JEB HENSARLING, TX , CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

M E M O R A N D U M

To: Members of the Committee on Financial Services

From: Financial Services Committee Majority Staff

Date: May 2, 2014

Subject: May 7, 2014, Full Committee Markup

The Committee on Financial Services will meet to mark up the following measures and matters at 10:00 a.m. on Wednesday, May 7, 2014, and subsequent days if necessary, in Room 2128 of the Rayburn House Office Building:

- H.R. 4200, the SBIC Advisers Relief Act
- H.R. 4554, the Restricted Securities Relief Act
- H.R. ____, the Small Business Freedom and Growth Act
- H.R. ____, Encouraging Employee Ownership Act of 2014
- H.R. ____, the Disclosure Modernization and Simplification Act
- H.R. ____, the Private Placement Improvement Act
- H.R. ____, to require the Securities and Exchange Commission to revise the definition of a well-known seasoned issuer to reduce the worldwide market value threshold under the definition
- H.R. ____, the Startup Capital Modernization Act of 2014
- H.R. ____, the Equity Crowdfunding Improvement Act of 2014
- H.R. 2629, the Fostering Innovation Act
- H.R. 1779, the Preserving Access to Manufactured Housing Act of 2013
- H.R. 2673, the Portfolio Lending and Mortgage Access Act
- H.R. 3211, the Mortgage Choice Act of 2013
- H.R. 4466, the Financial Regulatory Clarity Act of 2014
- H.R. 4521, the Community Institution Mortgage Relief Act of 2014
- Resolution to authorize the issuance of subpoenas to the Department of Justice and the Department of the Treasury for certain documents

H.R. 4200, the SBIC Advisers Relief Act

Rep. Blaine Luetkemeyer has introduced H.R. 420, the SBIC Advisers Relief Act, which amends the Investment Advisers Act of 1940 to reduce unnecessary regulatory costs and eliminate duplicative regulation of advisers to SBICs. Specifically H.R. 4200 preempts any state registration requirements of 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 AUM for those advisers that advise private funds in addition to SBIC funds.

H.R. 4554, the Restricted Securities Relief Act

Rep. Mick Mulvaney has introduced H.R. 4554, the Restricted Securities Relief Act, to amend SEC Rule 144 to reduce from 6 months to 3 months the mandatory holding period before which restricted securities issued by an SEC reporting company may be resold to the public. H.R. 4554 would also amend Rule 144 to allow the public resale of restricted securities originally issued by a shell company starting 2 years after the date on which the company files a Form 8-K with the SEC disclosing that it is no longer a shell company. Finally, H.R. 4554 would amend Section 18(b) of the Securities Act of 1933 to include in the definition of "covered securities" exempt from state regulation any security offered or sold in compliance with Rule 144A. Provisions included in H.R. 4554 that reduce the holding period from 6 months to 3 months and provide for shell company relief are based on recommendations in the SEC's Government-Business Forum on Small Business Capital Formation Final Report for 2012.

H.R. ____, the Small Business Freedom to Grow Act of 2014

Rep. Ann Wagner has proffered a discussion draft of the Small Business Freedom to Grow Act. The discussion draft would amend the SEC's Form S-1 registration statement to allow a smaller reporting company to incorporate by reference any documents the company files with the SEC after the effective date of the Form S-1. The discussion draft would also allow amend the SEC's Form S-3 registration statement to allow a smaller reporting company with a class of common equity securities listed and registered on a national securities exchange to register a primary securities offering exceeding one-third of the company's public float. Finally, the discussion draft would further amend the Form S-3 registration statement to allow a smaller reporting company without a class of common equity securities listed and registered on a national securities exchange to register a primary securities offering not exceeding one-third of the company's public float.

