

SMALL COMPANY DISCLOSURE SIMPLIFICATION ACT

JANUARY 28, 2016.—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. 1965]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1965) to exempt smaller public companies from requirements relating to the use of Extensible Business Reporting Language for periodic reporting to the Securities and Exchange Commission, and for other purpose, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced by Representative Hurt on April 22, 2015, H.R. 1965, the Small Company Disclosure Simplification Act, provides a voluntary exemption for all Emerging Growth Companies and other issuers with annual gross revenues under \$250 million from the Security and Exchange Commission's (SEC's) requirements to file their financial statements in an interactive data format known as eXtensible Business Reporting Language (XBRL). The exemption would extend 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. H.R. 1965 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 Final Report of the SEC's Government-Business Forum on Small Business Capital Formation recommends eliminating the requirement that smaller reporting companies submit financial information in XBRL format for SEC filings. The Final Report recommended dropping the XBRL requirement "based on its disproportionate burden in terms of cost and time, and because it is said few analysts (who primarily benefit from the use of XBRL) cover smaller reporting companies in any event." In the 113th Congress, identical legislation, H.R. 4164, passed the Committee on a vote of 51-5.

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 reports of securities holdings and transactions under Section 16(a) of the Securities Exchange Act of 1934 (Exchange Act) to be submitted in an XBRL format. In 2009, the SEC issued three final rules requiring XBRL tagging of disclosure information for operating companies, mutual funds, and credit rating agencies.

The XBRL requirements impose burdens on small businesses but yield little or no discernible value to investors. The burdens 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 filing in XBRL format. The SEC's XBRL requirement is inconsistent with the SEC's mandates to promote growth and job creation and to ease compliance burdens for smaller companies included in the Jumpstart Our Business Startups Act.

Tagging financial information in XBRL format may be costly for SEC registrants, particularly small public companies. The Wall Street Journal has reported that companies have spent billions of dollars on XBRL compliance, with costs for individual companies as high as \$500,000. At an April 29, 2015 Capital Markets and Government Sponsored Enterprises Subcommittee hearing, Shane Kovacs of PTC Therapeutics, Inc., testified that:

In addition to failing to provide useful information for investors, XBRL reporting is very costly for resource-constrained small businesses. As its name implies, XBRL is actually its own computing language—one that requires specific expertise outside the bounds of traditional financial or accounting training. Companies need experts in the XBRL language to properly file the appropriate reports, so we must turn to external contractors to complete our XBRL filings. The cost of an external XBRL contractor is significant for an emerging company, reducing the capital available for more vital functions like research and development. At PTC, we spend over \$50,000 annually on XBRL compliance. The capital we spend on XBRL fees could go to support our clinical testing, but instead we pay for a report that investors do not want or need.

Notwithstanding XBRL's significant costs, it has yielded little benefit. Research from Columbia University indicates that fewer than 10% of investors have used XBRL data for analysis, with some investors complaining that the data isn't reliable or timely. Mr. Kovacs further testified that "in preparation for today's [hearing], I actually reached out to a number of the Wall Street analysts that cover our company, and cover the industry, and a couple of the large institutional investors, and said do you know what XBRL is, and if so, do you think it's important to your sense of investing in biotech, and the consensus response I got was that they didn't even know what XBRL was."

HEARINGS

The Committee on Financial Services' Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing examining matters relating to H.R. 1965 on April 29, 2015.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 20, 2015, and ordered H.R. 1965 to be reported favorably to the House without amendment by a recorded vote of 44 yeas to 11 nays (recorded vote no. FC-35), 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 offered by Representative Ellison was not agreed to by a recorded vote of 26 yeas to 34 nays (FC-33). A second amendment offered by Representative Ellison was not agreed to by a recorded vote of 25 yeas to 35 nays (FC-34). The third and final 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 44 yeas to 11 nays (Record vote no. FC-35), a quorum being present.

