

MIDDLE MARKET IPO UNDERWRITING COST ACT

JUNE 5, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2812]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2812) to require the Securities and Exchange Commission to carry out a study of the costs associated with small- and medium-sized companies to undertake initial public offerings, having considered the same, reports favorably thereon with an amendment and recommends 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 “Middle Market IPO Underwriting Cost Act”.

SEC. 2. STUDY ON IPO FEES.

(a) STUDY.—The Securities and Exchange Commission (“Commission”), in consultation with the Financial Industry Regulatory Authority, shall carry out a study of the costs associated with small- and medium-sized companies to undertake initial public offerings (“IPOs”). In carrying out such study, the Commission shall—

(1) consider the direct and indirect costs of an IPO, including—

(A) fees, such as gross spreads paid to underwriters, IPO advisors, and other professionals;

(B) compliance with Federal and State securities laws at the time of the IPO; and

(C) such other IPO-related costs as the Commission determines appropriate;

(2) compare and analyze the costs of an IPO with the costs of obtaining alternative sources of financing and of liquidity;

(3) consider the impact of such costs on capital formation;

(4) analyze the impact of these costs on the availability of public securities of small- and medium-sized companies to retail investors; and

(5) analyze trends in IPOs over a time period the Commission determines is appropriate to analyze IPO pricing practices, considering—

(A) the number of IPOs;

(B) how costs for IPOs have evolved over time, including fees paid to underwriters, investment advisory firms, and other professions for services in connection with an IPO;

(C) the number of brokers and dealers active in underwriting IPOs;

(D) the different types of services that underwriters and related persons provide before and after a small- or medium-sized company IPO and the factors impacting underwriting costs;

(E) changes in the costs and availability of investment research for small- and medium-sized companies; and

(F) any other consideration the Commission considers necessary and appropriate.

(b) REPORT.—Not later than the end of the 360-day period beginning on the date of the enactment of this Act, the Commission shall issue a report to the Congress containing all findings and determinations made in carrying out the study required under subsection (a) and any administrative or legislative recommendations the Commission may have.

PURPOSE AND SUMMARY

Introduced on April 25, 2023, by Representative James Himes, H.R. 2812, the *Middle Market IPO Underwriting Cost Act*, would require the SEC, in consultation with the Financial Industry Regulatory Authority, to study the direct and indirect costs associated with small and medium-sized companies to undertake initial public offerings.

BACKGROUND AND NEED FOR LEGISLATION

When a company decides to sell its securities to the public, they incur various costs to comply with the requirements to conduct the IPO, as well as to enhance the ability for the IPO to price and market successfully. Various studies have focused on the costs of being a public company, but recent data may be helpful to better understand the regulatory and professional services costs of undertaking the IPO and becoming a public company. The SEC itself has estimated that the average cost of just achieving regulatory compliance for going public is \$2.5 million, which may not include additional costs of hiring professionals to help undertake the IPO. The study required under this bill will help Congress and the market better understand the costs associated with small-and medium-sized companies to undertake initial public offerings (IPOs) and become public companies.

HEARING

The Subcommittee on Capital Markets of the Committee on Financial Services held a hearing examining matters relating to H.R. 2812 on April 19, 2023.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 26, 2023, and ordered H.R. 2812 to be reported favorably to the House as amended by a recorded vote of 49 ayes to 0 nays (Record vote no. FC–45), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Himes by voice vote.

COMMITTEE VOTES

Clause 2(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.R. 2812 was ordered reported favorably to the House as amended by a recorded vote of 49 ayes to 0 nays (Record vote no. FC-45), a quorum being present.

