

Buried within the enormous text of the new American financial reform law, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, roughly in the middle of the 2,300-page document, in Section 929I, is a paragraph that exempts the Security and Exchange Commission from releasing information to the public under the Freedom of Information Act.

The section exempts the SEC from disclosing information it receives during examinations of companies if the commission is using that information for "surveillance, risk assessments, or other regulatory and oversight activities."

"This language is too broad," said U.S. Rep. Edolphus Towns, D-NY, "It allows the SEC to keep secret virtually any information it obtains under its examination authority."

On Aug. 10, Towns introduced his bill, H.R. 6086, to "repeal the secrecy provisions" of Section 929I.

Since the exemption provision came to public attention in late July, about a week after President Obama signed the reform bill, there have been three other bills introduced in the House to repeal or limit it, and a bipartisan bill introduced in the Senate to which Towns' bill is the House version.

U.S. Reps. Darrell Issa, R-CA and Spencer Bachus, R-AL introduced H.R. 5924; U.S. **Reps. John Campbell**, R-CA sponsors H.R. 5948; and U.S. Rep. Ron Paul, R-TX, is primary backer for H.R. 5970.

The Senate bill, S. 3717, is sponsored by Senators Patrick Leahy D-VT, John Cornyn R-TX, Ted Kaufman D.-DE, and Chuck Grassley R.-IA.

SEC Chairman Mary Schapiro, however, told a House committee last week that the agency needs the exemption provision.

"Section 929I enhances the Commission's ability to examine regulated entities by making clear that the Commission may protect, in appropriate circumstances, information gathered in the examination process," Schapiro told the House Financial Services Committee on Thursday.

"This provision will better enable the Commission's examination staff to access important information to monitor markets, identify risks, discover fraud and other securities law violations, and more efficiently focus its in-depth examinations - in short, to better protect investors and maintain efficient capital markets," she said.

Several of the Congressmen who want to repeal the exemption language have pointed out that the SEC already had an exemption right for sensitive material under the Freedom of Information Act. Congressman Towns stated the case again at the hearing.

"Prior to Dodd-Frank, the SEC relied on an existing exemption under the Freedom of Information Act to protect information obtained under its exam authority. Exemption 8 protects matters that are 'contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'"

Schapiro has countered that argument by saying that, under Dodd-Frank, the SEC must now monitor and deal with more business entities than before, some of which are not easily defined as "financial institutions" - hedge funds, for example - and may not be covered by the FOIA exemption.

Towns' bill, and its Senate counterpart, however, address Schapiro's concern by clearly defining "financial institution" in a broad sense.

But the SEC chief has another concern she said that lawmakers' proposals have yet to address.

She said that, without Section 929I, companies will be reluctant to turn over documents to the

SEC not only because some documents may become subject to FOIA requests, but also because documents held by the SEC may be subpoenaed in court cases.

Angela Canterbury, from the Project On Government Oversight, reminded lawmakers that the SEC already had the power to demand to see any documents from any company and did not need a carrot to cajole companies to cooperate.

Canterbury said her group supports the Towns' bill, although she added that the existing FOIA exemption rules were probably sufficient without further defining "financial institutions," and that the other bills were also supportable.

Canterbury said the public interest was in more transparency, not less, and that this also is what the Obama administration promised.

"Congress must ensure a proper balance between the need for limited confidentiality for effective financial regulation and the public's right to know," she said.

Congress must not allow the SEC "blanket authority to withhold public records," Canterbury said.

She said the SEC has had a poor record of late in protecting the interests of American families who "continue to suffer from the financial crisis fueled in part by systemic regulatory failures. The SEC's particularly dramatic failure to fulfill its core mission of protecting investors is exemplified in the Madoff and Stanford cases."

Canterbury also pointed out that the SEC may have already invoked the Section 929I exemption to serve its own political purposes in denying a FOIA request from a news organization seeking documents on the SEC investigation of Ponzi scheme mastermind Robert Allen Stanford.

It was that FOIA request and that refusal that drew public attention to the exemption.

Rick Blum, from the Sunshine in Government Initiative, a coalition of media associations promoting transparency in government, told lawmakers "a significant aspect of our work involves finding and deterring overbroad or unnecessary exemptions written elsewhere into federal law," and that this "overboard FOIA exemption" is one of them.

Blum said his group would be happy with a "simple repeal of Section 929I."

He said the flaws of the exemption can only be remedied by an act of Congress and that taking action on any of the proposals now before Congress "would be better than additional study while Section 929I stands."

While Schapiro thinks the SEC would be hampered in its job by any of the current legislative proposals, Congressman Towns said he received indications from Schapiro's staff that the SEC would be willing to work with him on improving his bill.