

FAMILY OFFICE TECHNICAL CORRECTION ACT OF 2017

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OCTOBER 23, 2017.—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. 3972]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3972) to clarify that family offices and family clients are accredited investors, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 1, line 7, strike “Any person who is a” and insert “(a) IN GENERAL.—Subject to subsection (b), any”.

Page 1, line 7, strike “client,” and insert “client of a family office,”.

Page 2, after line 2, insert the following:

“(b) LIMITATION.—Subsection (a) only applies to a family office with assets under management in excess of \$5,000,000, and a family office or a family client not formed for the specific purpose of acquiring the securities offered, and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of the prospective investment.”.

PURPOSE AND SUMMARY

Introduced by Representative Carolyn Maloney on October 5, 2017, H.R. 3972, the Family Office Technical Correction Act of 2017, clarifies that family offices and family clients, as defined in section 275.202(a)(11)(G)-1 of title 17, Code of Federal Regulations, generally are accredited investors under Regulation D.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 3972 is to provide a technical clarification to ensure that the federal securities laws consider family offices to be accredited investors under Regulation D, as promulgated by the Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933 (Securities Act).

A family office is a private entity formed and controlled by the family it serves to manage its personal and financial needs. Section 409 of the Dodd-Frank Wall Street Reform and Consumer Protection Act empowered the SEC to adopt Rule 202(a)(11)(G)-1, the Family Office Rule, under the Investment Advisers Act of 1940 (Advisers Act). The Family Office Rule allows a family office to give investment advice to a “family client” without registering under the Advisers Act. The public policy to support this exclusion is based on the notion that members of a family will protect each other and that the investor protections of the Advisers Act do not need to apply in this unique situation. This policy rationale also should extend to treat family offices as accredited investors under Regulation D. Providing this clarity is important because family offices frequently seek to acquire interests in private equity funds and hedge funds as part of the family office asset allocation process. As amended, H.R. 3972 satisfies this need so long as the family office has more than \$5,000,000 in assets under management and has not been formed for the specific purpose of acquiring the securities offered.

HEARINGS

The Committee on Financial Services Subcommittee on Capital Markets, Securities, and Investment held hearings examining matters relating to H.R. 3972 on April 19, 2017 and July 18, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 11, 2017, and October 12, 2017, and ordered H.R. 3972 to be reported favorably to the House, as amended, by a recorded vote of 60 yeas to 0 nays (Recorded vote no. FC-87), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment offered by Mrs. Maloney by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House, as amended. The motion was agreed to by a recorded vote of 60 yeas to 0 nays (Recorded vote no. FC-87), a quorum being present.

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	.....	.....

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Pearce	X	.....	.....	Mr. Capuano	X	.....	.....
Mr. Posey	X	.....	.....	Mr. Clay	X	.....	.....
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	X	.....	.....
Mr. Hultgren	X	.....	.....	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	X	.....	.....
Mr. Poliquin	X	.....	.....	Mr. Heck	X	.....	.....
Mrs. Love	X	.....	.....	Mr. Vargas	X	.....	.....
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. 3972 will provide regulatory parity for family offices by clarifying the definition of accredited investor, under Regulation D of the Securities Act of 1933, includes family offices.

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, October 20, 2017.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3972, the Family Office Technical Correction Act of 2017.

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. 3972—Family Office Technical Correction Act of 2017

Current law provides a number of exemptions from the requirement that securities be registered with the Securities and Exchange Commission (SEC) prior to their sale. Central to those exemptions is the accredited investor, a person with sufficient financial sophistication and ability to sustain the risk of loss so that the protections from the registration process are unnecessary. Accredited investors may participate in investment opportunities not available to non-accredited investors, such as purchasing securities that are exempt from registration.

H.R. 3972 would broaden the definition of an accredited investor to include a family office or a client of a family office that meets certain criteria. (A family office is a company that only has family clients, is owned and controlled by family members or family entities, and does not hold itself out to the public as an investment adviser.)

Based on an analysis of information from the SEC, CBO estimates that implementing H.R. 3972 would cost less than \$500,000 for the agency to conduct a rulemaking to change the definition of an accredited investor. Moreover, 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. 3972 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3972 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3972 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

If the SEC increases fees to offset the costs associated with implementing the bill, H.R. 3972 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 small and would fall well below the annual threshold for private-sector mandates established in UMRA (\$156 million in 2017, adjusted annually for inflation).

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

FEDERAL MANDATES STATEMENT

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

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

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

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

EARMARK IDENTIFICATION

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

DUPLICATION OF FEDERAL PROGRAMS

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

DISCLOSURE OF DIRECTED RULEMAKING

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

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 3972 as the “Family Office Technical Correction Act of 2017.”

Section 2. Accredited investors clarification

Any person who is a family office or a family client, as defined in section 275.202(a)(11)(G)-1 of title 17, Code of Federal Regulations, shall be deemed to be an accredited investor, as defined in Regulation D of the SEC (or any successor thereto) under the Securities Act, so long as the family office has more than \$5,000,000 in assets under management and has not been formed for the specific purpose of acquiring the securities offered.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 3972 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.

