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HOUSE OF REPRESENTATIVES
REPORT
115–1077

ACCESS TO CAPITAL CREATES ECONOMIC STRENGTH AND SUPPORTS RURAL AMERICA ACT

DECEMBER 12, 2018.—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

together with

MINORITY VIEWS

[To accompany H.R. 6745]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 6745) to amend the Securities Exchange Act of 1934 to revise the shareholder threshold for registration under such Act for issuers that receive support through certain Federal universal service support mechanisms, 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. SHORT TITLE.

This Act may be cited as the "Access to Capital Creates Economic Strength and Supports Rural America Act" or the "ACCESS Rural America Act".

SEC. 2. SHAREHOLDER THRESHOLD FOR REGISTRATION OF CERTAIN ISSUERS.

Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)(ii), by striking "and" at the end;

(B) in subparagraph (B), by adding "and" at the end;

(C) by inserting after subparagraph (B) the following:

"(C) in the case of an issuer that, during its previous fiscal year, received support, directly or through an affiliate, through any Federal universal service support mechanism established under section 254 of the Communications Act of 1934 and filed the report described under paragraph (7) with respect to such

fiscal year, not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by either—

"(i) 2,000 persons, or

"(ii) 1,250 persons who are not accredited investors,"; and

(D) by adding at the end the following: "The dollar figures in this paragraph shall be indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, rounded to the nearest $100,000."; and

(2) by adding at the end the following:

"(7) REPORT BY UNIVERSAL SERVICE SUPPORT MECHANISM RECIPIENTS.—

"(A) IN GENERAL.—The Commission shall issue regulations to establish a financial summary form that may be annually filed by an issuer that—

"(i) during its previous fiscal year, received support, directly or through an affiliate, through any Federal universal service support mechanism established under section 254 of the Communications Act of 1934; and

"(ii) has a class of equity security held of record by 500 or more persons who are not accredited investors, but less than 1,250 persons who are not accredited investors.

"(B) CONTENTS.—The form described under subparagraph (A) shall include a summary of the consolidated balance sheet and the consolidated income statement of the issuer, and such other information as the Commission determines is necessary and appropriate in the public interest and for the protection of investors.

"(C) PUBLIC AVAILABILITY OF FORMS.—The Commission shall make financial summary forms filed under this paragraph available to the public, including on the website of the Commission.".

SEC. 3. SEC STUDY.

(a) STUDY.—After the end of the 3-year period beginning on the date of enactment of this Act, the Securities and Exchange Commission shall carry out a study on—

(1) the effect of the amendments under section 2; and

(2) to what extent those changes have improved capital formation by the issuers described under section 12(g)(1)(C) of the Securities Exchange Act of 1934.

(b) REPORT.—Not later than the end of the 180-day period beginning after the end of the 3-year period described under subsection (a), the Commission shall issue a report to the Congress containing—

(1) all findings and determinations made in carrying out the study required under subsection (a); and

(2) a recommendation as to whether issuers in other sectors of the economy could also benefit from the sort of changes made by the amendments under section 2.

PURPOSE AND SUMMARY

On September 7, 2018, Representatives Duffy and Sinema introduced H.R. 6745, the "Access to Capital Creates Economic Strength and Supports Rural America Act" or the "ACCESS Rural America Act". As modified by an amendment in the nature of a substitute, H.R. 6745 amends section 12(g) of the Securities Exchange Act of 1934 (Exchange Act) to raise the threshold for issuers to register as a public reporting company with the U.S. Securities and Exchange Commission (SEC) if the issuer receives support through the Federal universal service fund (USF) in the previous fiscal year. Specifically, the bill raises the threshold for such issuers who have total assets exceeding $10,000,000 from 500 non-accredited investors to 1,250 investors, regardless of accredited investor status, with the dollar threshold indexed for inflation. Additionally, the bill requires the SEC to issue regulations to establish a financial summary form that such issuers may file to include a summary of the consolidated balance sheet and the consolidated income statement

of the issuer, as well as any other information the SEC determines is necessary and appropriate in the public interest and for the protection of investors. Finally, the legislation directs the SEC to conduct a study three (3) years after enactment on the effects of the bill on such issuers and to what extent it has improved capital formation for these issuers and whether the SEC should adjust shareholder thresholds for registration for other issuers.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 6745 is to modernize and tailor U.S. federal securities laws to promote capital formation tools in a manner that allows companies to stay private with less concern for inadvertently triggering requirements to become a reporting company for purposes of the federal securities laws. H.R. 6745 will help those companies that promote universal access to telecommunication and broadband services, including in rural areas, to raise capital without triggering costly SEC registration requirements. The legislation will also reduce the burdens associated with many such companies who find themselves having to divert resources from broadband deployment and instead retain legal counsel to comply with SEC rules as they have difficulty remaining under the current investor registration threshold.