H.R. ____, the Encouraging Employee Ownership Act of 2014

Rep. Randy Hultgren has proffered a discussion draft of the Encouraging Employee Ownership Act. The discussion draft amends SEC Rule 701, originally adopted in 1988 under Section 3(b) of the Securities Act of 1933 and last updated in 1998. Under current law, if an issuer sells, in the aggregate, more than $5 million of securities in any consecutive 12-month period, the issuer is required to provide additional disclosures to investors, such as risk factors, the plans under which offerings are made, and certain financial statements. The discussion draft would require the SEC to increase that threshold to $20 million. Support for this effort to expand the utility of Rule 701 can be found in the SEC's Government-Business Forum on Small Business Capital Formation Final Reports for 2001, 2004-2005 and 2013.

H.R. ____, the Disclosure Modernization and Simplification Act

Rep. Scott Garrett has proffered a discussion draft of the Disclosure Modernization and Simplification Act. The discussion draft would direct the SEC to permit issuers to submit, on Form 10-K annual reports, a summary page to make annual disclosures easier to understand for current and prospective investors. It would also direct the SEC, within 180 days of enactment, to tailor Regulation S-K's disclosure rules as they apply to emerging growth companies and smaller issuers and to eliminate other duplicative, outdated, or unnecessary disclosure rules as they apply to these smaller issuers. Finally, the discussion draft would direct the SEC to identify and implement additional reforms to Reg. S-K to simplify and modernize SEC disclosure rules.

H.R. ____, the Private Placement Improvement Act

In July 2013, the SEC adopted a rule lifting the ban on general solicitation and advertising for certain private securities offerings under Rule 506 of Regulation D (Reg D), as mandated under Title II of the bipartisan JOBS Act. In addition to lifting the ban on general solicitation and advertising, the SEC issued a separate rule proposal not called for by Congress that would impose a number of new regulatory requirements on small companies seeking to utilize amended Rule 506 to raise capital, including proposals to submit additional Form D filings to the SEC in advance and at the conclusion of an offering, and to file written general solicitation materials with the SEC. Under the SEC's rule proposal, an issuer could also be disqualified by the SEC from using Rule 506 for one year based on a failure to comply with the Form D filing requirements. The comment period closed on September 23, 2013. The SEC has received more than 200 comment letters but has not yet taken further action on the rule proposal. Rep. Scott Garrett has proffered a discussion draft of the Private Placement Improvement Act, that would amend Reg D, consistent with the goals of Title II of the JOBS Act, to ensure that small businesses do not face complicated and unnecessary regulatory burdens when attempting to raise capital through private securities offerings under Rule 506, while at the same time preserving important investor protections.

H.R. ____, to require the Securities and Exchange Commission to revise the definition of a well-known seasoned issuer to reduce the worldwide market value threshold under the definition

A Well-Known Seasoned Issuer (WKSI) is an issuer that meets certain criteria that make it eligible to take advantage of certain regulatory benefits, such as the ability to file an automatic shelf registration statement on Form S-3. One WKSI criterion is that the issuer must have at least $700 million in public float. Rep. Kevin McCarthy has proffered a discussion draft of legislation to require the SEC to revise the definition of a WKSI to reduce this threshold from $700 million to $250 million, thus enabling more issuers to take advantage of the benefits of WKSI designation.

H.R. ____, the Startup Capital Modernization Act of 2014

Rep. Patrick McHenry has proffered a discussion draft of legislation, the Startup Capital Modernization Act, to reform and improve Regulation A securities offerings. Section 2 of the discussion draft increases the maximum amount of a single public offering under

Regulation A from $5 million to $10 million. Section 3 clarifies the preservation of state enforcement authority with respect to an issuer, intermediary, or any other person or entity using the exemption from registration under Regulation A. Section 4 directs the SEC to exempt securities acquired under Tier 1 and Tier 2 Regulation A offerings from Sec. 12(g) of the Securities Exchange Act of 1934 if the issuer provided potential investors with audited financial statements. Section 5 amends the Securities Act of 1933 to add the resale of any securities acquired in an exempted transaction to the list of "exempted transactions" as long as certain conditions are met.

