

SMALL BUSINESS CAPITAL ACCESS AND JOB  
PRESERVATION ACT

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NOVEMBER 22, 2013.—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

together with

MINORITY VIEWS

[To accompany H.R. 1105]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1105) to amend the Investment Advisers Act of 1940 to provide a registration exemption for private equity fund advisers, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. No. 111-203) requires most advisers to private investment funds, including advisers to private equity funds, to register with the U.S. Securities and Exchange Commission (SEC). Private equity funds, however, neither caused nor contributed to the financial crisis, and requiring advisers to these funds to register with the SEC (at an estimated cost of \$500,000 per fund) needlessly diverts capital, time, and effort from investment activities that could be creating jobs; rather than using these resources to create jobs, private equity funds will use them to comply with these new regulatory mandates that impose costs without reducing systemic risk. To eliminate these unnecessary yet costly burdens, H.R. 1105, the Small Business Capital Ac-

cess and Job Preservation Act, exempts advisers to certain private equity funds from these new registration requirements. More specifically, H.R. 1105 exempts advisers to private equity funds that have not borrowed and that do not have outstanding a principal amount in excess of twice their funded capital commitments.

#### BACKGROUND AND NEED FOR LEGISLATION

Introduced by Rep. Robert Hurt, H.R. 1105, the Small Business Capital Access and Job Preservation Act, would exempt advisers to certain private equity funds from the new registration requirements imposed by Title IV of the Dodd-Frank Act. Title IV imposes new registration and reporting requirement on hedge funds and private equity firms. Specifically, Title IV requires investment advisers to private investment funds to register with the SEC under the Investment Advisers Act of 1940. Private funds are defined as those funds that would be investment companies under the Investment Company Act of 1940. H.R. 1105 would exempt from SEC registration advisers to private equity funds that have not borrowed and that do not have outstanding a principal amount in excess of twice their funded capital commitments. In the 112th Congress, Rep. Hurt introduced a similar bill, H.R. 1082, which the Committee reported by a voice vote on June 22, 2011.

As Marc A. Reich, the President of Ironwood Capital, a private equity firm, testified on May 23, 2013, “H.R. 1105 strengthens the ecosystem of the private equity marketplace by reducing overregulation that threatens capital access for small businesses. This bill will help private equity funds by removing unnecessary regulatory burdens that are tying up precious resources and wasting investor capital which would otherwise be directed towards growing small businesses.”

Under the Dodd-Frank Act, private fund advisers with assets under management of less than \$150 million qualify for a limited exemption from registration if they comply with recordkeeping and reporting requirements to be established by the SEC. The Dodd-Frank Act also exempts “family offices” from registration, as those are defined by SEC rule. Lastly, advisers registered with the Commodity Futures Trading Commission (CFTC) as commodity trading advisers are exempt from registration, unless the business of the adviser becomes predominantly securities-related after the Dodd-Frank Act takes effect.

As a result of Title IV’s registration requirements, advisers to private funds must maintain records and file reports with the SEC, which are made available to other regulators, including the Financial Stability Oversight Council (FSOC). The records are required to include the amount of assets under management and use of leverage, counterparty credit exposure, trading and investment positions, valuation policies and practices, types of assets held, side arrangements, trading practices, and other information deemed necessary by the SEC in consultation with the FSOC for the public interest or the assessment of systemic risk.

As Tom Quaadman from the Center on Capital Markets Competitiveness at the U.S. Chamber of Commerce testified at a May 23, 2013, hearing before the Subcommittee on Capital Markets and Government Sponsored Enterprises,

Private equity financing is an important form of financing for smaller businesses that are trying to grow. In fact, between 1995 and 2010, over 23,000 companies, employing 3 million people, were backed by private capital. These firms grew jobs at a rate of 64% compared to other companies which only grew jobs at a rate of 18%. It should also be noted that private equity financing was not a cause of the financial crisis and that business models utilizing private equity financing do not pose interconnected risk to the economy. Yet, the Dodd-Frank Act requires that private equity firms must register with the SEC. This places upon the private equity firms onerous reporting requirements through form PF, including the valuation of privately held portfolio companies, as well as expensive custodial requirements for untradeable legend equities. Requirements such as these are not only costly; they are designed for public company investors, not investors in privately held companies. Thus, the requirements are also a mismatch for the investment model.

