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Legislative Bulletin.....November 2, 2011

Contents:

H.R. 1070 - Small Company Capital Formation Act of 2011 (Schweikert, R-AZ)

Order of Business: The bill is scheduled to be considered on Wednesday, November 2, 2011, under a motion to suspend the rules and pass the legislation.

Summary: H.R. 1070 would authorize the Securities and Exchange Commission (SEC) to exempt a certain class of securities from the 1933 Act. The legislation gives the SEC the authority to add by rule or regulation a class of securities to the securities exempted. The legislation would exempt these securities with the following terms and conditions:

- The aggregate offering amount of all securities sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph will not exceed $50,000,000.

- The securities may be offered and sold publicly.

- The securities will not be restricted securities within the meaning of the federal securities laws and the regulations.

- The civil liability provision in section 12(a)(2) will apply to any person offering or selling those securities.

- The issuer may solicit interest in the offering prior to filing any offering statement, on these terms and conditions as the SEC may prescribe in the public interest or for the protection of investors.

- The SEC will require the issuer to file audited financial statements with the Commission annually.

- Any other terms, conditions, or requirements as the SEC may determine necessary in the public interest and for the protection of investors, which may include—

    - a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in the same form and with same content as prescribed by the Commission, which will include a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and
    - disqualification provisions under which the exemption will not be available based upon the disciplinary history of the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which will be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

H.R. 1070 would enact a limitation that only the following types of securities may be exempted under the proposed rule or regulation: equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.

The legislation also require that upon the SEC enacting the terms and conditions, as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under this bill to make available to investors periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of a requirement with respect to that issuer.

The bill requires that not later than 2 years after the date of enactment of the Small Company Capital Formation Act of 2011 and every 2 years thereafter, the Commission will review the offering amount limitation and will increase this amount as the Commission determines appropriate. If the Commission determines not to increase the amount, it will report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.

Lastly, H.R. 1070 requires the added class of securities is to be treated as covered securities for the purpose of the National Securities Markets Improvement Act

Background: According to the committee report, "Section 3 of the Securities Act of 1933 authorizes the SEC to exempt small securities offerings from registration. Under Section 3, the SEC promulgated Regulation A, which exempts public offerings of less

than $5 million in any 12-month period. The SEC set the threshold at $5 million in 1992, where it has remained. Since the SEC set the Regulation A threshold at $5 million in 1992, issuers and market participants have pointed out that the offering threshold has been too low to justify the costs of going public under Regulation A. In addition, inflation, which has risen approximately 165% since 1980, when Congress gave the SEC the authority to set the Regulation A offering threshold, has further exacerbated the imbalance between costs and benefits. Between 1995 and 2004, companies have used Regulation A only 78 times; in 2010, only three times. The low number of Regulation A filings--each for the maximum amount of $5 million--demonstrates that a revision to Regulation A is necessary. To increase the use of Regulation A offerings and help make capital available to small companies, Representative Schweikert introduced H.R. 1070, which increases the offering threshold to $50 million."

Committee Action: H.R. 1070 was introduced on March 14, 2011 by Rep. David Schweikert, and referred to the House Financial Services. On June 22, 2011, the Committee on Financial Services met in open session and ordered H.R. 1070, as amended, favorably reported to the House by voice vote.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: According to the Congressional Budget Office (CBO) report, "implementing H.R. 1070 would cost about $2 million over the 2012-2016 period, assuming appropriation of the necessary funds. The SEC would incur additional costs for staffing and overhead as a result of the expected additional securities offerings exempt from the registration requirement, but those discretionary costs would be less than $500,000 in any year during that period. Enacting H.R. 1070 would not affect direct spending or revenues."

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to the CBO, H.R. 1070 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting states from requiring issuers of some securities to register the securities with the state, or to pay registration fees, prior to issuance. The cost of the mandate would be the amount of fee revenue that states would be precluded from collecting. Based on information from the SEC, states, and industry sources, CBO estimates that forgone revenues would be small and would not exceed the threshold established in UMRA for intergovernmental mandates ($71 million in 2011, adjusted annually for inflation). H.R. 1070 contains no private-sector mandates as defined in UMRA.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: H.R. 1070 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: According Rep. Schweikert's statement of constitutional authority, "Congress has the power to enact this legislation pursuant to the following: Article One, Section Eight."