H.R. _____, the Equity Crowdfunding Improvement Act of 2014

Title III of the Jumpstart Our Business Startups Act (""JOBS Act) (P.L. 112-106) establishes the foundation for a regulatory structure for startups and small businesses to raise capital by offering their securities over the Internet using a technique known as crowdfunding. The crowdfunding provisions of the JOBS Act are intended to provide startups and small businesses with capital by making relatively low dollar offerings of securities less costly. The provisions also permit Internet-based platforms to facilitate the offer and sale of securities without having to register with the Commission as brokers. The JOBS Act required the Securities and Exchange Commission (SEC) to issue rules implementing the Act within 270 days of enactment, which would have been January 5, 2013, but the SEC missed this deadline. On October 23, 2013, the SEC issued proposed rules for public comment and the comment period closed on February 4, 2013. The SEC has received more than 325 comment letters but has yet to finalize this rule, which is now more than 450 days overdue. In response to comment letters received by the SEC and concerns with the underlying statute that may make crowdfunding difficult to implement, Rep. Patrick McHenry has proffered a discussion draft of legislation that would strike Title III of the JOBS Act, which was added by the Senate, and replace it with legislation that closely mirrors the House-passed crowdfunding title and makes additional improvements.

H.R. 2629, the Fostering Innovation Act

Rep. Michael Fitzpatrick introduced H.R. 2629, the Fostering Innovation Act, on July 9, 2013. H.R. 2629 requires the Securities and Exchange Commission (SEC) to amend Rule 12b-2 so that companies with a public float of either (i) less than $250 million with no annual revenue restriction or (ii) between $250 million and $700 million and less than $100 million in annual revenue are deemed "non-accelerated filers" and can therefore take advantage of certain exemptions from the securities laws and the Sarbanes-Oxley Act of 2002.

H.R. 1779, the Preserving Access to Manufactured Housing Act of 2013

Rep. Fincher introduced H.R. 1779, the "Preserving Access to Manufactured Housing Act of 2013" to provide technical clarifications to the definition of a "mortgage originator" for purposes of the Truth in Lending Act. The bill also amends the definition of a high cost mortgage and corresponding thresholds to ensure that consumers of small-balance mortgage loans will have the opportunity to have access to mortgage credit.

H.R. 2673, the Portfolio Lending and Mortgage Access Act

Rep. Barr introduced H.R. 2673, the "Portfolio Lending and Mortgage Access Act" to ensure that Americans have access to credit when they choose to purchase a home. The Committee has heard concerns that the Qualified Mortgage rule that went into effect in January is impacting the ability of community financial institutions to offer mortgages to qualified applicants. In fact, a Federal Reserve Board report found that "roughly one-third of black and Hispanic borrowers would not meet the requirements of a QM loan based solely on its debt-to-income requirements."[1] This bill would provide community financial institutions, who frequently hold mortgage loans on portfolio, and other institutions the ability to be protected from the liability associated with Section 1411 of the Dodd-Frank Act so long as the loan appears on the institution's balance sheet. The Committee has received testimony that a lender could be forced to spend between $70,000 to $100,000 to defend itself against each claim that it violated Section 1411 of the Dodd-Frank Act. Because of the potential liability, many community financial institutions have stopped offering mortgages altogether.

H.R. 3211, the Mortgage Choice Act of 2013

Rep. Huizenga introduced H.R. 3211 on September 28, 2013. The QM definition restricts the points and fees associated with a mortgage to three percent of the loan amount. This restriction has nothing to do with the borrower's ability to repay the loan. This legislation would modify the definition of "points and fees" and would exclude from the calculation of points and fees insurance and taxes held in escrow and fees paid to affiliated companies as a result of their participation in an affiliated business arrangement. The Committee has received testimony that providing these exclusions from the cap on points and fees will ensure that consumers can continue to enjoy the convenience of one stop shopping should the consumer choose to receive a mortgage from a lender who provides consumers with products and services from an affiliated company.