Section 12(g) of the Exchange Act establishes the thresholds at which an issuer is required to register a class of securities with the SEC. Once a company registers securities under 12(g) they become subject to the periodic and current reporting requirements under Section 13(a) of the Exchange Act, and most companies cannot terminate a registration or suspend reporting until the class of securities is held by fewer than 300 persons.

On May 3, 2016 the SEC implemented the amendments made by Title V and Title VI of the Jumpstart Our Business Startups Act (JOBS Act) (P.L. 112–106) and Title LXXXV of the Fixing America's Surface Transportation Act (FAST Act) to Section 12(g). These amendments raised the threshold for registration and termination of registration for a class of equity securities under Section 12(g). Specifically, the JOBS Act amendments require an issuer to register a class of equity securities with the SEC if the issuer has more than $10 million in total assets held by either 2,000 persons, or 500 persons who are not accredited investors. The Congress also adopted amendments in regards to banks and bank holding companies, with the issuer having to register with the SEC if the issuer had more than $10 million in total assets held by 2,000 persons regardless of accredited investor status.

The JOBS Act also amended the threshold under which issuers can terminate a class of securities under section 12(g) or suspend reporting under Section 15(d)(1). For banks and bank holding companies, the issuer can terminate or suspend a class of securities if they are held by fewer than 1,200 persons. For issuers that are not banks or bank holding companies, that threshold for termination remained at 300.

The purpose of the JOBS Act amendments was to help private companies expand their abilities to raise capital and to reduce the regulatory burdens associated with staying private until the company is ready to shoulder the significant costs associated with going and being public. By increasing the asset and persons thresh-

old, private companies are able attract larger capital investments from a diverse range of investors without have to register under the Exchange Act or engage in an initial public offering.

While a laudable goal, the implementation of these provisions has actually created problems for many companies looking to extend their securities offerings to a greater number of investors, particularly through crowdfunding. For example, as a result of the 500 persons non-accredited investor exemption, companies are limited in the number of people to whom they can offer securities and must monitor this closely. This is not only problematic for companies that may want to raise capital, but the Committee has learned that the burdens are especially felt by established companies that raise money based on wide ownership in their communities—such as many rural broadband cooperatives. Now, such companies can potentially trigger the 12(g) registration requirements that are expensive and can ultimately drive community businesses out of existence.

The current thresholds can be particularly difficult to manage for firms that operate in capital-intensive industries, like rural telecommunications and broad infrastructure. The direct capital investments required to operate in rural areas are significantly more than in urban and suburban areas. Urban areas are the least costly to operate, and as compared to suburban areas, the differences are stark. For example, according to a review of rural broadband economics by Steve G. Parsons and James Stegeman, the capital investment for broadband per customer location for conduit and poles is approximately 5.6 times higher in rural areas as in suburban areas; and for fiber optic cable, the capital investment is approximately 4.2 times higher in rural areas as in suburban areas. More specifically, a report published in July 2017 by Deloitte Consulting LLP estimates that the United States needs an estimated $130-to-$150 billion of fiber investment in the next 5-to-7 years to support broadband competition, rural coverage, and wireless densification. In other words, in such network industries the $10 million limit is not difficult to exceed, requiring companies who want to stay private to spend significant capital on avoiding the risk of triggering registration requirements—including on monitoring, consulting, and legal services, as well as efforts to buy back stock to manage the number of shareholders. Additionally, these costs typically add on to other costs that rural telecommunication companies already face such as telecommunications regulatory requirements and costs of deploying and operating advanced fiber optic networks in high-cost rural areas. Reducing the regulatory burden on such providers is essential because rural areas not only are much more expensive to serve, they often are served by smaller companies. For many of these small companies, this capital would be better spent on investment in jobs and growth.