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H.R. 1965 - To amend the securities laws to establish certain thresholds for shareholder registration, and for other purposes (*Himes*, D-CT)

Order of Business: The bill is scheduled to be considered on Wednesday, November 2, 2011, under a motion to suspend the rules and pass the legislation.

Summary: H.R. 1965 will amend the securities laws to increase certain thresholds for total assets that businesses and banks that issue non-publicly traded securities must hold before being required to register with the Securities and Exchange Commission (SEC). The bill will also increase the threshold for the number of shareholders ("holders of record") banks must have to trigger SEC registration requirements. The legislation would amend Section 12 of the Securities Exchange Act of 1934 to increase to $10 million from $1 million the level of total assets an issuer of non-publicly traded securities must hold before the issuer is required to register with the SEC.

H.R. 1965 would require banks that are issuers to raise the number of "holders of record" who can possess bank securities before the bank would be required to register with the SEC from 500 to 2,000. The bill also establishes that SEC registration requirement for banks would be terminated if the number of holders of record drops to less than 1,200. The bill requires the SEC to issue regulations implementing the changes within one year of enactment.

H.R. 1965 will require the Chief Economist and Director of the Division of Corporation Finance of the SEC to jointly conduct a study, including a cost-benefit analysis, of shareholder registration thresholds. The legislation will require the cost-benefit analysis to take into account:

- the incremental benefits to investors of the increased disclosure that results from registration;
- the incremental costs to issuers associated with registration and reporting requirements; and
- the incremental administrative costs to the Commission associated with different thresholds.

The legislation also requires a study of the shareholder registration threshold and the cost-benefit analysis will evaluate whether it is advisable to:

- increase the asset threshold;
- index the asset threshold to a measure of inflation;
- increase the shareholder threshold;
- change the shareholder threshold to be based on the number of beneficial owners; and
- create new thresholds based on other criteria.

Lastly, H.R. 1965 will require the Chief Economist and the Director of the Division of Corporation Finance of the SEC to jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report not later than 2 years after the date of enactment of this bill that includes:

- the findings of the study required under this bill; and
- recommendations for statutory changes to improve the shareholder registration thresholds.

The bill requires that not later than one year after the date of enactment of this bill, the SEC will issue final regulations to implement this bill and the amendments made by this bill.

Background: Small businesses have the ability to raise money by selling non-publicly traded securities to individuals and other entities. In 1964, the SEC set a law in place that required that issuers of securities with 500 or more shareholders (holders of record) and total company assets of more than $1 million to register with the SEC. Since then and up until now, SEC registration triggers numerous reporting requirements, which can be costly for many small businesses. As a result, many small businesses have decided to avoid raising money through the sale of such securities.

Committee Action: H.R. 1965 was introduced on May 24, 2011 by Rep. Himes, and was referred to the House Financial Services. On the October 26, 2011 the bill was marked-up and reported by voice vote.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: According to CBO," implementing H.R. 1965 would have a negligible impact on the SEC's workload, and any change in agency spending that is subject to appropriation would not be significant. Enacting H.R. 1965 would not affect direct spending or revenues."

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO, "H.R. 1965 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".

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: According Rep. Hime's statement of constitutional authority, "Congress has the power to enact this legislation pursuant to the following: Article 1 Section 8."

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H.R. 2061 - Civilian Service Recognition Act of 2011 (Hanna, R-NY)

Order of Business: The bill is scheduled to be considered on Wednesday, November 2, 2011 under a motion to suspend the rules and pass the legislation.

Summary: H.R. 2061 would allow federal agencies to present a United States flag to the next of kin of United States federal employees who have died in connection with their federal employment because of injuries suffered as a result of a criminal act, act of terrorism, natural disaster, or other circumstance as determined by the President.

The flag may be furnished to eligible next of kin, namely a surviving spouse, child, sibling, or parent. If no request is received from a next of kin, the flag can be provided to an individual other than the next of kin as determined by the Director of the Office of Personnel Management.

The head of an executive agency may disclose information necessary to show that a deceased individual was a U.S. federal employee to the extent that such information is not classified and to the extent that such disclosure does not endanger the national security of the United States.

H.R. 2061 requires federal agency heads to notify employees of this benefit, and this benefit is also extended to employees of the U.S. Postal Service.

