

SMALL COMPANY SIMPLE REGISTRATION ACT OF 2015

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JULY 14, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 1723]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1723) to direct the Securities and Exchange Commission to revise Form S-1 so as to permit smaller reporting companies to use forward incorporation by reference for such form, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1723, the “Small Company Simple Registration Act of 2015,” simplifies the securities registration process by amending the Securities and Exchange Commission’s Form S-1 registration statement, which is the basic registration form for new securities offerings, to allow smaller reporting companies to incorporate by reference any documents filed with the SEC after the effective date of the Form S-1.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1723, the “Small Company Simple Registration Act of 2015,” simplifies the securities registration process by amending the SEC’s Form S-1 registration statement, which is the basic registration form for new securities offerings, to allow smaller reporting companies to incorporate by reference any documents filed with the SEC after the effective date of the Form S-1. This “forward incorporation by reference” eliminates the need for filing excessive paperwork with each subsequent filing. Simplifying this disclosure regime will lower compliance costs associated with filing redundant

paperwork, which allows eligible companies to direct more resources to growing their business.

The provisions in H.R. 1723 are derived from recommendations in the SEC's Government-Business Forum on Small Business Capital Formation Final Report for 2012. In January 2014, SEC Commissioner Dan Gallagher endorsed this recommendation by calling on the SEC to reduce redundant disclosure requirements and streamline registration statements by permitting forward incorporation by reference in Form S-1 registration statements. During the 113th Congress, Rep. Wagner included H.R. 1723 as a provision in a larger bill that the Committee approved on a roll-call vote of 32-26.

At the April 29, 2015 Subcommittee hearing, Shane Kovacs testified that "the friction costs with raising capital can be quite high, and any way that you can reduce those costs yields more capital to the companies that need it. By allowing forward incorporation on an S-1 per se means that you don't have to be continually—if there's some delay in the offering, you don't have to continually update those statements."

At the same hearing, Tom Quaadman noted that "that [H.R. 1723] is getting at is that if you create a company file, you can use forward incorporation as a way to streamline disclosures and get the information out to investors without repetitive disclosures. So what we're faced with here is that the explosion of disclosures isn't particularly—for smaller companies, isn't providing material information to investors."

At a 2014 hearing before the Subcommittee on similar legislation, Professor John Coffee from Columbia University Law School testified that "For some time, the SEC's Government-Business Forum on Small Business Capital Formation has called for changes to permit smaller reporting companies that have filed a Form S-1 to incorporate by reference documents filed with the SEC . . . I believe this one does have real efficiency justifications and could help smaller issuers."

HEARINGS

The Committee on Financial Services held a hearing on April 29, 2015, titled "Legislative Proposals to Enhance Capital Formation and Reduce Regulatory Burdens," at which this matter was examined.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 20, 2015, and ordered H.R. 1723 to be reported favorably to the House without amendment by a recorded vote of 60 yeas to 0 nays (Record vote no. FC-31), a quorum being present.

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 vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 60 yeas to 0 nays (Record vote no. FC-31), a quorum being present.

Record vote no. FC-31

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)	X		
Mr. King (NY)	X			Mrs. Maloney (NY)	X		
Mr. Royce	X			Ms. Velázquez	X		
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks	X		
Mr. Neugebauer	X			Mr. Capuano	X		
Mr. McHenry	X			Mr. Hinojosa	X		
Mr. Pearce	X			Mr. Clay	X		
Mr. Posey	X			Mr. Lynch	X		
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland	X			Mr. Al Green (TX)	X		
Mr. Luetkemeyer	X			Mr. Cleaver	X		
Mr. Huizenga (MI)	X			Ms. Moore	X		
Mr. Duffy	X			Mr. Ellison	X		
Mr. Hurt (VA)	X			Mr. Perlmutter	X		
Mr. Stivers	X			Mr. Himes	X		
Mr. Fincher	X			Mr. Carney	X		
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney	X			Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee	X		
Mr. Ross	X			Mr. Murphy (FL)	X		
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty	X		
Mr. Rothfus	X			Mr. Heck (WA)	X		
Mr. Messer	X			Mr. Vargas	X		
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

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. 1723 will reduce regulatory compliance costs by permitting smaller reporting companies to incorporate by reference in their Form S-1 registration statement any documents filed with the SEC after the effective date of such statement.

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.

COMMITTEE COST ESTIMATE

The Committee adopts as its own 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, June 23, 2015.

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. 1723, the Small Company Simple Registration Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susan Willie and Ben Christopher.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1723—Small Company Simple Registration Act of 2015

H.R. 1723 would change the registration process for small businesses that file statements with the Securities and Exchange Commission (SEC) in order to sell securities to the public. Specifically, for certain small issuers, the bill would reduce information that such firms must provide to the SEC after filing a registration statement.

Based on information from the SEC, CBO estimates that implementing H.R. 1723 would cost about \$1 million in fiscal year 2016 to complete a rulemaking process as required under the bill. Under current law the SEC is authorized to collect fees sufficient to offset its appropriation each year; therefore, we estimate that the net cost to the SEC would not be significant, assuming appropriation action consistent with that authority. CBO estimates that enacting H.R. 1723 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1723 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

If the SEC increases fees to offset the costs associated with implementing the bill, H.R. 1723 would increase the cost of an existing mandate on private entities required to pay those fees. Based on information from the SEC, CBO estimates that the aggregate cost of the mandate would amount to about \$1 million in 2016 and would fall well below the annual threshold for private-sector mandates established in UMRA (\$154 million in 2015, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie and Ben Christopher (for federal costs) and Logan Smith (for the private-sector impact). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

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

H.R. 1723 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 1723 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 1723 does not require any directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 1723 as the “Small Company Simple Registration Act of 2015.”

Section 2. Forward incorporation by reference for Form S-1

This section provides that, within 45 days of enactment of the Act, the SEC must revise Form S-1 to permit a smaller reporting company (as defined in section 230.405 of title 17, Code of Federal Regulations) to incorporate by reference in a registration statement filed on such form any documents that such company files with the SEC after the effective date of such registration statement.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 1723 does not 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.