

SMALL BUSINESS CAPITAL FORMATION ENHANCEMENT
ACT

FEBRUARY 1, 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

[To accompany H.R. 4168]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4168) to amend the Small Business Investment Incentive Act of 1980 to require an annual review by the Securities and Exchange Commission of the annual government-business forum on capital formation that is held pursuant to such Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced by Representative Poliquin on December 3, 2015, H.R. 4168, the Small Business Capital Formation Enhancement Act, requires the Securities and Exchange Commission (SEC) to respond to any findings and recommendations put forth by the SEC's annual Government-Business Forum on Small Business Capital Formation (Forum). This statutory requirement is consistent with the current obligations related to findings and recommendations submitted by the Investor Advisory Committee as required by Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

BACKGROUND AND NEED FOR LEGISLATION

In 1980, Congress required the SEC to conduct an annual government-business forum to review the current status of problems and programs relating to small business capital formation. A summary of the proceedings of the forum—known as the Government-

Business Forum on Small Business Capital Formation—and any related findings and recommendations are submitted to, among others, the SEC and the appropriate congressional committees for review. The Forum has generated a number of sound recommendations that the Financial Services Committee has used to develop legislation, including many provisions of the bipartisan Jumpstart Our Business Startups (JOBS) Act.

Unfortunately, the SEC is not statutorily obligated to respond to the Forum's recommendations and findings. Although Congress has deemed the recommendations worthy of response and action, the SEC has not. Interestingly, SEC Commissioners typically offer opening statements at Forum meetings that praise the Forum's work and the expertise of its members. For example, at the November 19, 2015, commencement of this year's forum, Chair White observed that:

This is . . . the latest in a remarkable series of open and direct discussions that have given the Commission critical insight into the impact of our rules on small businesses and on their efforts to raise capital. This Forum can be counted on to be another frank and productive conversation, and we welcome all of your perspectives as leaders of the small business community.

Unfortunately, the interest and excitement reflected by the Forum's opening statements have not generated rule proposals once the SEC issues a summary of the Forum's recommendations the following year. As SEC Commissioner Michael Piwowar told attendees of the 2015 Forum:

[g]iven your tremendous efforts to develop thoughtful recommendations, I believe that the Commission should respond to each one. By statute, the Commission is required to respond to each recommendation provided by the Investor Advisory Committee. It should not take a law to require the Commission to respond to the Forum's recommendations—it is more of a matter of common courtesy and good government.

Other experts have spoken about the need to statutorily obligate the SEC to respond to any findings and recommendations put forth by the Forum. At a December 2, 2015, Subcommittee on Capital Markets and Government Sponsored Enterprises hearing, Brian Hahn, who appeared on behalf of the Biotechnology Industry Organization and is the Chief Financial Officer of GlycoMimetics, testified that:

small businesses understand their own regulatory environment, and are uniquely equipped to advise the SEC on how it could be reformed to enhance capital formation. However, despite the fact that most Forum recommendations could be adopted by the SEC through its standard rule proposal process, the SEC is often reluctant to act.

Chris Mathieu, who testified at the same hearing on behalf of the Small Business Investor Alliance, also noted that “in its current form, the Forum is weak and unfortunately most of its ideas are left for dead.”

At the December 2nd hearing, Tom Quaadman, Vice President of the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness, testified that:

[t]oo often, regulatory restructures remain stagnant over the course of decades while the marketplace is constantly evolving. In fact, the proactive efforts by this Subcommittee and Congress in passing the JOBS Act and other bills to advance capital formation are directly related to the inertia of the SEC to modernize regulations . . . This bill would require the Commission to pay closer attention to the Forum and take affirmative action to move forward or not. Therefore, the needs of capital formation cannot simply be ignored.

HEARINGS

The Committee on Financial Services' Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing examining matters relating to H.R. 4168 on December 2, 2015.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on December 8, 2015 and December 9, 2015, and ordered H.R. 4168 to be reported favorably to the House without amendment by a recorded vote of 55 yeas to 1 nay (recorded vote no. FC-81), 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. The sole record vote was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. That motion was agreed to by a recorded vote of 55 yeas to 1 nay (Record vote no. FC-81), a quorum being present.

Record vote no. FC-81

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				Mr. Hinojosa			
Mr. Pearce	X			Mr. Clay			
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			
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						

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. 4168 will remedy the SEC's lack of response to the Government-Business Forum on Small Business Capital Formation's recommendations and findings by statutorily obligating the SEC to respond to any findings and recommendations put forth by the Forum.

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, January 15, 2016.

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. 4168, the Small Business Capital Formation Enhancement 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 Keith Hall, *Director*).

Enclosure.

H.R. 4168—Small Business Capital Formation Enhancement Act

H.R. 4168 would require the Securities and Exchange Commission (SEC) to review the recommendations generated at an annual forum of government and business experts brought together to discuss small business capital formation. The bill also would require the SEC to assess each recommendation made by the forum and disclose any action the agency intends to take with respect to such recommendations.

Based on information from the SEC, CBO estimates that implementing H.R. 4168 would cost less than \$500,000 over the 2016–2020 period to complete the review and assessment of recommendations as directed under the bill. Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that implementing the bill would have a negligible effect on net discretionary costs, assuming appropriation actions consistent with that authority.

Enacting H.R. 4168 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 4168 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

H.R. 4168 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 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 the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 4168 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. 4168 establishes or 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. 4168 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 4168 as the “Small Business Capital Formation Enhancement Act.”

Section 2. Annual review of government-business forum on capital formation

This section requires the Securities and Exchange Commission to review the findings and recommendations of the forum. It also requires the Commission to assess the finding and disclose any action the Commission intends to take with respect to the finding or recommendation.

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

SECTION 503 OF THE SMALL BUSINESS INVESTMENT INCENTIVE ACT OF 1980

ANNUAL GOVERNMENT-BUSINESS FORUM ON CAPITAL FORMATION

SEC. 503. (a) Pursuant to the consultation called for in section 502, the Securities and Exchange Commission shall conduct an annual Government-business forum to review the current status of problems and programs relating to small business capital formation.

(b) The Commission shall invite other Federal agencies, such as the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Small Business Administration, organizations representing State securities commissioners, and leading small business and professional organizations concerned with capital formation, to participate in the planning for such forums.

(c) The Commission may request any of the Federal departments, agencies, or organizations such as those specified in subsection (b), or other groups or individuals, to prepare statements and reports to be delivered at such forums. Such departments and agencies shall cooperate in this effort.

(d) A summary of the proceedings of such forums and any findings or recommendations thereof shall be prepared and transmitted to the participants, appropriate committees of the Congress, and others who may be interested in the subject matter.

(e) The Commission shall—

*(1) review the findings and recommendations of the forum;
and*

*(2) each time the forum submits a finding or recommendation
to the Commission, promptly issue a public statement—*

*(A) assessing the finding or recommendation of the
forum; and*

*(B) disclosing the action, if any, the Commission intends
to take with respect to the finding or recommendation.*