H.R. 4466, the Financial Regulatory Clarity Act of 2014

Rep. Capito introduced H.R. 4466 on April 10, 2014. This legislation requires the Federal Deposit Insurance Corporation (FDIC), Office of Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System, Bureau Of Consumer Financial Protection (CFPB), National Credit Union Administration (NCUA), Securities and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC) to assess whether any newly proposed regulation or order conflicts with, duplicates or is inconsistent with existing federal regulations, and address any overlap or duplication before issuing the final rulemaking. H.R. 4466 also requires regulators to evaluate whether existing regulations are outdated, and to submit a report to Congress making recommendations for repealing or amending any conflicting, inconsistent, duplicative, or outdated laws or regulations within 60 days of a proposed rulemaking.

H.R. 4521, the Community Institution Mortgage Relief Act of 2014

[1] "Blacks and Hispanics Likely to be Hurt by 'Qualified Mortgage' Rule", *American Banker*, Oct. 22, 2013.

Mr. Luetkemeyer introduced H.R. 4521, the "Community Institution Mortgage Relief Act," on April 30, 2014 to address concerns that the CFPB's final rules and guidance on escrow and mortgage servicing requirements are overly burdensome for community financial institutions. This bill amends the Dodd-Frank Act to exempt community financial institutions from escrow requirements for loans held in portfolio. This bill also amends the Real Estate Settlement Procedures Act to instruct the CFPB to provide regulatory relief for servicers that annually service 20,000 or fewer mortgage loans, in order to reduce regulatory burdens while appropriately balancing consumer protections.

Resolution to authorize the issuance of subpoenas to the Department of Justice and the Department of the Treasury for certain documents

Beginning in March 2013, the Committee sought records and other information relating to the Department of Justice's (DOJ) prosecutorial decision-making in cases involving large financial institutions. That month, in testimony before the Senate Judiciary Committee, Attorney General Holder indicated that DOJ had not prosecuted certain financial institutions because it feared disrupting the financial system. The Attorney General's testimony followed several high-profile instances in which DOJ had entered into criminal settlements with certain multinational banks that were accused of violating anti-money laundering and other laws. The settlements meant that the banks avoided the possibility of criminal convictions, which might otherwise have triggered administrative proceedings to revoke United States banking charters that were necessary to the institutions' ability to continue as going concerns.

Among other communications, the Committee has sent at least four letters to DOJ and/or the Department of the Treasury ("Treasury") seeking documents to help it understand how DOJ analyzes systemic risk in making prosecution decisions:

1) Letter from Chairmen Hensarling and McHenry to the Attorney General and Secretary of the Treasury dated March 8, 2013;
2) Letter from Chairman McHenry to the Attorney General dated April 3, 2013;
3) Letter from Chairman McHenry to the Attorney General dated June 7, 2013;
4) Letter from Chairman McHenry to the Secretary of the Treasury dated June 7, 2013;
5) Letter from Chairman McHenry to the Attorney General dated August 21, 2013.

Specifically, the Committee's requests sought to determine (1) whether DOJ entered into the settlements primarily because it sought to avoid harming the economy (as suggested by the Attorney General) or whether other factors prompted the settlements, and (2) how DOJ officials measured the potential economic consequences of a contemplated prosecution.[2]

[2] In particular, the Committee considered whether the Department based its assessments on "internal" data or the advice of "outside experts" such as the Financial Stability Oversight Council ("FSOC") and the Office of Financial Research ("OFR").

To date, the Committee is not satisfied that it has received all documents requested by these letters.[3] The Committee has exhausted all reasonable efforts to obtain the requested materials. The Committee's authority to require the production of information in circumstances like those presented here — an investigation relating to the adequacy and effectiveness of existing financial services laws as well as conditions that may suggest the need for new legislation — is well settled.

[3] The Committee is satisfied with the documents Treasury produced in response to the March 8, 2013, letter.