 2014:** Introduced in House
 - **Apr 7, 2014:** Referred to the House Committee on Agriculture.