H.R. 1105 does not alter the Securities and Exchange Commission's authority provided by Section 404 of the Dodd-Frank Act to require that all private fund advisers maintain records and make them available to the SEC for the protection of investors or for the assessment of systemic risk by the Financial Stability Oversight Council. Title IV directs the SEC to periodically examine the records of private fund advisers, and it authorizes the SEC to conduct additional examinations as the SEC deems necessary. Private fund investment advisers are required to safeguard client assets over which they have custody, and assets must be verified by independent accountants. Taking into account the public interest and the economy, the SEC must increase the financial threshold for accredited investors, and is required to adjust that threshold every four years in the interests of investor protection.

#### HEARINGS

The Committee on Financial Services' Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing on H.R. 1105 on May 23, 2013.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 19, 2013, and ordered H.R. 1105 to be reported favorably to the House without amendment by a recorded vote of 38 yeas to 18 nays (recorded vote no. FC-21), 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. An amendment by Rep. Velázquez to limit the registration exemption provided by the bill to advisers of funds that do not make use of the modification of rules required by section 201(a) of the Jumpstart Our Business Startups Act (JOBS Act) was not agreed to by a recorded vote of 24 yeas to 28 nays (recorded vote no. FC-19).

## Record vote no. FC-19

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....		X		Ms. Waters .....	X		
Mr. Gary G. Miller (CA) .....				Mrs. Maloney (NY) .....	X		
Mr. Bachus .....		X		Ms. Velázquez .....	X		
Mr. King (NY) .....				Mr. Watt .....	X		
Mr. Royce .....		X		Mr. Sherman .....	X		
Mr. Lucas .....				Mr. Meeks .....	X		
Mrs. Capito .....		X		Mr. Capuano .....			
Mr. Garrett .....		X		Mr. Hinojosa .....	X		
Mr. Neugebauer .....		X		Mr. Clay .....	X		
Mr. McHenry .....		X		Mrs. McCarthy (NY) .....			
Mr. Campbell .....		X		Mr. Lynch .....	X		
Mrs. Bachmann .....		X		Mr. David Scott (GA) .....	X		
Mr. McCarthy (CA) .....		X		Mr. Al Green (TX) .....	X		
Mr. Pearce .....		X		Mr. Cleaver .....			
Mr. Posey .....		X		Ms. Moore .....	X		
Mr. Fitzpatrick .....		X		Mr. Ellison .....	X		
Mr. Westmoreland .....				Mr. Perlmutter .....	X		
Mr. Luetkemeyer .....		X		Mr. Himes .....	X		
Mr. Huizenga (MI) .....		X		Mr. Peters (MI) .....	X		
Mr. Duffy .....		X		Mr. Carney .....	X		
Mr. Hurt .....		X		Ms. Sewell (AL) .....	X		
Mr. Grimm .....		X		Mr. Foster .....			
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					
Mrs. Wagner .....		X					
Mr. Barr .....		X					
Mr. Cotton .....							
Mr. Rothfus .....		X					

2. An amendment by Rep. Maloney to strike the registration exemption provided by the bill and insert in its place a requirement that the SEC devise a simplified procedure for registration of investment advisers to qualifying funds was not agreed to by a recorded vote of 26 yeas to 30 nays (recorded vote no. FC-20).

## Record vote no. FC-20

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....		X		Ms. Waters .....	X		
Mr. Gary G. Miller (CA) .....				Mrs. Maloney (NY) .....	X		
Mr. Bachus .....		X		Ms. Velázquez .....	X		
Mr. King (NY) .....				Mr. Watt .....	X		
Mr. Royce .....		X		Mr. Sherman .....	X		
Mr. Lucas .....				Mr. Meeks .....	X		
Mrs. Capito .....		X		Mr. Capuano .....	X		
Mr. Garrett .....		X		Mr. Hinojosa .....	X		
Mr. Neugebauer .....		X		Mr. Clay .....	X		
Mr. McHenry .....		X		Mrs. McCarthy (NY) .....			
Mr. Campbell .....		X		Mr. Lynch .....	X		
Mrs. Bachmann .....		X		Mr. David Scott (GA) .....	X		
Mr. McCarthy (CA) .....		X		Mr. Al Green (TX) .....	X		
Mr. Pearce .....		X		Mr. Cleaver .....			
Mr. Posey .....		X		Ms. Moore .....	X		
Mr. Fitzpatrick .....		X		Mr. Ellison .....	X		
Mr. Westmoreland .....		X		Mr. Perlmutter .....	X		
Mr. Luetkemeyer .....		X		Mr. Himes .....	X		
Mr. Huizenga (MI) .....		X		Mr. Peters (MI) .....	X		
Mr. Duffy .....		X		Mr. Carney .....	X		
Mr. Hurt .....		X		Ms. Sewell (AL) .....	X		
Mr. Grimm .....		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					
Mrs. Wagner .....		X					
Mr. Barr .....		X					
Mr. Cotton .....		X					
Mr. Rothfus .....		X					