Record vote no. FC- 45

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	—	—	Ms. Waters	X	—	—
Mr. Hill	X	—	—	Mrs. Velazquez	X	—	—
Mr. Lucas	X	—	—	Mr. Sherman	X	—	—
Mr. Sessions	X	—	—	Mr. Meeks	—	—	—
Mr. Posey	—	—	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	X	—	—	Mr. Lynch	X	—	—
Mr. Huizenga	X	—	—	Mr. Green	X	—	—
Mrs. Wagner	X	—	—	Mr. Cleaver	X	—	—
Mr. Barr	X	—	—	Mr. Himes	X	—	—
Mr. Williams (TX)	X	—	—	Mr. Foster	X	—	—
Mr. Enmer	X	—	—	Mrs. Beatty	—	—	—
Mr. Loudermilk	X	—	—	Mr. Vargas	X	—	—
Mr. Mooney	X	—	—	Mr. Gottheimer	X	—	—
Mr. Davidson	X	—	—	Mr. Gonzalez	X	—	—
Mr. Rose	X	—	—	Mr. Casten	X	—	—
Mr. Steil	X	—	—	Ms. Pressley	X	—	—
Mr. Timmons	X	—	—	Mr. Horsford	X	—	—
Mr. Norman	X	—	—	Ms. Tlaib	X	—	—
Mr. Meuser	X	—	—	Mr. Torres	X	—	—
Mr. Fitzgerald	X	—	—	Ms. Garcia	X	—	—
Mr. Garbarino	X	—	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	X	—	—	Mr. Nickel	X	—	—
Mr. Donalds	X	—	—	Ms. Pettersen	X	—	—
Mr. Flood	X	—	—				
Mr. Lawler	X	—	—				
Mr. Nunn	X	—	—				
Ms. De La Cruz	X	—	—				
Mrs. Houchin	X	—	—				
Mr. Ogles	X	—	—				

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) 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 goal of H.R. 2812 is to help Congress and the market better understand the costs associated with small-and medium-sized companies to undertake IPOs and become public companies by requiring the SEC, in consultation with the Financial Industry Regulatory Authority, to conduct a study.

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 1973.

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:

H.R. 2812, Middle Market IPO Underwriting Cost Act			
As ordered reported by the House Committee on Financial Services on April 26, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between -\$500,000 and \$500,000.			

H.R. 2812 would require the Securities and Exchange Commission (SEC) to study and report to the Congress within 360 days on the cost for small- and medium-sized companies to undertake initial public offering.

Using information from the SEC about the cost of similar reports, CBO estimates that implementing H.R. 2812 would cost \$2

million over the 2023–2024 period. CBO expects that the SEC would need five employees, at an average annual cost of \$300,000 per employee, to complete the study and report to the Congress. However, because the SEC is authorized to collect fees each year to offset its annual appropriation, CBO expects that the net effect on discretionary spending over the 2023–2028 period would be negligible, assuming appropriation actions consistent with that authority.

If the SEC increases fees to offset the costs associated with implementing the bill, H.R. 2812 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 the Unfunded Mandates Reform Act (UMRA, \$198 million in 2023, adjusted annually for inflation).

H.R. 2812 contain no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

FEDERAL MANDATES STATEMENT

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

Per the estimate from CBO, H.R. 2812 could increase the cost of an existing mandate on private entities if the SEC increased costs to implement the bill. However, this increase would still fall below the annual threshold for private-sector mandates as defined in the Unfunded Mandates Reform Act.

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 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 a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 2812 as the “Middle Market IPO Underwriting Cost Act”.

Section 2. Study on IPO fees

This section requires the SEC, in consultation with the Financial Industry Regulatory Authority, to study the costs associated with small and medium-sized companies to undertake initial public offerings. This section states that in carrying out such study, the SEC shall consider the direct and indirect costs of an IPO, compare and analyze the costs of an IPO with the costs of obtaining alternative sources of financing and of liquidity, consider the impact of such costs on capital formation, analyze the impact of these costs on availability of public securities of small and medium-sized companies to retail investors, and analyze trends in IPOs over a time period the SEC determines appropriate to analyze IPO pricing practices. In analyzing trends in IPOs, the SEC will consider, the number of IPOs, how costs of IPOs have evolved, the number of brokers and dealers active in underwriting IPOs, the different types of services that underwriters and related persons provide and the factors impacting underwriting costs, changes in the costs and availability of investment research, and any other consideration the SEC deems appropriate.

Finally, this section notes that the SEC shall issue a report to Congress containing all finding and determinations made in carrying out the study and any administrative or legislative recommendations the SEC may have not later than the end of the 360-day period beginning on the date of the enactment of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2812 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.