

SBIC ADVISERS RELIEF ACT OF 2014

DECEMBER 2, 2014.—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

[To accompany H.R. 4200]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4200) to amend the Investment Advisers Act of 1940 to prevent duplicative regulation of advisers of small business investment companies, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 4200 amends the Investment Advisers Act of 1940 to reduce unnecessary regulatory costs and eliminate duplicative regulation of advisers to Small Business Investment Companies (SBICs) by the Securities and Exchange Commission (SEC). Specifically, H.R. 4200 preempts the application of any state registration requirements to those advisers solely advising SBIC funds; allows advisers to venture capital funds to continue to be “exempt reporting advisers” if they also advise an SBIC fund; and prevents the inclusion of the assets of an SBIC fund in the SEC registration calculation of “assets under management” for those advisers that advise private funds in addition to SBIC funds.

BACKGROUND AND NEED FOR LEGISLATION

The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) creates a new regulatory regime for advisers of private equity funds. Under this new regime, advisers to private equity funds must register as investment advisers with the SEC. However, there are several exemptions from SEC registration for private fund advisers. The main exemption for smaller private

funds is calculated based upon an “assets under management” threshold test. If an adviser to a private fund manages less than \$150 million, the adviser is exempt from SEC registration. Two other exemptions from SEC registration are available for advisers that solely advise SBICs and for advisers that solely advise venture capital funds. However, the law is not clear on whether advisers to both venture capital funds (or private funds) and SBICs are exempted, potentially resulting in new regulatory costs for some advisers.

By eliminating duplicative regulation, H.R. 4200 will allow the private equity fund money that currently goes to pay for regulatory compliance and fees to flow directly to job-creating small businesses. These changes, while largely technical, remove duplicative regulation and allow fund managers to focus more on growing small businesses and less on fitting into a regulatory regime that is not designed for small business investing. Marc Reich, President of Ironwood Capital, testified at a Capital Markets Subcommittee hearing about the duplicative regulation that could result under the current system of exemptions:

If an adviser advises for SBICs and any other private funds and the total assets under management exceed the \$150 million registration threshold (as it does for Ironwood Capital) the threshold for full registration is triggered. The double counting of capital, even otherwise exempt capital, causes double regulation for advisers that advise SBICs and any other private funds (non-SBICs). Firms should not be required to count the SBIC exemption as part of the \$150 million threshold. Congress did not intend for firms to face the threat of double regulation, and it is important to remove the double regulation of SBICs and non-SBICs.¹

HEARINGS

The Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing on H.R. 4200 on April 9, 2014.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 7, 2014, and again on May 22, 2014, and ordered H.R. 4200 to be reported favorably to the House by a recorded vote of 56 yeas to 0 nays (Record vote no. FC-58), 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.

1. A motion by Chairman Hensarling to report the bill without amendment to the House with a favorable recommendation was agreed to by a record vote of 56 yeas and 0 nays (Record vote no. FC-58). [please see vote tally on next page]

¹Marc Reich, President of Ironwood Capital, Testimony before the Subcommittee on Capital Markets, Hearing entitled “Legislative Proposals to Relieve the Red Tape Burden on Investors and Job Creators” (May 23, 2013).

Record vote no. FC-58

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters	X		
Mr. Bachus	X			Mrs. Maloney (NY)	X		
Mr. King (NY)	X			Ms. Velázquez	X		
Mr. Royce	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Gary G. Miller (CA)				Mr. Capuano	X		
Mrs. Capito	X			Mr. Hinojosa	X		
Mr. Garrett	X			Mr. Clay			
Mr. Neugebauer	X			Mrs. McCarthy (NY)	X		
Mr. McHenry	X			Mr. Lynch	X		
Mr. Campbell	X			Mr. David Scott (GA)	X		
Mrs. Bachmann	X			Mr. Al Green (TX)	X		
Mr. McCarthy (CA)	X			Mr. Cleaver			
Mr. Pearce	X			Ms. Moore	X		
Mr. Posey	X			Mr. Ellison	X		
Mr. Fitzpatrick				Mr. Perlmutter	X		
Mr. Westmoreland				Mr. Himes	X		
Mr. Luetkemeyer	X			Mr. Peters (MI)	X		
Mr. Huizenga (MI)	X			Mr. Carney	X		
Mr. Duffy	X			Ms. Sewell (AL)	X		
Mr. Hurt	X			Mr. Foster	X		
Mr. Stivers	X			Mr. Kildee	X		
Mr. Fincher	X			Mr. Murphy (FL)	X		
Mr. Stutzman	X			Mr. Delaney	X		
Mr. Mulvaney	X			Ms. Sinema	X		
Mr. Hultgren	X			Mrs. Beatty	X		
Mr. Ross	X			Mr. Heck (WA)	X		
Mr. Pittenger	X			Mr. Horsford	X		
Mrs. Wagner	X						
Mr. Barr	X						
Mr. Cotton	X						
Mr. Rothfus	X						
Mr. Messer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in 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. 4200 will allow the private equity fund money that currently goes to pay for regulatory compliance diligence and fees to flow directly to job-creating small businesses.

