

**[DISCUSSION DRAFT]**

117<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R.** \_\_\_\_\_

To establish additional requirements for issuers offering securities in reliance on Regulation D, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

M. \_\_\_\_\_ introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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**A BILL**

To establish additional requirements for issuers offering securities in reliance on Regulation D, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Private Securities  
5        Transparency and Reform Act of 2022”.

1 **SEC. 2. ADDITIONAL REQUIREMENT FOR ISSUERS RELYING**  
2 **ON REGULATION D.**

3 (a) FILLING OF FORM D.—Not later than 180 days  
4 after the date of the enactment of this Act, the Securities  
5 and Exchange Commission shall amend sections 230.503  
6 and 230.500 of title 17, Code of Federal Regulations to—

7 (1) require any issuer offering securities in reli-  
8 ance on section 230.506(b) of the Code of Federal  
9 Regulations (commonly known as Rule 506(b)) to  
10 file with the Commission a notice of sales containing  
11 the information required by Form D (17 C.F.R.  
12 239.500) before any sale of such securities; and

13 (2) require any issuer offering securities in reli-  
14 ance on section 230.506(c) of the Code of Federal  
15 Regulations (commonly known as Rule 506(c)) to  
16 file with the Commission a notice of sales containing  
17 the information required by Form D (17 C.F.R.  
18 239.500) before the earlier of—

19 (A) the commencement of a general solici-  
20 tation; and

21 (B) a sale of such securities; and

22 (3) specify that the failure of an issuer to file  
23 a notice of sales containing the information required  
24 by Form D (17 C.F.R. 239.500), with the Commis-  
25 sion, as required by sections 230.503 and 230.500  
26 of title 17, Code of Federal Regulations, shall result

1 in loss of the exemption from registration for the of-  
2 fering for which the issuer failed to file a notice of  
3 sales containing the information required by Form  
4 D.

5 (b) CLOSING AMENDMENTS.—

6 (1) IN GENERAL.—Not later than 80 days after  
7 the date of the enactment of this Act, the Commis-  
8 sion shall amend Regulation D (sections 230.501  
9 through 230.508 of the Code of Federal Regula-  
10 tions) to require any issuer who offers securities in  
11 reliance on sections 230.501 through 230.508 of the  
12 Code of Federal Regulations (commonly known as  
13 Regulation D) to, not later than 90 days after the  
14 termination of such offering, file a closing amend-  
15 ment to Form D with the Commission.

16 (2) CONTENTS OF AMENDMENT TO REGULA-  
17 TION D.—In amending Regulation D pursuant to  
18 paragraph (1), the Commission shall—

19 (A) determine the information needed from  
20 each issuer in each closing amendment to Form  
21 D to allow the Commission to understand the  
22 overall marketplace for private securities offer-  
23 ings;

1 (B) establish the information an issuer  
2 shall include in each closing amendment to  
3 Form D, including—

4 (i) any information the Commission  
5 determines is necessary pursuant to sub-  
6 paragraph (A);

7 (ii) the amount of capital raised by  
8 the offering;

9 (iii) the number of investors who pur-  
10 chased securities in the offering,

11 (iv) the average and median amounts  
12 of capital raised from each class of inves-  
13 tors, including retail investors, accredited  
14 investors, and qualified institutional buy-  
15 ers;

16 (v) the amount of any fees paid by the  
17 issuer paid by the issuer in furtherance of  
18 the offering or in promotion of the offer-  
19 ing, including fees to promoters and bro-  
20 kers, and fees paid in connection with ad-  
21 vertising and solicitation;

22 (vi) the average and median amounts  
23 of any commissions or other fees paid by  
24 investors in each class of investors (includ-  
25 ing retail investors, accredited investors,

1 and qualified institutional buyers) in asso-  
2 ciation with the purchase of securities in  
3 the offering;

4 (vii) a list of any related offerings of  
5 securities by the issuer;