Record vote no. FC-33

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

Record vote no. FC-34

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

Record vote no. FC-35

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

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 1965 will reduce regulatory burden by exempting Emerging Growth Companies and other smaller companies from the requirement to file SEC reports using eXtensible Business Reporting Language (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.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 17, 2015.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1965, the Small Company Disclosure Simplification Act.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1965—Small Company Disclosure Simplification Act

H.R. 1965 would exempt emerging growth companies (EGCs) and other small companies from requirements to file financial and other

periodic reports with the Securities and Exchange Commission (SEC) using Extensible Business Reporting Language (XBRL). XBRL is a reporting standard that allows financial data stored electronically to be shared and searched efficiently. The reporting exemption would last up to five years, although the bill would allow EGCs to submit information in XBRL format if they so desired. Finally, H.R. 1965 would direct the SEC to conduct an analysis of the costs and benefits of requiring such companies to file reports using XBRL and report the results to the Congress. (An EGC is a company that has issued or proposes to issue stock and had gross revenues of less than \$1 billion during its most recently completed fiscal year; companies can retain that designation from the SEC for up to five years.)

Based on information from the SEC, CBO expects that the agency's costs would increase under H.R. 1965 to meet the bill's new reporting requirements. Further, reducing the amount of financial information about emerging growth companies that is available in an easily searchable format could increase the agency's workload to develop rules affecting those entities. CBO estimates that those costs would be less than \$500,000 per year over the 2016–2020 period. Further, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net budgetary effect of H.R. 1965 would not be significant, assuming appropriation actions consistent with the agency's authority. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1965 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Susan Willie and Ben Christopher. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

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

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

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

EARMARK IDENTIFICATION

H.R. 1965 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 1965 establishes or re-authorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 1965 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 1965 as the “Small Company Disclosure Simplification Act.”

Section 2. Exemption from XBRL requirements for emerging growth companies and other smaller companies

This Section provides an exemption for Emerging Growth Companies and other smaller companies (those with total annual gross revenues of less than \$250,000,000) from the requirement to use Extensible Business Reporting Language (XBRL) for financial statements and other periodic reports required to be filed with the SEC. Under this section, the exemption for smaller companies runs for five years from the date of the Act’s enactment, unless the SEC determines that the benefits of XBRL to such issuers outweigh the costs, in which case the exemption shall run until two years after such determination.

Section 3. Analysis by the SEC

This section requires the SEC to conduct an analysis of the costs and benefits to smaller companies (those with total annual gross revenues of less than \$250,000,000) of using XBRL.

Section 4. Report to Congress

This section requires the SEC to report to Congress, not later than one year after the enactment of the Act, regarding the implementation and use of XBRL reporting, including the results of the analysis required by Section 3 of the Act.

Section 5. Definitions

This section defines the terms “Commission,” “emerging growth company,” “issuer,” and “securities laws.”

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 1965 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. 1965 would exempt small companies (less than \$250M in annual revenue) and Emerging Growth Companies from the requirements to use Extensible Business Reporting Language, or XBRL, for their SEC filings for a period of 3 to 5 years depending on a cost-benefit analysis that the SEC must conduct under the bill. It also requires the SEC to revise its regulations within 60 days of enactment to provide the exemptions and to report to Congress.

XBRL is a computer readable reporting format that makes it easier to compare companies both against each other and against themselves across time. The bill is estimated to exclude more than 60% of public companies from using this format in their SEC filings, which are used by analysts, academics, researchers, the SEC, and investors. Exempting such a large number of filers would prevent those companies from being easily compared to other companies to the disadvantage of those using the data. Ultimately, the companies themselves may be harmed, as investors who do not have such information may demand a higher rate of return for investment or decide not to invest at all. Ironically, this would work against the capital formation goal that this bill is designed to achieve.

In addition, since this bill was considered in Committee last Congress, there have been several new developments that raise additional concerns with the bill. Specifically, the SEC's Investor Advocate has focused his attention on this issue and stated that the bill would hurt the SEC's ability to modernize disclosure. The Investor Advocate also announced a new project by the SEC that would help to reduce costs and improve the current use of XBRL by integrating XBRL tagging directly into HTML formatted documents. Finally, a large array of data transparency advocates, who've joined with both Democrats and Republicans like Rep. Darrell Issa, have expressed their concerns about making data accessible and understandable to the general public.

Democrats tried to limit the detrimental effect of the bill by narrowing the bill to only apply to emerging growth companies, as well as directing the SEC to reform XBRL. However, both amendments were rejected.

For these reasons, we oppose H.R. 1965.

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