3. A motion by Chairman Hensarling to report the bill (H.R. 1105) to the House with a favorable recommendation was agreed to by a record vote of 38 yeas to 18 nays (recorded vote no. FC-21).

## Record vote no. FC-21

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Waters .....		X	
Mr. Gary G. Miller (CA) .....				Mrs. Maloney (NY) .....		X	
Mr. Bachus .....	X			Ms. Velázquez .....		X	
Mr. King (NY) .....				Mr. Watt .....		X	
Mr. Royce .....	X			Mr. Sherman .....	X		
Mr. Lucas .....				Mr. Meeks .....	X		
Mrs. Capito .....	X			Mr. Capuano .....		X	
Mr. Garrett .....	X			Mr. Hinojosa .....		X	
Mr. Neugebauer .....	X			Mr. Clay .....		X	
Mr. McHenry .....	X			Mrs. McCarthy (NY) .....			
Mr. Campbell .....	X			Mr. Lynch .....		X	
Mrs. Bachmann .....	X			Mr. David Scott (GA) .....	X		
Mr. McCarthy (CA) .....	X			Mr. Al Green (TX) .....		X	
Mr. Pearce .....	X			Mr. Cleaver .....			
Mr. Posey .....	X			Ms. Moore .....		X	
Mr. Fitzpatrick .....	X			Mr. Ellison .....		X	
Mr. Westmoreland .....	X			Mr. Perlmutter .....		X	
Mr. Luetkemeyer .....	X			Mr. Himes .....	X		
Mr. Huizenga (MI) .....	X			Mr. Peters (MI) .....		X	
Mr. Duffy .....	X			Mr. Carney .....	X		
Mr. Hurt .....	X			Ms. Sewell (AL) .....	X		
Mr. Grimm .....	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						
Mrs. Wagner .....	X						
Mr. Barr .....	X						
Mr. Cotton .....	X						
Mr. Rothfus .....	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. 1105, among other things, exempts investment advisers to certain qualifying private equity funds if the adviser maintains records and provides reports to the SEC pursuant to applicable regulation.

## 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 9, 2013.*

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. 1105, the Small Business Capital Access and Job Preservation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

ROBERT A. SUNSHINE  
(For Douglas W. Elmendorf, Director).

Enclosure.

*H.R. 1105—Small Business Capital Access and Job Preservation Act*

H.R. 1105 would exempt investment advisers from the Security and Exchange Commission's (SEC's) registration and reporting re-

quirements when they provide advice to a private equity fund with outstanding debt that is less than twice the amount of capital that has been committed to and invested by the fund. The bill would direct the SEC to adopt rules requiring exempt advisors to maintain records and provide reports to the commission as deemed necessary based on the fund's size, governance, risk, and investment strategy. Under current law, investment advisers do not have to register or report to the SEC if they advise only venture capital funds that meet certain qualifications.

Based on information from the SEC, CBO expects that implementing H.R. 1105 would not have a significant effect on the agency's workload. Therefore, we estimate that implementing the bill would not have a significant effect on spending that is subject to appropriation. Further, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net budgetary effect of implementing H.R. 1105 would be negligible. Enacting H.R. 1105 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1105 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 contact for this estimate is Susan Willie. 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 the section 102(b)(3) of the Congressional Accountability Act.

#### EARMARK IDENTIFICATION

H.R. 1105 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. 1105 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. 1105 directs the SEC to issue rules to require investment advisers exempted from registration by the bill to maintain records and file reports with the SEC and to define “private equity fund” for purposes of the bill.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This Section cites H.R. 1105 as the “Small Business Capital and Job Preservation Act.”

##### *Section 2. Registration and reporting exemptions relating to private equity funds advisors*

This section amends section 203 of the Investment Advisers Act of 1940 by adding at the end of section 203 a provision exempting investment advisers to qualifying funds from the registration and reporting requirements of title IV of the Dodd-Frank Act provided that such investment advisers maintain records and file periodic reports with the SEC in accordance with rules that the SEC shall prescribe.

