

Union Calendar No. 536110TH CONGRESS
2D SESSION**H. R. 6308****[Report No. 110-835]**

To ensure uniform and accurate credit rating of municipal bonds and provide for a review of the municipal bond insurance industry.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2008

Mr. FRANK of Massachusetts (for himself, Mr. CAPUANO, and Mr. KANJORSKI) introduced the following bill; which was referred to the Committee on Financial Services

SEPTEMBER 9, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 19, 2008]

A BILL

To ensure uniform and accurate credit rating of municipal bonds and provide for a review of the municipal bond insurance industry.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Municipal Bond Fair-*
 3 *ness Act”.*

4 **TITLE I—DISCRIMINATORY RAT-**
 5 **INGS TREATMENT OF STATE**
 6 **AND MUNICIPAL SECURITIES**

7 **SEC. 101. PRESERVATION OF AUTHORITY TO PREVENT DIS-**
 8 **CRIMINATION.**

9 *Section 15E of the Securities Exchange Act of 1934*
 10 *(15 U.S.C. 78o–7) is amended—*

11 *(1) by redesignating subsection (p) as subsection*
 12 *(q); and*

13 *(2) by inserting after subsection (o) the following*
 14 *new subsection:*

15 *“(p) RATINGS CLARITY AND CONSISTENCY.—*

16 *“(1) COMMISSION OBLIGATION.—Subject to para-*
 17 *graphs (2) and (3), the Commission shall require each*
 18 *nationally recognized statistical rating organization*
 19 *that is registered under this section to establish,*
 20 *maintain, and enforce written policies and procedures*
 21 *reasonably designed—*

22 *“(A) to establish and maintain credit rat-*
 23 *ings with respect to securities and money market*
 24 *instruments designed to assess the risk that in-*
 25 *vestors in securities and money market instru-*
 26 *ments may not receive payment in accordance*

1 *with the terms of issuance of such securities and*
2 *instruments;*

3 *“(B) to define clearly any rating symbol*
4 *used by that organization; and*

5 *“(C) to apply such rating symbol in a con-*
6 *sistent manner for all types of securities and*
7 *money market instruments.*

8 *“(2) ADDITIONAL CREDIT FACTORS.—Nothing in*
9 *paragraph (1)(A), (B), or (C)—*

10 *“(A) prohibits a nationally recognized sta-*
11 *tistical rating organization from using addi-*
12 *tional credit factors that are documented and*
13 *disclosed by the organization and that have a*
14 *demonstrated impact on the risk an investor in*
15 *a security or money market instrument will not*
16 *receive repayment in accordance with the terms*
17 *of issuance; or*

18 *“(B) prohibits a nationally recognized sta-*
19 *tistical rating organization from considering*
20 *credit factors that are unique to municipal secu-*
21 *rities that are not backed by the issuer’s full*
22 *faith and credit in its assessment of the risk an*
23 *investor in a security or money market instru-*
24 *ment will not receive repayment in accordance*
25 *with the terms of issuance.*

1 “(3) *COMPLEMENTARY RATINGS.*—*The Commis-*
2 *sion shall not impose any requirement under para-*
3 *graph (1) that prevents nationally recognized statis-*
4 *tical rating organizations from establishing ratings*
5 *that are complementary to the ratings described in*
6 *paragraph (1)(A) and that are created to measure a*
7 *discrete aspect of the security’s or instrument’s risk.*

8 “(4) *REVIEW.*—

9 “(A) *PERFORMANCE MEASURES.*—*The Com-*
10 *mission shall, by rule, establish performance*
11 *measures that the Commission shall consider*
12 *when deciding whether to initiate a review con-*
13 *cerning whether a nationally recognized statis-*
14 *tical rating organization has failed to adhere to*
15 *such organization’s stated procedures and meth-*
16 *odologies for issuing ratings on securities or*
17 *money market instruments.*

18 “(B) *CONSIDERATION OF EVIDENCE.*—*Per-*
19 *formance measures the Commission may con-*
20 *sider in initiating a review of an organization’s*
21 *ratings in each of the categories described in*
22 *clauses (i) through (v) of section 3(a)(62)(B)*
23 *during an appropriate interval (as determined*
24 *by the Commission) include the transition and*
25 *default rates of its in discrete asset classes.”.*

1 **SEC. 102. GENERAL ACCOUNTABILITY OFFICE STUDY OF**
2 **CREDIT RATINGS.**

3 (a) *STUDY REQUIRED.*—*The Comptroller General*
4 *shall conduct a study of the treatment of different classes*
5 *of bonds (municipal versus corporate) by the nationally rec-*
6 *ognized statistical rating organizations. Such study shall*
7 *examine—*

8 (1) *whether there are fundamental differences in*
9 *the treatment of different classes of bonds by such rat-*
10 *ing organizations that cause some classes of bonds to*
11 *suffer from undue discrimination;*

12 (2) *if there are such differences, what are the*
13 *causes of such differences and how can they be allevi-*
14 *ated;*

15 (3) *whether there are factors other than risk of*
16 *loss that are appropriate for the credit ratings agen-*
17 *cies to consider when rating bonds, and do those fac-*
18 *tors vary across different sectors;*

19 (4) *the types of financing arrangement used by*
20 *municipal issuers;*

21 (5) *the differing legal and regulatory regimes*
22 *governing disclosures for corporate bonds and munic-*
23 *ipal bonds;*

24 (6) *the extent to which retail investors could be*
25 *disadvantaged by a single ratings scale; and*

1 (7) practices, policies, and methodologies by the
2 nationally recognized statistical rating organizations
3 with respect to rating municipal bonds.

