

SMALL COMPANY DISCLOSURE SIMPLIFICATION ACT OF
2018

DECEMBER 21, 2018.—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

together with

MINORITY VIEWS

[To accompany H.R. 5054]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 5054) to provide an exemption for emerging growth companies and other smaller companies from the requirements to use Extensible Business Reporting Language (XBRL) for financial statements and other periodic reporting, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

On February 15, 2018, Representative David Kustoff introduced H.R. 5054, the “Small Company Disclosure Simplification Act of 2018.” H.R. 5054 provides a voluntary exemption for all Emerging Growth Companies (EGCs) and other issuers with annual gross revenues under \$250 million from the U.S. Securities and Exchange Commission’s (SEC) requirements to file their financial statements in an interactive data format known as eXtensible Business Reporting Language (XBRL). The exemption will be for either five years or two years after the SEC establishes that the benefits of XBRL to smaller issuers outweigh the costs, whichever occurs first. The bill also directs the SEC to conduct an economic analysis

on the costs and benefits of XBRL to smaller issuers and to report to Congress on the SEC and investors' use of the information.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 5054 is to reduce unnecessary regulatory costs on small companies. In the 2000s, the SEC began to phase-in the use of "interactive" data for securities filings. Interactive data formats can be applied to data-much like bar codes are applied to merchandise-to allow computers to recognize data and feed it into analytical tools. XBRL is an interactive data format developed specifically for business and financial reporting. In 2003, the SEC required the submission in an XBRL format for reports of securities holdings and transactions under section 16(a) of the Securities Exchange Act of 1934 (Exchange Act). In 2009, the SEC issued three final rules to require XBRL tagging of disclosure information for operating companies, mutual funds, and credit rating agencies.

The XBRL requirements impose disproportionate burdens on small businesses but, for many of these companies, yield little or no discernable value to investors. The additional burdens on small businesses include cost, additional personnel, management and audit committee time and attention, liability for any misstatements that result from the miscoding of their data, and the need for extensive reviews, tests, and additional documentation in order to submit their SEC filings in XBRL format. The phase-in period for smaller reporting companies was a minor concession for a rule that otherwise was not scaled for smaller companies. The SEC's XBRL requirement simply has been inconsistent with its statutory mission to facilitate capital formation. The mandate does not promote growth and job creation and does not ease compliance burdens for smaller companies, known as EGCs, created by Title I of the Jumpstart Our Business Startups (JOBS) Act (P.L. 112-106).

The *Wall Street Journal* has reported that companies have spent billions on XBRL compliance, with costs for individual investors as high as \$500,000. At a May 23, 2018, Subcommittee on Capital Markets, Securities, and Investment hearing, Brian Hahn, Chief Financial Officer, GlycoMimetics, Inc., testified on behalf of BIO that:

XBRL is an attempt to make it easier for investors to compare financial data, but as with many of the issues I have discussed today, it disproportionately affects smaller issuers due to its one-size-fits-all approach. The simple fact is, biotech investors are less concerned with the reporting metrics that XBRL compares, and more concerned with the actual science of the company and their path toward FDA approval, and, ultimately, getting a drug on the market and to patients.

On March 1, 2017, the SEC proposed amendments to improve the quality and accessibility of data submitted by public companies and mutual funds using XBRL. The proposals would require the use of "Inline" XBRL, which the SEC believes has the potential to benefit investors and other market participants while decreasing, over time, the cost of preparing information for submission to the SEC. Despite the greater clarity and efficiencies provided by these

amendments, concerns about the costs to smaller companies persist.

The SEC's amendments to XBRL are a step in the right direction to reduce the costs for larger companies; however, they do not adequately address the concerns for small and emerging companies. The costly requirements from XBRL add to the litany of regulatory requirements that prevent companies from going public. Exempting these small and emerging companies from the cost burdens associated with submitting financial data in XBRL format would help to ensure that these companies can invest in the growth of the business rather than purchase software to comply with a data-tagging mandate. As SEC Commissioner Hester Peirce noted in her public statement on June 28, 2018, about the SEC's actions to require inline XBRL, "Today's rule will require the adoption of very specific technology to be used in a very specific way on an ambitious timeline. When we issue such a mandate, it has wide-ranging effects on the industry, including knock-on effects on vendors, investors, and others who interact with the relevant filers. By mandating the use of inline XBRL, we are privileging one form of technology over present and potential future competitors."