6 (viii) a list of any offerings of securi-  
7 ties by the issuer that were made in reli-  
8 ance on an exemption from registration  
9 under the Securities Act of 1933 or the  
10 Securities Exchange of 1934 and oc-  
11 curred—

12 (I) at the same time as the offer-  
13 ing for which the closing amendment  
14 is being filed; or

15 (II) during the 60 days before  
16 the offering for which the closing  
17 amendment is being filed; and

18 (ix) such other information as the  
19 Commission determines necessary;

20 (C) define the term “termination of an of-  
21 fering” as the Commission determines appro-  
22 priate; and

23 (D) specify that the failure of an issuer to  
24 file a closing amendment to Form D (17 C.F.R  
25 239.500) with the Commission shall result in

1           loss of the exemption from registration for the  
2           offering for which the issuer failed to file the  
3           closing statement.

4 **SEC. 3. SECURITIES EXCHANGE COMMISSION STUDY OF**  
5                   **PRIVATE AND QUASI-PRIVATE OFFERINGS OF**  
6                   **SECURITIES.**

7           Not later than 1 year after the date of the enactment  
8 of this Act, the Commission shall submit, to the Senate  
9 Committee on Banking, Housing, and Urban Affairs and  
10 to the House Committee on Financial Services, a report  
11 that—

12           (1) examines the relationship between private  
13 securities offerings, quasi-private securities offerings,  
14 and initial public offerings;

15           (2) identifies any relationship between increased  
16 access to capital through private securities offerings  
17 and quasi-private securities offerings and the declin-  
18 ing number of companies that choose to offer securi-  
19 ties to the public through initial public offerings;

20           (3) compares the primary characteristics of the  
21 markets for private securities offerings, quasi-private  
22 securities offerings, and public securities offerings,  
23 including—

24                   (A) filings and trends;

25                   (B) the number and types of investors;

1 (C) the size of offerings of securities,

2 (D) the average and median amounts of  
3 capital raised from each class of investors, in-  
4 cluding retail investors, accredited investors,  
5 and qualified institutional buyers;

6 (E) disclosures of information, including  
7 whether any investors have additional or more  
8 detailed information than other investors;

9 (F) liquidity and trading costs;

10 (G) terms, including price per security,  
11 limitations on trading, and other factors that  
12 may impact the value of the securities, or the  
13 rights associated with such securities;

14 (H) discrimination between classes of in-  
15 vestors;

16 (I) the existence of minimum offering  
17 amounts;

18 (J) the number of directors of the issuer;

19 (K) the existence of independent directors;

20 (L) the existence of related party trans-  
21 actions (as such term is defined in part 229 of  
22 chapter II of title 17 of the Code of Federal  
23 Regulations, commonly known as Regulation S-  
24 K);

1 (M) the existence of corporate governance  
2 provisions of the issuer that limit affiliated  
3 transactions and other conflicts of interest;

4 (N) the provision of financial projections to  
5 investors, including revenue and profit projec-  
6 tions;

7 (O) the amount of revenue, if any, of  
8 issuers during the year in which the offering oc-  
9 curs;

10 (P) the amount of profit, if any, of issuers  
11 during the year in which the offering occurs;

12 (Q) the provision of unaudited and audited  
13 financial statements to investors;

14 (R) the performance of the securities of-  
15 fered over 1 year, 2 years, 5 years, 10 years,  
16 and 20 years;

17 (S) the rate of issuer bankruptcy or other  
18 termination of operations with investment losses  
19 in the 1 year, 2 year, 5 year, 10 year, and 20  
20 year periods following the offering of securities;

21 (T) the disclosure of risk to investors, in-  
22 cluding valuation risks, accounting risks, liquid-  
23 ity risks, and market risks;



1 (U) the access of investors of all classes to  
2 third-party investment research, and the cost  
3 and quality of such research; and

4 (V) any other factors the Commission de-  
5 termines relevant;

6 (4) to the degree possible, compares investors  
7 participating in private securities offerings, quasi-  
8 public securities offerings, and public securities of-  
9 ferings with respect to—

10 (A) age;

11 (B) income;

