

[H.R. 1839, Reforming Access for Investments in Startup Enterprises \(RAISE\) Act of 2015](#)

FLOOR SITUATION

On Tuesday, October 6, 2015, the House will consider [H.R. 1839](#), the Reforming Access for Investments in Startup Enterprises Act of 2015, under suspension of the rules. H.R. 1839 was introduced on April 16, 2015 by Rep. Patrick McHenry (R-NC) and was referred to the Committee on Financial Services, which ordered the bill reported by a vote of 58 to 0 on July 29, 2015.

SUMMARY

H.R. 1839 amends Section 4 of the Securities Act of 1933 ('33 Act) to increase market liquidity and resolve legal uncertainty that impedes employees of private companies from selling their company-issued securities. Currently, a holder of securities issued in a private placement or private offering may resell the securities on a public market after a holding period. However, there is not a similar stator framework for the private resale of restricted securities.

Specifically, the bill allows the resale of certain restricted securities to be "exempted transactions" (which do not trigger certain registration provisions) if:

- (1) each purchaser is an accredited investor;
- (2) the securities are offered by means of general solicitation or general advertising;
- (3) all such sales are made through a platform available only to accredited investors; and,
- (4) the transaction does not involve a public offering.

The bill largely codifies an existing legal framework for secondary markets for restricted securities.

BACKGROUND

Restricted securities are securities acquired in unregistered, private sales from the issuing company or from an affiliate of the issuer. Investors typically receive restricted securities through private placement offerings, Regulation D offerings, employee stock benefit plans, as compensation for professional services, or in exchange for providing "seed money" or start-up capital to the company.

In order to resell restricted securities in a public marketplace, sellers must follow regulations established by the Securities and Exchange Commission ([Rule 144](#)), which allows public resale of restricted and control securities if a number of conditions are met.¹ However, there is not a similar codified law for private resale of restricted securities. H.R. 1839 codifies an existing legal framework for these transactions to facilitate private company capital formation. Private companies find it much easier to raise primary capital when prospective investors understand that some degree of liquidity will be available to them, particularly in the case of private companies that wish to remain private and defer their initial public offering.

According to the bill sponsor, “Secondary markets are among the most important arenas for entrepreneurs seeking capital, but the lack of liquidity in these markets has limited their viability as a tool for growing companies. My bill is a narrow and straightforward fix which, if enacted, would provide more liquidity thereby facilitating growth for investors and entrepreneurs participating in secondary markets.”²

COST

The Congressional Budget Office (CBO) [estimates](#) implementing H.R. 1839 would cost less than \$500,000 over the 2016 to 2020 period; the SEC would not make any changes to current regulations as a result of the bill. Under current law, the SEC is authorized to collect fees to offset its annual appropriation; therefore, assuming appropriation action consistent with that authority, CBO estimates that implementing the bill would have a negligible effect on net discretionary spending. Enacting H.R. 1839 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

STAFF CONTACT

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.

¹ See FEC [Rule 144: Selling Restricted and Control Securities](#)

² See Rep. Patrick McHenry Press Release, [“McHenry Introduces the RAISE Act of 2015.”](#) April 17, 2015.