As Thomas Quadman, Executive Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce testified at the May 23, 2018 Subcommittee hearing:

H.R. 5054 would afford the SEC time to fix some of the deficiencies associated with XBRL. The optional exemption for EGCs and small issuers appropriately grants company boards and their shareholders the ultimate authority to decide whether or not using XBRL is in the best long term interest of the company. This is preferable to a top-down mandate from the SEC for issuers of all sizes to comply with a system that is clearly facing a number of short-term issues.

On June 28, 2018, the SEC voted to adopt amendments to XBRL requirements for operating companies and funds. The SEC stated in its press release that the "amendments are intended to improve the quality and accessibility of XBRL data." The amendments, which will go into effect in phases, require the use of Inline XBRL for financial statement information and risk/return summaries. The amendments also eliminate the requirements for operating companies and funds to post XBRL data on their websites. Commissioner Peirce again noted, "Moreover, it is not clear how useful XBRL is to small filers" investors. According to comments we received, small company investors in certain sectors do not currently use XBRL. Before requiring small filers to invest considerable resources in implementing inline XBRL, we should be sure that the data is actually useful to their investors."

Large accelerated filers that use U.S. GAAP will be required to comply with the XBRL mandate beginning with fiscal periods ending on or after June 15, 2019. Accelerated filers that use U.S. GAAP will be required to comply beginning with fiscal periods ending on or after June 15, 2020. All other filers will be required to comply beginning with fiscal periods ending on or after June 15, 2021. Filers will be required to comply beginning with their first

Form 10-Q filed for a fiscal period ending on or after the applicable compliance date.

Even though the SEC's final rule does not include any exemption for EGCs or smaller reporting companies from the XBRL mandate, the Committee will monitor the phased-in approach for smaller entities. The SEC estimates that there are approximately 1,163 filers, other than investment companies, that may be considered small entities and are subject to the inline XBRL amendments. All of these filers will be required to comply with the amendments by the end of the phase-in. The SEC should use its general exemptive authority to extend the phase-in for smaller entities and EGCs.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 5054 on May 23, 2018.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 7, 2018, and ordered H.R. 5054 to be reported favorably to the House by a vote of 32 yeas to 23 nays (recorded vote no. FC-182), 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 recorded vote was on 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 32 yeas to 23 nays (recorded vote no. FC-182), a quorum being present.

Record vote no. FC-182

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	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay			
Mr. Luetkemeyer	X			Mr. Lynch			
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren				Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			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			
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas			
Mr. Hill	X			Mr. Gottheimer	X		
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. 5054 will reduce regulatory burdens by exempting EGCs and other smaller companies from the requirement to file SEC reports using XBRL.

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, December 20, 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. 5054, the Small Company Disclosure Simplification Act of 2018.

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. 5054—Small Company Disclosure Simplification Act of 2018

Under current law, securities issuers who are required to file certain reports with the Securities and Exchange Commission (SEC) must provide that information in a specific data format known as eXtensible Business Reporting Language (XBRL). H.R. 5054 would direct the SEC to conduct an analysis and report on the costs and benefits of the requirement to use XBRL. Under the bill, issuers with total annual gross revenues of less than \$250 million would be exempt from the XBRL requirements for a minimum of three

years and maximum of five years after enactment. The length of the exemption would depend on the outcome of the SEC analysis and report. H.R. 5054 also would exempt emerging growth companies from the XBRL reporting requirement.¹

Using information from the SEC on the costs of similar activities, CBO estimates that implementing H.R. 5054 would cost \$1 million for the agency to amend its reporting rules, conduct the analysis, and prepare a 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.

Implementing H.R. 5054 also could substantially increase the costs to the SEC by requiring the agency to engage in a more labor intensive process to review and analyze financial data presented in alternative forms to XBRL. However, any such costs would depend on the number of companies that elect to stop using XBRL and on the outcome of the required SEC report; therefore, CBO has no basis for estimating any such increase in SEC costs.

Enacting H.R. 5054 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5054 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5054 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. 5054 would increase the cost of an existing mandate on private entities required to pay those fees. However, the fee increase would depend in part on the number of companies that elect to stop using XBRL. CBO cannot determine the number of those companies and therefore has no basis to estimate whether the additional fees would exceed the threshold 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 Rachel 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.

¹An emerging growth company is one that has issued or proposes to issue stock and had total annual gross revenues of less than \$1.07 billion during its most recently completed fiscal year; companies can retain that designation for up to five years.

