

TO DIRECT THE SECURITIES AND EXCHANGE COMMISSION TO ALLOW
CERTAIN ISSUERS TO BE EXEMPT FROM REGISTRATION REQUIRE-
MENTS, AND FOR OTHER PURPOSES

SEPTEMBER 5, 2017.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 2864]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2864) to direct the Securities and Exchange Commission to allow certain issuers to be exempt from registration requirements, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. APPLICATION OF EXEMPTION.

The Securities and Exchange Commission shall amend—

(1) section 230.251 of title 17, Code of Federal Regulations, to remove the requirement that the issuer not be subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) immediately before the offering; and

(2) section 230.257 of title 17, Code of Federal Regulations, with respect to an offering described in section 230.251(a)(2) of title 17, Code of Federal Regulations, to deem any issuer that is subject to section 13 or 15(d) of the Securities Exchange Act of 1934 as having met the periodic and current reporting requirements of section 230.257 of title 17, Code of Federal Regulations, if such issuer meets the reporting requirements of section 13 of the Securities Exchange Act of 1934.

PURPOSE AND SUMMARY

H.R. 2864 was introduced by Representatives Kyrsten Sinema and Trey Hollingsworth on June 8, 2017. H.R. 2864 would amend the federal securities laws to direct the Securities and Exchange Commission (SEC) to expand its Regulation A+ rules to include companies that are “fully reporting” companies under the Securities Exchange Act of 1934. In doing so, the legislation will facilitate

capital formation for small reporting companies and provide small-dollar investors with enhanced investment opportunities and facilitate liquidity in the capital markets for these smaller companies.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2864 will allow smaller, fully reporting SEC companies to raise capital publicly through Regulation A+ (Reg A+) offerings. Title IV of the Jumpstart Our Business Startups or “JOBS” Act directed the SEC to issue rules to update Regulation A (Reg A), which exempts small offerings of up to \$5 million within a 12-month period from federal registration. Even though these small offerings are exempted under Reg A from federal registration, they remain subject to state securities law registration and qualification requirements. Historically, a limited number of issuers used the Reg A exemption. From 2009 through 2012, there were 19 qualified Reg A offerings for a total offering amount of approximately \$73 million. During the same period, there were approximately 27,870 offerings for a total offering amount of approximately \$26 billion that were eligible to take advantage of the Reg A exemption but did not.

The JOBS Act exemption, now known as Reg A+, increased the amount companies could offer from \$5 million to \$50 million within a 12-month period. Reg A+ also pre-empted state registration and qualification requirements. On March 25, 2015, the SEC approved its final rule to implement Title IV of the JOBS Act. The final rule provides for two tiers of offerings: Tier 1, for offerings of securities of up to \$20 million in a 12-month period, with not more than \$6 million in offers by selling security-holders that are affiliates of the issuer; and Tier 2, for offerings of securities of up to \$50 million in a 12-month period, with not more than \$15 million in offers by selling security-holders that are affiliates of the issuer. Both Tiers are subject to certain basic requirements while Tier 2 offerings are also subject to additional disclosure and ongoing reporting requirements. The final rule also provides for the preemption of state securities law registration and qualification requirements for securities offered or sold to “qualified purchasers” in Tier 2 offerings.

Since the amendments to Reg A became effective in June 2015, the rate of Reg A+ securities offerings has increased. As of October 2016, prospective issuers have publicly filed offering statements for 147 Reg A+ offerings, seeking up to \$2.6 billion in financing. Of these filed, approximately 81 offerings, seeking up to \$1.5 billion have been qualified by the SEC and \$190 million has been reported raised, though this understates the true amount raised due to reporting time frames. As a comparison, in the 12 months leading up to June 18, 2015, there were approximately 51 filings seeking to raise \$159 million, including 12 qualified filings seeking to raise up to \$34 million. Average issuers were seeking \$18 million in a given, qualified offering, the average for Tier 2 was \$26 million and the average for Tier 1 was \$10 million, still well below the thresholds for each Tier.

A 2016 SEC study showed that, consistent with the intent of Reg A+, the typical issuer based on offering data was relatively small. The typical issuer had median assets of approximately \$0.1 million across all filings and approximately \$0.2 million across qualified filings. Two-thirds of all filings and of qualified offerings were by

issuers with assets up to \$1 million. 92% of all filings and 87% of qualified filings were by issuers with total assets not exceeding \$100 million. Average assets were \$51 million across all issuers and \$79 million across issuers in qualified offerings. Median issuer had no cash, property, plants and equipment, long-term debt, revenue, or net income. These characteristics are consistent with the present pool of filers being primarily comprised of small, early-stage companies with limited collateral, which may restrict their ability to obtain a bank loan or other debt financing on favorable terms.

Despite the data that demonstrates the importance of Reg A+ to provide investment capital to small issuers, not all issuers are permitted to make an offering using Reg A+. When the SEC issued its final rule to implement Title IV of the JOBS Act, it excluded fully SEC reporting companies (those reporting under 13(a) or 15(d) of the Securities Exchange Act of 1934) as ineligible issuers who could use Reg A+. This exclusion was contrary to the intent of Title IV, which was meant to improve access to capital for all small companies, to include fully SEC reporting companies. H.R. 2864 corrects the SEC's action and will provides the benefits of Reg A+ to full reporting companies, which will enhance the liquidity and vibrancy of these issuers for initial and secondary offerings.

