

TO REQUIRE THE SECURITIES AND EXCHANGE COMMISSION TO CARRY OUT A STUDY AND RULEMAKING ON THE DEFINITION OF THE TERM “SMALL ENTITY” FOR PURPOSES OF THE SECURITIES LAWS, AND FOR OTHER PURPOSES

MAY 30, 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. 2792]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2792) to require the Securities and Exchange Commission to carry out a study and rulemaking on the definition of the term “small entity” for purposes of the securities laws, and for other purposes, 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 “Small Entity Update Act”.

SEC. 2. STUDIES, REPORTS, AND RULES REGARDING SMALL ENTITIES.

(a) DEFINITIONS.—In this section—

(1) the term “Commission” means the Securities and Exchange Commission; and

(2) the term “small entity”—

(A) has the meaning given the term in section 601 of title 5, United States Code, with respect to the activities of the Commission; and

(B) includes any definition established by the Commission of the term “small business”, “small organization”, or “small governmental jurisdiction” under paragraph (3), (4), or (5), respectively, of section 601 of title 5, United States Code, with respect to the activities of the Commission.

(b) STUDIES AND REPORTS.—Not later than 1 year after the date of enactment of this Act, and again 5 years thereafter, the Commission shall—

(1) conduct a study of the definition of the term “small entity” with respect to the activities of the Commission for the purposes of chapter 6 of title 5, United States Code, which shall consider—

(A) the extent to which the definition of the term “small entity”, as in effect during the period in which the study is conducted, aligns with the find-

ings and declarations made under section 2(a) of the Regulatory Flexibility Act (5 U.S.C. 601 note);

(B) the amount by which financial markets in the United States have grown since the last time the Commission amended the definition of the term “small entity”, if applicable; and

(C) how the Commission should define the term “small entity” to ensure that a meaningful number of entities would fall under that definition; and
(2) submit to Congress a report that includes—

(A) the results of the applicable study conducted under paragraph (1); and

(B) specific and detailed recommendations on the ways in which the Commission could amend the definition of the term “small entity” to—

(i) be consistent with the results described in subparagraph (A); and

(ii) expand the number of entities covered by such definition.

(c) RULEMAKING.—After the completion of each study required under subsection (b), the Commission shall, subject to public notice and comment, revise the rules of the Commission consistent with the results of such study.

PURPOSE AND SUMMARY

Introduced on April 20, 2023, by Representative Ann Wagner, H.R. 2792, the *Small Entity Update Act*, would direct the Securities and Exchange Commission (SEC) to conduct a study, followed by a rulemaking consistent with the results of such study, including defining the term “small entity” under the Regulatory Flexibility Act. The bill also directs the SEC to adjust the definition of small entity for inflation after enactment and every five years thereafter.

BACKGROUND AND NEED FOR LEGISLATION

The Regulatory Flexibility Act requires all federal agencies to analyze the economic impact of regulations when there is likely to be a significant economic impact on a substantial number of small entities and to consider regulatory alternatives that will achieve the agency’s goal while minimizing the burden on small entities.

Regulations often impose disproportionate burdens on startups, small businesses, and other small entities. This bill represents a thoughtful approach to addressing longstanding concerns that numerous SEC rules are not tailored to appropriately balance the SEC’s mandates to protect investors and facilitate capital formation. Studying and revising these definitions—and considering whether such definitions should include more meaningful metrics—will result in a better understanding of regulatory costs on small entities and will ensure that the SEC modernizes its criteria for defining “small entities.” As such, H.R. 2792 will lead to more tailored regulations and appropriately reduced burdens on small entities under our securities laws.

HEARING

The Subcommittee on Capital Markets of the Committee on Financial Services held a hearing examining matters relating to H.R. 2792 on February 8, 2023.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 26, 2023, and ordered H.R. 2792 to be reported favorably to the House as amended by a recorded vote of 42 ayes to 0 nays (Record vote no. FC–37), 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 Mrs. Wagner 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. 2792 was ordered reported favorably to the House as amended by a recorded vote of 42 ayes to 0 nays (Record vote no. FC-37), a quorum being present.

Record vote no. FC- 37

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	—	—	Ms. Waters	X	—	—
Mr. Hill	X	—	—	Mrs. Velázquez	—	—	—
Mr. Lucas	—	—	—	Mr. Sherman	—	—	—
Mr. Sessions	—	—	—	Mr. Meeks	—	—	—
Mr. Posey	X	—	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	X	—	—	Mr. Lynch	X	—	—
Mr. Huelskamp	X	—	—	Mr. Green	X	—	—
Mrs. Wagner	X	—	—	Mr. Cleaver	X	—	—
Mr. Barr	X	—	—	Mr. Himes	X	—	—
Mr. Williams (TX)	X	—	—	Mr. Foster	X	—	—
Mr. Emmer	—	—	—	Mrs. Beatty	X	—	—
Mr. Loudermilk	X	—	—	Mr. Vargas	X	—	—
Mr. Mooney	X	—	—	Mr. Gottheimer	X	—	—
Mr. Davidson	X	—	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	—	—	Mr. Casten	X	—	—
Mr. Steil	X	—	—	Ms. Pressley	—	—	—
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	—	—	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	X	—	—	Mr. Nickel	X	—	—
Mr. Donalds	—	—	—	Ms. Petersen	X	—	—
Mr. Flood	X	—	—				
Mr. Lawler	X	—	—				
Mr. Nunn	X	—	—				
Ms. De La Cruz	X	—	—				
Mrs. Houchins	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. 2792 is to ensure the SEC has a better understanding of regulatory costs on small entities and modernizes its criteria for defining “small entities.”

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. 2792, Small Entity Update 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 net direct spending in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2034?	No	Mandate Effects	
		Contains intergovernmental mandate? No	
		Contains private-sector mandate? Yes, Under Threshold	
* = between -\$500,000 and \$500,000.			

H.R. 2792 would require the Securities and Exchange Commission (SEC) to study its current definition of “small entity” under the Regulatory Flexibility Act (RFA) and revise its rules based on the results of the study. Under current law, agencies subject to the RFA need to determine if their rules have a significant economic impact on small entities, including businesses, nonprofit organizations, and governmental jurisdictions. If so, agencies must consider alternatives that minimize that impact.

Using information about the cost of similar provisions, CBO estimates that implementing the bill would cost \$2 million over the 2023–2028 period. CBO expects that the SEC would need about five employees, at an average annual cost of \$300,000 per employee, to carry out the study and amend rules. 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. 2792 would increase the cost of an existing mandate on private entities required to pay those assessments. CBO estimates that the incremental cost of that mandate would be small and fall below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$198 million in 2023, adjusted annually for inflation).

H.R. 2792 contains 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 Emily Stern, Senior Adviser for 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. 2792 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. 2792 as the *Small Entity Update Act*.

Section 2. Studies, reports, and rules regarding small entities

This section directs the SEC to conduct a study of the definition of the term “small entity.” This section also directs the SEC to propose and finalize rules consistent with the results of its study to define the term “small entity” under the Regulatory Flexibility Act. Lastly, this section directs the SEC to adjust the definition of small entity for inflation after enactment of this Act and every five years thereafter.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2792 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.