Similar to the elimination of the non-accredited investor distinction for banks and bank holding companies, it makes sense to eliminate this requirement for nonbank companies who already share information with shareholders and otherwise could provide financial information in a more streamlined manner—a reason such relief was extended to banks and bank holding companies previously.

H.R. 6745 neither weakens investor protection nor does it deny retail investors with essential information necessary to make informed investment decisions. At a June 2018 hearing of the Subcommittee on Capital Markets, Securities, and Investment, the co-directors of the SEC's Division of Enforcement reinforced the SEC's enforcement focus and testified that "Retail investors depend on fair, orderly, and efficient markets to build savings to buy homes, pay for college, or plan for retirement, among other things. They are not only often the most prevalent participants in our markets, but, in many cases, also the most vulnerable and least able to weather financial loss." Securities fraud is illegal and it remains illegal under H.R. 6745. Nothing in this bill either prohibits or inhibits the SEC or the Department of Justice from investigating and prosecuting companies that are engaging in fraud. As SEC Chairman Clayton testified before the Committee on June 21, 2018 about the importance of Enforcement, "After more than a year on the job, I continue to firmly believe that Enforcement's work is essential to protecting investors and maintaining confidence in the integrity and fairness of our capital markets."

Recipients of Universal Service Funding—which are generally rural telecommunications and broad infrastructure companies—are such nonbank companies. Ultimately, by allowing rural broadband providers to raise capital from up to 1,250 investors, regardless of accredited investor status, more capital will be infused into our markets and such companies can better raise the capital they need to reinvest in technological upgrades and more appropriately navigate the securities regulatory landscape.

HEARINGS

The Committee on Financial Services held hearings examining matters relating to H.R. 6745 on April 26, 2018 and April 28, 2018.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 13, 2018, and ordered H.R. 6745 to be reported favorably to the House, as amended, by a vote of 37 yeas to 15 nays (FC–205), 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. An amendment in the nature of a substitute was agreed to by voice vote. The sole recorded vote was 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 37 yeas to 15 nays (FC–205), a quorum being present.

Record vote no. FC-205

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)		X	
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)		X	
Mr. King	X			Ms. Velázquez		X	
Mr. Royce (CA)	X			Mr. Sherman		X	
Mr. Lucas	X			Mr. Meeks			
Mr. Pearce				Mr. Capuano			
Mr. Posey	X			Mr. Clay			
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)		X	
Mr. Stivers	X			Mr. Cleaver			
Mr. Hultgren	X			Ms. Moore		X	
Mr. Ross	X			Mr. Ellison			
Mr. Pittenger				Mr. Perlmutter		X	
Mrs. Wagner	X			Mr. Himes		X	
Mr. Barr	X			Mr. Foster		X	
Mr. Rothfus	X			Mr. Kildee		X	
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty		X	
Mr. Poliquin	X			Mr. Heck		X	
Mrs. Love	X			Mr. Vargas		X	
Mr. Hill	X			Mr. Gottheimer			
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen		X	
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	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. 6745 will help companies to raise the capital that they need to grow and become public by eliminating unnecessary compliance costs for small and emerging companies.

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, November 15, 2018.

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. 6745, the ACCESS Rural America 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. 6745—ACCESS Rural America Act

Under current law, securities issuers with total assets exceeding $10 million and whose securities are held by either 500 nonaccredited investors or by 2,000 people must file a securities registration statement with the Securities and Exchange Commission (SEC). H.R. 6745 would raise the threshold to 1,250 nonaccredited investors if the issuer received support directly, or through an affiliate, from a federal universal service support program and would index

the $10 million asset threshold to inflation. The SEC would be required to conduct a study and issue a report on the effects of the changes. Under the bill, the SEC also would be required to develop a financial summary form that issuers that receive support through a federal universal service support program and have securities held by between 500 and 1,250 nonaccredited investors could file.

Using information from the SEC, CBO estimates that implementing H.R. 6745 would cost $2 million over the 2019–2023 period for the agency to develop the new form, conduct the study, and issue its report. However, 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. 6745 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 6745 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6745 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

If the SEC increased fees to offset the costs associated with implementing the bill, H.R. 6745 would increase the cost of an existing mandate on private entities required to pay those assessments. CBO estimates that the incremental cost of the mandate would be less than $2 million, well below the annual threshold for private-sector mandates established in UMRA ($160 million in 2018, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs), and Rachael Austin (for mandates). The estimate was reviewed 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 pro-

visions 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 rule makings: The Committee estimates that the bill requires one directed rulemaking to direct the SEC to issue regulations to establish a financial summary form to be filed by the issuer with the SEC to include a summary of the consolidated balance sheet and the consolidated income of the issuer, as well as any other such information as the SEC determines necessary.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 6745 as the "Access to Capital Create Economic Strength and Supports Rural America Act," or the "ACCESS Rural America Act."