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, July 30, 2014.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC 20515.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4200, the SBIC Advisers Relief Act of 2014.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4200—SBIC Advisers Relief Act of 2014

H.R. 4200 would direct the Securities and Exchange Commission (SEC) to exempt certain investment advisers who advise Small Business Investment Companies (SBICs) from requirements to register with the agency. Specifically, advisers to venture capital funds

that also advise SBICs would be exempt from registration requirements under the bill. Further, advisers to private funds would not be required to count the value of SBICs they advise in the calculation used to determine whether an adviser is large enough to require such registration.

Based on information from the SEC, CBO estimates that implementing H.R. 4200 would not have a significant effect on the number of registered investment advisers, and as a result, CBO estimates that implementing H.R. 4200 would not significantly affect discretionary spending. Further, under current law, the SEC is authorized to collect fees sufficient to offset its appropriation each year; therefore, we estimate that the net cost to the SEC would be negligible, assuming appropriation action consistent with that authority. Enacting H.R. 4200 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4200 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting state governments from requiring some advisers of SBICs to comply with registration, licensing, or other qualification requirements. Some states require those advisers to pay a fee for registration. The cost of the mandate would be the forgone revenue that states could no longer collect. Information from organizations representing state security commissioners and SBICs indicates that both the number of SBIC advisers and the registration fee that states currently charge is small. Therefore, CBO estimates the annual cost for states to comply with the mandate would total less than \$1 million and would thus fall well below the threshold established in UMRA (\$76 million in 2014, adjusted annually for inflation). This bill contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Michael Hirsch and Susan Willie (for federal costs) and Melissa Merrell (for the state and local impact). The estimate was approved by Theresa Gullo, 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. 4200 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(j) of H. Res. 5, 113th Cong. (2013), the Committee states that no provision of H.R. 4200 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(k) of H. Res. 5, 113th Cong. (2013), the Committee states that H.R. 4200 requires no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section states that the Act may be cited as the SBIC Advisers Relief Act of 2014.

Section 2. Advisers of SBICs and Venture Capital Funds

This section amends the Investment Advisers Act of 1940 to exempt from registration requirements advisers of SBICs and other similar advisers.

Section 3. Advisers of SBICs and Private Funds

This section exempts assets under management of a private fund that is an SBIC from the \$150 million registration trigger contained in section 203(m) of the Investment Advisers Act of 1940.

Section 4. Relationship to State Law

This section confirms that state registration laws shall not apply to an adviser to whom an exemption has been granted by the bill.

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, existing law in which no change is proposed is shown in roman):

INVESTMENT ADVISERS ACT OF 1940

TITLE II—INVESTMENT ADVISERS

* * * * *

REGISTRATION OF INVESTMENT ADVISERS

SEC. 203. (a) * * *

* * * * *

(1) EXEMPTION OF VENTURE CAPITAL FUND ADVISERS.—[No investment adviser]

(1) *IN GENERAL.*—No investment adviser that acts as an investment adviser solely to 1 or more venture capital funds shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund. Not later than 1 year after the date of enactment of this subsection, the Commission shall issue final rules to define the term “venture capital fund” for purposes of this subsection. The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(2) *ADVISERS OF SBICS.*—For purposes of this subsection, a venture capital fund includes an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940).

(m) EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.—

(1) * * *

* * * * *

(3) *ADVISERS OF SBICS.*—For purposes of this subsection, the assets under management of a private fund that is an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940) shall be excluded from the limit set forth in paragraph (1).

* * * * *

SEC. 203A. STATE AND FEDERAL RESPONSIBILITIES.

(a) * * *

(b) ADVISERS SUBJECT TO COMMISSION AUTHORITY.—

(1) *IN GENERAL.*—No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser shall apply to any person—

(A) that is registered under section 203 as an investment adviser, or that is a supervised person of such person, except that a State may license, register, or otherwise qualify any investment adviser representative who has a place of business located within that State; [or]

(B) that is not registered under section 203 because that person is excepted from the definition of an investment adviser under section 202(a)(11)[.]; or

(C) that is not registered under section 203 because that person is exempt from registration as provided in sub-

section (b)(7) of such section, or is a supervised person of such person.

* * * * *

○