#### 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 (new matter is printed in italic and 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) \* \* \*

\* \* \* \* \*

#### *(o) EXEMPTION OF AND REPORTING REQUIREMENTS BY PRIVATE EQUITY FUNDS ADVISORS.—*

*(1) IN GENERAL.—Except as provided in this subsection, no investment adviser shall be subject to the registration or reporting requirements of this title with respect to the provision of investment advice relating to a private equity fund or funds, provided that each such fund has not borrowed and does not have outstanding a principal amount in excess of twice its invested capital commitments.*

(2) *MAINTENANCE OF RECORDS AND ACCESS BY COMMISSION.—*  
*Not later than 6 months after the date of enactment of this sub-*  
*section, the Commission shall issue final rules—*

*(A) to require investment advisers described in paragraph*  
*(1) to maintain such records and provide to the Commis-*  
*sion such annual or other reports as the Commission tak-*  
*ing into account fund size, governance, investment strategy,*  
*risk, and other factors, as the Commission determines nec-*  
*essary and appropriate in the public interest and for the*  
*protection of investors; and*

*(B) to define the term “private equity fund” for purposes*  
*of this subsection.*

\* \* \* \* \*

## MINORITY VIEWS ON H.R. 1105

The Dodd-Frank Wall Street Reform and Consumer Protection Act brought many firms and pools of capital out of the “shadow” financial system and into the daylight by requiring hedge fund and private equity fund advisors with more than \$150 million of assets under management to register with the Securities and Exchange Commission (SEC) as investment advisers and provide information about their trades and portfolios. Under the Act, the SEC shares this data with the Financial Stability Oversight Board (FSOC) and reports to Congress annually on how it uses this data for the protection of investors and the preservation of market integrity.

Today, private equity fund advisors have registered with the SEC, and have been making systemic risk reports for more than a year. As registered investment advisers, private equity firms must provide advice that is the best interest of the investor, basic disclosures about an employee who violated securities laws, the adviser’s business practices, its fees, and any conflicts of interest. In addition, registered advisers must have a compliance program, a code of ethics and a chief compliance officer for each fund manager. While we recognize that complying with such requirements does have a cost and that some disclosures and registration requirements could be streamlined, we believe the benefits of reduced systemic risk and increased investor protection outweighs these costs.

H.R. 1105 exempts private equity fund advisors levered by less than a 2-to-1 ratio from both making these systemic risk reports, as well as from the investor protections of adviser registration. In practice, because private equity firms leverage the purchased companies, and not the fund, all private equity funds would likely be exempted. As we have heard before, this year, one witness testified that the leverage at the purchased companies is itself an element of risk. Information about these companies is precisely the type of data that should be available to the FSOC to analyze.

Additionally, H.R. 1105 would exempt private equity fund advisers just as the SEC seeks to finalize a provision of the Jumpstart Our Business Startups Act of 2012 (JOBS Act) that permits general solicitation and advertising of private equity funds and other private securities. Investor advocates have raised strong concerns that the pensions of hard working Americans, as well as individual retirees, would now be targeted to invest in these funds. Removing investor protections related to private equity funds just as this provision of the JOBS Act goes into effect is short-sighted.

During consideration of H.R. 1105, Democrats offered two improvements to the bill, but both were rejected by Republicans. Ms. Velázquez offered an amendment to limit the exemption to firms that did not use public solicitation. Ms. Maloney’s amendment would have eliminated the exemption, and instead required the SEC to adopt simplified disclosure and registration requirements

for smaller private equity firms, striking a balance between industry cost concerns on the one hand, and systemic risk mitigation and investor protection on the other. Both were rejected on a party-line vote.

As a result, because H.R. 1105 limits the ability of the FSOC to monitor systemic risk in the financial system, and prevents the SEC from protecting investors in private equity funds, we oppose the bill.

MAXINE WATERS.  
STEPHEN F. LYNCH.  
CAROLYN B. MALONEY.  
MICHAEL E. CAPUANO.  
AL GREEN.  
WM. LACY CLAY.  
JOYCE BEATTY.  
KEITH ELLISON.  
DANIEL T. KILDEE.  
DENNY HECK.  
MELVIN L. WATT.