Section 2. Shareholder thresholds for registration of certain issuers

This section amends section 12(g) of the Securities Exchange Act of 1934 to raise the threshold to register as a public reporting company with the SEC from 500 non-accredited investors to 1,250 investors, with the $10 million threshold indexed for inflation. Additionally, this section requires the SEC to issue regulations to establish a financial summary form that is publicly available, to be filed by issuers that includes a summary of the consolidated balance sheet and the consolidated income statement of the issuer, as well as any other information the SEC deems necessary.

Section 3. SEC study

This section requires the SEC to conduct a study on the effects of the bill on such issuers and to what extent it has improved capital formation, with the SEC required to issue a report to Congress containing the findings of the study as well as a recommendation to whether shareholder thresholds should be adjusted for other issuers.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * * * *

REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title and the rules and regulations thereunder. The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.

(b) A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structures, and nature of the business;

(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;

(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with,

the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

(E) remuneration to others than directors and officers exceeding $20,000 per annum;

(F) bonus and profit-sharing arrangements;

(G) management and service contracts;

(H) options existing or to be created in respect of their securities;

(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm; and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(3) Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(c) If in the judgment of the Commission any information required under subsection (b) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.

(d) If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission;

whereupon the issuer shall be relieved from further compliance with the provisions of this section and section 13 of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken. An unissued security may be registered only in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(e) Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors permit securities listed on any exchange at the time the registration of such exchange as a national securities exchange becomes effective, to be registered for a period ending not later than July 1, 1935, without complying with the provisions of this section.

(f)(1)(A) Notwithstanding the preceding subsections of this section, any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to—

(i) any security that is listed and registered on a national securities exchange, subject to subparagraph (B); and

(ii) any security that is otherwise registered pursuant to this section, or that would be required to be so registered except for the exemption from registration provided in subparagraph (B) or (G) of subsection (g)(2), subject to subparagraph (E) of this paragraph.

(B) A national securities exchange may not extend unlisted trading privileges to a security described in subparagraph (A)(i) during such interval, if any, after the commencement of an initial public offering of such security, as is or may be required pursuant to subparagraph (C).

(C) Not later than 180 days after the date of enactment of the Unlisted Trading Privileges Act of 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title. Until the earlier of the effective date of such rule or regulation or 240 days after such date of enactment, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next day of trading.

(D) The Commission may prescribe, by rule or regulation such additional procedures or requirements for extending unlisted trading privileges to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title.

(E) No extension of unlisted trading privileges to securities described in subparagraph (A)(ii) may occur except pursuant to a rule, regulation, or order of the Commission approving such extension or extensions. In promulgating such rule or regulation or in issuing such order, the Commission—

(i) shall find that such extension or extensions of unlisted trading privileges is consistent with the maintenance of fair

and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title;

(ii) shall take account of the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(iii) shall not permit a national securities exchange to extend unlisted trading privileges to such securities if any rule of such national securities exchange would unreasonably impair the ability of a dealer to solicit or effect transactions in such securities for its own account, or would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

(F) An exchange may continue to extend unlisted trading privileges in accordance with this paragraph only if the exchange and the subject security continue to satisfy the requirements for eligibility under this paragraph, including any rules and regulations issued by the Commission pursuant to this paragraph, except that unlisted trading privileges may continue with regard to securities which had been admitted on such exchange prior to July 1, 1964, notwithstanding the failure to satisfy such requirements. If unlisted trading privileges in a security are discontinued pursuant to this subparagraph, the exchange shall cease trading in that security, unless the exchange and the subject security thereafter satisfy the requirements of this paragraph and the rules issued hereunder.