4 (b) *REPORT REQUIRED.*—Within 6 months after the
5 date of enactment of this Act, the Comptroller General shall
6 submit a report on the results of the study required by sub-
7 section (a) to the Committee on Financial Services of the
8 House of Representatives and the Committee on Banking,
9 Housing, and Urban Development of the Senate. Such re-
10 port shall include an assessment of each of the issues and
11 subjects described in paragraphs (1) through (7) of sub-
12 section (a).

13 **SEC. 103. IMPLEMENTATION.**

14 The Securities and Exchange Commission shall pre-
15 scribe rules to implement the amendments made by section
16 101 within 270 days after the date of enactment of this Act.

17 **TITLE II—REVIEW OF MUNICIPAL**
18 **BOND INSURANCE INDUSTRY**

19 **SEC. 201. AUTHORITY OF SECRETARY.**

20 (a) *AUTHORITY TO RECEIVE AND COLLECT INFORMA-*
21 *TION.*—Subject to subsection (b), the Secretary of the Treas-
22 ury shall have the authority to receive and collect (directly
23 from the States and other sources), and to analyze and dis-
24 seminate, data and information, and to issue reports, re-
25 garding entities that insure or guarantee the payment of

1 *any portion of the principal and interest of any municipal*
2 *obligation, including information, data and material re-*
3 *garding—*

4 *(1) financial safety and soundness of such enti-*
5 *ties;*

6 *(2) concentration of insurance liabilities of such*
7 *entities;*

8 *(3) performance of such entities under various*
9 *scenarios of macro- and micro-economic stress;*

10 *(4) underwriting standards for such entities; and*

11 *(5) risk management of such entities.*

12 *(b) LIMITATIONS.—With respect to the authority under*
13 *subsection (a)—*

14 *(1) the submission of any non-publicly available*
15 *data and information to the Secretary shall be vol-*
16 *untary and such submission shall not constitute a*
17 *waiver of, or otherwise affect, any privilege or con-*
18 *fidentiality protection to which the data or informa-*
19 *tion is otherwise subject;*

20 *(2) to the extent that any such data and infor-*
21 *mation has already been received or collected by, or*
22 *can efficiently be received or collected by, the States*
23 *(including the insurance commissioners of the States),*
24 *the National Association of Insurance Commissioners,*
25 *or any other appropriate source, the Secretary may*

1 *enter into an information-sharing agreement with*
2 *such source to provide for the receipt of such data by*
3 *the Secretary;*

4 (3) *any requirement under Federal or State law*
5 *to the extent otherwise applicable, or any requirement*
6 *pursuant to a written agreement in effect between the*
7 *original source of any non-publicly available data or*
8 *information and the source of such data or informa-*
9 *tion to the Secretary, regarding the privacy or con-*
10 *fidentiality of any data or information in the posses-*
11 *sion of the source to the Secretary, and any privilege*
12 *arising under Federal or State law (including the*
13 *rules of any Federal or State court) with respect to*
14 *such data or information, shall continue to apply to*
15 *such data or information after the data or informa-*
16 *tion has been provided pursuant to this subsection to*
17 *the Secretary;*

18 (4) *the Secretary shall treat as confidential and*
19 *privileged any data or information obtained from*
20 *any source that is entitled to confidential treatment*
21 *under applicable State or Federal law or regulations,*
22 *or under any agreement to which the source is a*
23 *party and shall take all reasonable steps to oppose*
24 *any effort to secure disclosure of the data or informa-*
25 *tion by the Secretary;*

1 *tity that insures or guarantees the payment of any portion*
2 *of the principal and interest of any municipal obligation.*

3 **SEC. 204. DEFINITIONS.**

4 *For purposes of this title, the following definitions*
5 *shall apply:*

6 (1) *MUNICIPAL OBLIGATION.*—*The term “municipal obligation” means any bond, note, security, or*
7 *other debt obligation issued by any State, any political*
8 *subdivision of a State, one or more political subdivisions of a State, or a State and one or more of*
9 *its political subdivisions, by any agency, department,*
10 *office, authority, or other instrumentality of a State,*
11 *any political subdivision of a State, one or more political subdivisions of a State, or a State and one or*
12 *more of its political subdivisions, or by any other entity eligible to issue bonds the interest on which is ex-*
13 *cludable from gross income under section 103 of the*
14 *Internal Revenue Code of 1986.*

15 (2) *POLITICAL SUBDIVISION.*—*The term “political subdivision” includes any city, county, town,*
16 *township, parish, village, or other general purpose political subdivision of a State and any school, utility,*
17 *fire, or tax district, or other special purpose political*
18 *subdivision of a State.*

1 (3) *SECRETARY.*—*The term “Secretary” means*
2 *the Secretary of the Treasury.*

3 (4) *STATE.*—*The term “State” means the States*
4 *of the United States, the District of Columbia, the*
5 *Commonwealth of Puerto Rico, the Commonwealth of*
6 *the Northern Mariana Islands, Guam, the Virgin Is-*
7 *lands, American Samoa, and any other territory or*
8 *possession of the United States.*

9 **SEC. 205. AUTHORIZATION OF APPROPRIATIONS.**

10 *There are authorized to be appropriated to the Sec-*
11 *retary for carrying out this title such sums as may be nec-*
12 *essary for each fiscal year.*

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