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 rule makings: The Committee estimates that the bill requires one directed rule making within the meaning of such section. The directed rulemaking requires the SEC to revise its regulations, under parts 229, 230, 232, 239, 240, and 249 of title 17 of the Code of Federal Regulations, to exempt EGCs and companies with total annual gross revenues of less than \$250,000,000 from the requirements to use XBRL for financial statements and other periodic reporting required to be filed with the Commission.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 5054 as the “Small Company Disclosure Simplification Act of 2018”.

Section 2. Disclosure to multi-class share structures

This section exempts EGCs and for five years, or until the Commission completes a cost benefit analysis, companies with total annual gross revenues of less than \$250,000,000 from the requirements to use XBRL for financial statements and other periodic reporting required to be filed with the Commission.

Section 3. Analysis by the SEC

This section requires that the SEC do an analysis of the costs and benefits of XBRL. Specifically, the analysis will focus on the effects of XBRL on competition, capital formation, the costs to

issuers of submitting data and the benefits it provides the Commission in monitoring the securities markets.

Section 4. Report to Congress

This section requires the Commission to submit a report, no later than one year after enactment, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the progress in implementing XBRL reporting, the use of XBRL data by Commission officials, the use of XBRL by investors, the result of the conducted analysis and any other information the Commission deems necessary.

Section 5. Definitions

This section defines the terms “Commission”, “emerging growth company”, “issuer”, and “securities laws” as they are defined in the section 3 of the Securities Exchange Act of 1934.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 5054 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.

MINORITY VIEWS

H.R. 5054 would exempt most public companies from the requirement to file financial statements in a standard, computer-readable format, called eXtensible Business Reporting Language (“XBRL”). The bill also directs the SEC to conduct a retrospective study to determine whether, in hindsight, the exemption makes sense. The bill would potentially harm smaller public companies by undermining the ability of analysts, investors, and the public to efficiently research these firms.

XBRL-formatted data can be processed by software to allow for sophisticated viewing and analysis. In 2009, the SEC adopted a rule requiring public companies to submit their filings in the XBRL format as an exhibit to the company’s human-readable documents. In its release, the SEC found that the benefits of computer-readable financial data to the investing public and the filers themselves outweighed the potential costs of the new requirement.

H.R. 5054 would create exemptions for emerging growth companies (i.e., newly public companies with less than \$1 billion in revenues, \$700 million in public float, and \$1 billion in nonconvertible debt) and companies with less than \$250 million in annual revenues from the XBRL filing requirement. These exemptions would apply to more than 60% of public companies.

The Committee on Financial Services first considered identical legislation more than four years ago. Information has since been produced that demonstrates the importance of computer-readable financial data to investors, regulators, and public companies. For example, an August 2017 study of filings from 880 small companies revealed that investors downloaded financial records in XBRL format nearly twice as often as conventional data files. This study suggests that investors find machine-readable data useful as they seek to obtain specific information about issuers, compare information across different issuers, or observe how issuer-specific information changes over time.

Additionally, the SEC has indicated that it relies on XBRL data to protect investors and root out bad actors in our capital markets. In a May 3, 2018 speech, Scott Bauguess, the SEC’s Deputy Chief Economist and Deputy Director of the Division of Economic and Risk Analysis, stated, “the agency’s commitment to investor protection involves the use of sophisticated data analytics to ensure that we have insight into the market, particularly as we seek potential market misconduct.”

Regarding costs, preliminary results from a 2018 survey of XBRL filing agents for 1,300 small public companies show that the average company paid less than \$6,000 for XBRL filing services in 2017, a 41% decline since the Committee first considered this exemption in 2014. The median costs were approximately \$2,500—a modest cost that would not seem to outweigh diminishing the ac-

cessibility and utility of public company financial data. Importantly, on June 28, 2018, the SEC adopted amendments to its rules to require the use of the new Inline XBRL format, which will further reduce the costs of XBRL filings by streamlining the filing process. These developments suggest that H.R. 5054 is unwarranted and could negatively affect investors and the companies the bill purports to help.

H.R. 5054 is opposed by AFL–CIO, Americans for Financial Reform, Consumer Federation of America, and the Council of Institutional Investors because investors, regulators, and market researchers heavily rely on XBRL data.

For the aforementioned reasons, we oppose H.R. 5054.

MAXINE WATERS.
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