(G) For purposes of this paragraph—

(i) a security is the subject of an initial public offering if—

(I) the offering of the subject security is registered under the Securities Act of 1933; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of section 13 or 15(d) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

(2)(A) At any time within 60 days of commencement of trading on an exchange of a security pursuant to unlisted trading privileges, the Commission may summarily suspend such unlisted trading privileges on the exchange. Such suspension shall not be reviewable under section 25 of this title and shall not be deemed to be a final agency action for purposes of section 704 of title 5, United States Code. Upon such suspension—

(i) the exchange shall cease trading in the security by the close of business on the date of such suspension, or at such time as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title; and

(ii) if the exchange seeks to extend unlisted trading privileges to the security, the exchange shall file an application to reinstate its ability to do so with the Commission pursuant to such procedures as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title.

(B) A suspension under subparagraph (A) shall remain in effect until the Commission, by order, grants approval of an application to reinstate, as described in subparagraph (A)(ii).

(C) A suspension under subparagraph (A) shall not affect the validity or force of an extension of unlisted trading privileges in effect prior to such suspension.

(D) The Commission shall not approve an application by a national securities exchange to reinstate its ability to extend unlisted trading privileges to a security unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title. If the application is made to reinstate unlisted trading privileges to a security described in paragraph (1)(A)(ii), the Commission—

(i) shall take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such a security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(ii) shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of a dealer to solicit or effect transactions in such security for its own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of marketmakers who are specialists and such dealers who are not specialists.

(3) Notwithstanding paragraph (2), the Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this title.

(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

(5) In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this title. The powers and duties of the Commission under this title shall be applicable to the rules of an exchange in respect to any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of section 13, 14, or 16 of this title.

(g)(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by either—

(i) 2,000 persons, or

(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), [and]

(B) in the case of an issuer that is a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons, *and*

(C) in the case of an issuer that, during its previous fiscal year, received support, directly or through an affiliate, through any Federal universal service support mechanism established under section 254 of the Communications Act of 1934 and filed the report described under paragraph (7) with respect to such fiscal year, not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by either—

(i) 2,000 persons, or

(ii) 1,250 persons who are not accredited investors,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require)

with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph. *The dollar figures in this paragraph shall be indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, rounded to the nearest $100,000.*

(2) The provisions of this subsection shall not apply in respect of—

(A) any security listed and registered on a national securities exchange.

(B) any security issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940.

(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual; or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940.

(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

(G) any security issued by an insurance company if all of the following conditions are met:

(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance

(or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title.

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.

(3) The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

(4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than 300 persons, or, in the case of a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons persons. The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.

(5) For the purposes of this subsection the term "class" shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms "total assets" and "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. For purposes of

this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product. For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of "held of record" shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933.

(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.

(7) REPORT BY UNIVERSAL SERVICE SUPPORT MECHANISM RECIPIENTS.—

(A) IN GENERAL.—The Commission shall issue regulations to establish a financial summary form that may be annually filed by an issuer that—

(i) during its previous fiscal year, received support, directly or through an affiliate, through any Federal universal service support mechanism established under section 254 of the Communications Act of 1934; and

(ii) has a class of equity security held of record by 500 or more persons who are not accredited investors, but less than 1,250 persons who are not accredited investors.

(B) CONTENTS.—The form described under subparagraph (A) shall include a summary of the consolidated balance sheet and the consolidated income statement of the issuer, and such other information as the Commission determines is necessary and appropriate in the public interest and for the protection of investors.

(C) PUBLIC AVAILABILITY OF FORMS.—The Commission shall make financial summary forms filed under this paragraph available to the public, including on the website of the Commission.

(h) The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 13, 14, or 15(d) or may exempt from section 16 any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this title, classify issuers and prescribe requirements appropriate for each such class.

(i) In respect of any securities issued by banks and savings associations the deposits of which are insured in accordance with the Federal Deposit Insurance Act, the powers, functions, and duties

vested in the Commission to administer and enforce sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, (1) with respect to national banks and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of the date of enactment of this subsection, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

(j) The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

(k) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—

(1) TRADING SUSPENSIONS.—If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

(A) summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

(B) summarily to suspend all trading on any national securities exchange or otherwise, in securities other than ex-

empted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision. If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(2) EMERGENCY ORDERS.—

(A) IN GENERAL.—The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors—

(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);

(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or

(iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of—

(I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets; or

(II) the transmission or processing of securities transactions (other than transactions in exempted securities).

(B) EFFECTIVE PERIOD.—An order of the Commission under this paragraph shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), an order of the Commission under this paragraph may not continue in effect for more than 10 business days, including extensions.