H.R. 2061 does not authorize appropriations to carry out the expenses associated with this flag presentation.

Additional Information: The legislation was originally scheduled to be taken up under suspension on Wednesday, September 7th, but was removed from the calendar due to objections by the American Legion that the original version could blur the line between military and civilian honors. The legislation was later narrowed and clarified, and the American Legion has issued a letter of support for the version to be considered by the House this week.

Committee Action: H.R. 2061 was introduced on May 31, 2011, and was referred to the House Committee on Oversight and Government Reform. The full committee held a markup on June 22, 2011, and favorably reported the legislation by voice vote, as amended.

Administration Position: As of press time, no Statement of Administration Policy (SAP) has been released.

Cost to Taxpayers: CBO estimates that implementing H.R. 2061 would have no significant impact on the federal budget. The CBO estimate can be viewed here.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: House Report 112-149 states, "H.R. 2061 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments."

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: House Report 112-149 states, "H.R. 2061 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI."

Constitutional Authority: The Constitutional Authority Statement accompanying the bill upon introduction states: "The Congress enacts this bill pursuant to Section 8 of Article I of the United States Constitution."

Outside Groups (In Support):
American Legion
Numerous Federal Employee Groups (full list available upon request)

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S. 894 – Veterans' Compensation Cost-of-Living Adjustment Act of 2011 *(Murray, D-WA)*

Order of Business: S. 894 is scheduled to be considered on Wednesday, November 2, 2011 under suspension of the rules requiring two-thirds majority vote for passage.

Summary: S. 894 increases the rates of disability compensation and dependency and indemnity compensation for disabled veterans' survivors by the same cost-of-living adjustment (COLA) applied to Social Security benefits. The increase would take effect on December 1, 2011. According to the Committee on Veterans' Affairs, annual cost-of-living adjustments for disabled veterans have been enacted each year since 1976.

On May 23, 2011, the House passed by voice vote the companion bill to S. 894 (H.R. 1407). H.R. 1407 included an additional provision dealing with adaptive housing for disabled veterans that was addressed in the recently-enacted H.R. 2646 (Public Law 112-37).

The RSC Legislative Bulletin for H.R. 1407 can be found here.

Additional Background: The purpose of the disability compensation program is to provide relief from the impaired earning capacity of disabled veterans as a consequence of their military service to the United States. This bill follows the traditional practice of setting veterans' disability compensation COLA by reference to the Social Security increase, which the U.S. Social Security Administration announced on October 19, 2011 will be 3.6% for 2012.

Committee Action: Senator Patty Murray *(D-WA)* introduced S.894 on May 5, 2011. The Senate Committee on Veterans' Affairs held a legislative hearing on the bill on June 8, 2011 and reported the bill out of Committee on June 29, 2011 without amendment. The Senate passed the bill by Unanimous Consent on October 19, 2011. The House has taken no action on the bill.

Administration Position: There is no statement of Administrative position with regard to this bill.

Cost to Taxpayers: The Congressional Budget Office (CBO) issued a cost estimate for S. 894 on July 5, 2011. It estimated that enacting S. 894 would have no budgetary effect relative to the baseline since ***CBO assumes this COLA increase in its baseline***. However, relative to current law—unlike the CBO baseline, where no COLA increase would occur—CBO estimates that enacting this bill would increase spending by $475 million in fiscal year 2012 (and about $630 million in subsequent years).

This estimate assumed a 1.1% COLA increase effective December 1, 2011. The current COLA increase will be 3.6%. CBO staff has not formally revised their initial July 5, 2011 cost estimate for the bill, but it is RSC staffs' understanding that spending relative to current law—now assuming a 3.6% COLA increase—is estimated to be $1.8 billion in FY2012 and $2.5 billion annually in subsequent years.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, relative to current law, the bill will increase direct spending by $1.8 billion in FY2012 and $2.5 billion annually in subsequent years. However, all of this new spending is already assumed in CBO's baseline.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No. S. 894 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.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Yes. In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, S. 894 (same text as Sec. 2 of H.R. 1407) does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Constitutional Authority: There is no Constitutional Authority Statement accompanying S. 894. The Constitutional Authority Statement published in the Congressional Record upon introduction of H.R. 1407 states: "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the Constitution of the United States."

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