12 (C) net worth;

13 (D) education level;

14 (E) geographic distribution;

15 (F) amount of investable assets, including  
16 and not including assets invested in retirement  
17 plans;

18 (G) reliance on advice and recommenda-  
19 tions from financial professionals; and

20 (5) examines, for the 3 fiscal years preceding  
21 the date of the enactment of this Act—

22 (A) cases of fraud and noncompliance in  
23 private securities offerings and quasi-private se-  
24 curities offerings;

1 (B) any enforcement actions brought by  
2 the Commission, the States, or the Financial  
3 Industry Regulatory Authority relating to pri-  
4 vate securities offerings and quasi-private secu-  
5 rities offerings;

6 (C) any losses to investors resulting from  
7 fraud and noncompliance associated with pri-  
8 vate securities offerings and quasi-private secu-  
9 rities offerings; and

10 (D) the characteristics of investors who ex-  
11 perience any losses resulting from fraud and  
12 noncompliance associated with private securities  
13 offerings and quasi-private securities offering,  
14 including—

15 (i) whether the investor is an accred-  
16 ited investor;

17 (ii) the level of education of the inves-  
18 tor

19 (iii) the financial sophistication of the  
20 investor;

21 (iv) the ability of the investor to with-  
22 stand losses;

23 (v) the access the investor has to in-  
24 formation about the securities, relative to  
25 the risk and value of the securities; and

1 (vi) demographic information includ-  
2 ing geographic distribution.

3 **SEC. 4. SECURITIES EXCHANGE COMMISSION STUDY OF**  
4 **BROKERS DEALING IN OFFERS OF PRIVATE**  
5 **SECURITIES.**

6 Not later than 1 year after the date of the enactment  
7 of this Act, the Commission shall submit, to the Senate  
8 Committee on Banking, Housing, and Urban Affairs and  
9 to the House Committee on Financial Services, a report  
10 that examines brokers primarily dealing in private securi-  
11 ties offered in reliance on Regulation D to determine—

12 (1) whether, compared to brokers who do not  
13 primarily deal in private securities offerings and  
14 quasi-private securities offerings, there are higher  
15 rates of—

16 (A) noncompliance among such brokers;

17 (B) complaints raised against such bro-  
18 kers;

19 (C) civil and criminal actions brought  
20 against such brokers; or

21 (D) regulatory actions brought against  
22 such brokers; and

23 (2) to the degree possible, how the amounts of  
24 commissions earned by such brokers compare to the  
25 amounts of commissions earned by brokers who do

1 not primarily deal in private securities offerings and  
2 quasi-private securities offerings.

3 **SEC. 5. DEFINITIONS.**

4 For the purposes of this Act:

5 (1) COMMISSION.—The term “Commission”  
6 means the Securities Exchange Commission.

7 (2) PRIVATE SECURITY OFFERING.—The term  
8 “private security offering” means an offering of se-  
9 curities that relies on—

10 (A) section 230.506, of title 17 of the Code  
11 of Federal Regulations; or

12 (B) section 230.144A of title 17 of the  
13 Code of Federal Regulations.

14 (3) PUBLIC SECURITY OFFERING.—The term  
15 “public security offering” means—

16 (A) an initial public offering of securities  
17 registered pursuant to the Securities Act of  
18 1933 and not reliant on an exemption from reg-  
19 istration under section 4 of such Act; or

20 (B) a secondary offering of securities reg-  
21 istered pursuant to the Securities Act of 1933  
22 and not reliant on an exemption from registra-  
23 tion under section 4 of such Act.

1           (4) QUASI-PRIVATE SECURITY OFFERING.—The  
2           term “quasi-private security offering” means an of-  
3           fering of securities that relies on—

4                   (A) section 227.100, of title 17 of the Code  
5                   of Federal Regulations (commonly known as  
6                   Regulation CF); or

7                   (B) section 230.251 et seq. of title 17 of  
8                   the Code of Federal Regulations (commonly  
9                   known as Regulation A and Regulation A+).