(C) EXTENSION.—An order of the Commission under this paragraph may be extended to continue in effect for more than 10 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 10 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph continue in effect for more than 30 calendar days.

(D) SECURITY FUTURES.—If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(E) EXEMPTION.—In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of—

(i) section 19(c); or

(ii) section 553 of title 5, United States Code.

(3) TERMINATION OF EMERGENCY ACTIONS BY PRESIDENT.—The President may direct that action taken by the Commission under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

(4) COMPLIANCE WITH ORDERS.—No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5) of this subsection or has ceased to be effective upon direction of the President as provided in paragraph (3).

(5) LIMITATIONS ON REVIEW OF ORDERS.—An order of the Commission pursuant to this subsection shall be subject to review only as provided in section 25(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(6) CONSULTATION.—Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and consider the views of the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

(7) DEFINITION.—For purposes of this subsection, the term "emergency" means—

(A) a major market disturbance characterized by or constituting—

(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

(ii) the transmission or processing of securities transactions.

(l) It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regu-

lations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

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MINORITY VIEWS

H.R. 6745 would increase retail investor exposure to risky private offerings by more than doubling the cap on the number of non-accredited investors that can hold certain companies' unregistered stock without triggering the full protections of federal securities laws.

Pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended by the Jumpstart Our Business Startups Act ("JOBS Act"), a private business that is not a bank, bank holding company, or savings and loan holding company, can issue shares to up to 2,000 investors without registering with the Securities and Exchange Commission (SEC), provided that fewer than 500 of the investors are non-accredited. The JOBS Act permits banks to issue shares to up to 2,000 persons, without respect to accredited status.

"Accredited investors" are persons and entities with the financial resources to withstand the increased risks associated with unregistered securities offerings, which include reduced or no disclosures of the company's financial condition, fewer investor protections, and significant obstacles to reselling the security. As set forth in SEC Rule 501 of Regulation D,[1] a natural person can qualify as an accredited investor if they have an annual income of more than $200,000 (or $300,000 together with a spouse) or a net worth exceeding $1 million, excluding their primary residence. Qualifying entities include financially sophisticated enterprises such as banks, brokers, insurance companies, and investment companies.

H.R. 6745 would raise the non-accredited investor threshold for telecommunications companies that receive certain federal subsidies from 500 to 1,250 persons. The bill would thus allow eligible companies to remain private longer and avoid disclosure of important financial information to a greater number of potentially vulnerable investors.

Importantly, one of the primary reasons Congress afforded a more flexible registration threshold for smaller banks in the JOBS Act was because banks engage in additional reporting in the form of publicly available call reports filed with the Federal Financial Institutions Examination Council (FFIEC). A call report is similar to a public company's quarterly filing (called a "10–Q") in that it provides a quarterly balance sheet, income statement, and narrative explaining elements of the financial statements to the public and regulators. While H.R. 6745 would direct the SEC to create a form that an eligible company must file to take advantage of the increased threshold, the new form need only be filed annually and include "a summary of the consolidated balance sheet and the consolidated income statement of the issuer." The bill leaves any other content to the discretion of the SEC. As such, the form con-

[1] 17 CFR § 230.501(a).

templated by H.R. 6745 falls well short of the robust, audited filings made by public companies. It would also provide investors with significantly less information, on a less regular basis, than the public call reports that justified increased registration flexibility for smaller banks.

Curiously, H.R. 6745 would direct the SEC to (1) retrospectively study whether the bill's changes were warranted and (2) recommend to Congress whether issuers in other industries could also benefit from delayed registration. The inclusion of these provisions suggests that H.R. 6745 is premature. While retrospective studies can provide a useful examination of changing market conditions, Congress should collect sufficient information to demonstrate that amendments to our federal securities laws are appropriately tailored and necessary to advance the interests of the public before enacting such amendments. Unfortunately, the record currently lacks support for the bill's central premise—that reducing disclosures and investor protections is a necessary and appropriate means of enhancing capital formation for rural telecommunication companies.

Investor advocacy groups Americans for Financial Reform ("AFR") and Public Citizen oppose H.R. 6745 because it would increase risks for investors and deter public company registration. In a letter to the Committee, AFR wrote that the bill, "would tend to undermine the public equities markets in favor of private market fundraising with inadequate disclosure requirements and investor protections."

For the above reasons, we oppose H.R. 6745.

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