HEARINGS

The Committee on Financial Services' Subcommittee on Capital Markets, Securities, and Investment held hearings examining matters related to H.R. 2864 on March 22, 2017, and July 18, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 25, 2017 and ordered H.R. 2864 to be reported favorably to the House as amended by a recorded vote of 59 yeas to 0 nays (Record vote no. FC-68), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment in the nature of a substitute offered by Ms. Sinema by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a recorded vote of 59 yeas to 0 nays (Record vote no. FC-68), a quorum being present.

| Present | Representative | Yeas | Nays |
|---------|-----------------------------------|------|------|
| | Mr. HENSARLING, <i>Chairman</i> | ✓ | |
| | Mr. MCHENRY | ✓ | |
| | Mr. KING | ✓ | |
| | Mr. ROYCE | ✓ | |
| | Mr. LUCAS | ✓ | |
| | Mr. PEARCE | ✓ | |
| | Mr. POSEY | ✓ | |
| | Mr. LUETKEMEYER | ✓ | |
| | Mr. HUIZENGA | ✓ | |
| | Mr. DUFFY | ✓ | |
| | Mr. STIVERS | ✓ | |
| | Mr. HULTGREN | ✓ | |
| | Mr. ROSS | ✓ | |
| | Mr. PITTENGER | ✓ | |
| | Mrs. WAGNER | ✓ | |
| | Mr. BARR | ✓ | |
| | Mr. ROTHFUS | ✓ | |
| | Mr. MESSER | ✓ | |
| | Mr. TIPTON | ✓ | |
| | Mr. WILLIAMS | ✓ | |
| | Mr. POLIQUIN | ✓ | |
| | Mrs. LOVE | ✓ | |
| | Mr. HILL | ✓ | |
| | Mr. EMMER | ✓ | |
| | Mr. ZELDIN | ✓ | |
| | Mr. TROTT | ✓ | |
| | Mr. LOUDERMILK | ✓ | |
| | Mr. MOONEY | ✓ | |
| | Mr. MACARTHUR | ✓ | |
| | Mr. DAVIDSON | ✓ | |
| | Mr. BUDD | | |
| | Mr. KUSTOFF | ✓ | |
| | Ms. TENNEY | ✓ | |
| | Mr. HOLLINGSWORTH | ✓ | |
| | Ms. WATERS, <i>Ranking Member</i> | ✓ | |
| | Mrs. MALONEY | ✓ | |
| | Ms. VELÁZQUEZ | ✓ | |
| | Mr. SHERMAN | ✓ | |
| | Mr. MEEKS | ✓ | |
| | Mr. CAPUANO | ✓ | |
| | Mr. CLAY | ✓ | |
| | Mr. LYNCH | ✓ | |
| | Mr. SCOTT | ✓ | |
| | Mr. GREEN | ✓ | |
| | Mr. CLEAVER | ✓ | |
| | Ms. MOORE | ✓ | |
| | Mr. ELLISON | ✓ | |
| | Mr. PERLMUTTER | ✓ | |
| | Mr. HIMES | ✓ | |
| | Mr. FOSTER | ✓ | |
| | Mr. KILDEE | ✓ | |
| | Mr. DELANEY | ✓ | |
| | Ms. SINEMA | ✓ | |
| | Mrs. BEATTY | ✓ | |
| | Mr. HECK | ✓ | |
| | Mr. VARGAS | ✓ | |
| | Mr. GOTTHEIMER | ✓ | |
| | Mr. GONZALEZ | ✓ | |
| | Mr. CRIST | ✓ | |
| | Mr. KIHUEN | ✓ | |

Committee on Financial Services

115th Congress

DATE: 7/25/17

Measure HR 2864

Amendment No. MTA

Offered by: _____

| Agreed To | Yes | No | Wdm |
|-----------|-----|----|-----|
| | ✓ | | |

| Voice Vote | Yeas | Nays | Prsnt |
|------------|------|------|-------|
| | 59 | 0 | |

Record vote no. FC-68

As Amended

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2864 will enhance access to capital for small issuers, create greater investor choice and provide liquidity to the capital markets by allowing for “fully reporting” companies to raise capital publicly using Regulation A+.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 5, 2017.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2864, the Improving Access to Capital Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL, *Director.*

Enclosure.

H.R. 2864—Improving Access to Capital Act

Under current law, some securities offerings are exempt from registration with the Securities and Exchange Commission (SEC) if the offering meets certain criteria and if an issuer is exempt from other SEC reporting requirements. H.R. 2864 would expand the exemption to allow issuers that are subject to SEC reporting requirements to qualify for the registration exemption. The bill also would require the SEC to deem certain offerings as having met the ex-

emption's reporting requirements if the issuer is subject to and meets reporting requirements under a different securities law.

Based on an analysis of information from the SEC, CBO estimates that implementing H.R. 2864 would increase the agency's costs by less than \$500,000, to update its regulations. Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriation actions consistent with that authority.

Enacting H.R. 2864 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 2864 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2864 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

If the SEC increases fees or premiums to offset the costs associated with implementing the bill, H.R. 2864 would increase the cost of an existing mandate on private entities required to pay those assessments. CBO estimates that incremental cost of the mandate would be small and would fall well below the annual threshold for private-sector mandates established in UMRA (\$156 million in 2017, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95-220, as amended by Pub. L. No. 98-169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

This section cites H.R. 2864 as the “Improving Access to Capital Act”.

Section 2. Application of Exemption

This section requires the Securities and Exchange Commission to remove the requirement that the issuer not be subject to section 13 or 15(d) of the Securities Exchange Act of 1934.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2864 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by Clause 3(e)(1)(B) of rule XIII of the House of Representatives.