



## H.R. 5424—Investment Advisers Modernization Act of 2016 (Hurt, R-VA)

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### FLOOR SCHEDULE:

Expected to be considered on September 9, 2016 under a structured [rule](#).

### TOPLINE SUMMARY:

[H.R. 5424](#) would exempt private equity funds and their managers from requirements under the Dodd-Frank Act regarding registration and reporting on the fund's investments and activities. Private equity investments are typically held by sophisticated and institutional investors who are more than capable of making informed decisions about investments without federal government involvement in private investment relationships.

### COST:

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 5424 would cost \$2 million over the 2017-2021 period.

### CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

H.R. 5424 would amend the [Investment Advisers Act of 1940](#) to modify its rules as they pertain to the registration, advertising, transferring, and selling funds and securities by investment advisers managing private funds. Private funds are voluntary associations of typically sophisticated and institutional investors that typically make large, private investments in firms. H.R. 5424 would better allow these investors to engage in investment activities at their own discretion, without needless interference from the federal government, returning to a more appropriate governance of the investment relationship by the mutual interests of buyers and sellers.

H.R. 5424 would modernize requirements pertaining to disclosure of change of ownership control, including removing restrictions on assignment of equity ownerships within partnerships and narrowing the definitions to exclude the death, withdrawal, sale or transfer of minority interests. It would permit qualified clients to consent to a transfer of interests when they begin an advisory contract. It would amend duplicative requirements as they pertain to changes in membership, removing the requirement to provide

notice each time there is a change in partnership. It would also eliminate the applicability of [Rule 206\(4\)-1\(a\)\(1\) & \(a\)\(2\)](#), the advertising rule, for advisers that only advertise to accredited investors, qualified purchasers, qualified clients, and knowledgeable employees, while retaining anti-fraud provisions that pertain to private funds.

H.R. 5424 would also exempt private fund sponsors from requirements to complete and deliver Part 2A and 2B of [Form ADV](#), which is the form used by investment advisers to register with state securities authorities and the SEC, so long as the private placement memorandum filed by the fund contains the information required by the form. It would also remove Part 4 of Form PF for private equity funds, allowing them to be on the same reporting basis of other non-hedge fund private fund sponsors. Form PF requires private fund advisers to report to the Financial Stability and Oversight Council all regulatory assets under management.

It would also update the Custody Rule, expanding already issued SEC guidance so only publicly traded securities and cash are required to be maintained with a qualified custodian. It would provide an exemption for Special Purpose Vehicles (subsidiary companies with asset structures that assure their obligations are secure even in the event of a parent-company bankruptcy) that are managed by private fund sponsors and co-investment funds that only hold a single investment. It would adjust the Proxy Voting Rule to provide an exemption from the rule when an investment adviser exercises authority as it pertains to non-public securities.

Lastly, H.R. 5424 would prevent the misapplication of Rule 156, which prohibits investment companies from giving current or possible investors misleading information in their advertisements, allowing regulators and investors to recognize the differences between private funds and mutual funds.

The Committee Report can be found [here](#).

#### **AMENDMENTS:**

1. [Rep. Foster \(D-IL\)](#) – This amendment would remove provisions pertaining to brochure delivery, and the annual audit requirement at certain private funds.

#### **OUTSIDE GROUPS IN SUPPORT**

[National Taxpayers Union](#)

#### **COMMITTEE ACTION:**

H.R. 5424 was introduced on June 9, 2016, and was referred to the House Committee on Financial Services, where it was ordered reported by the yeas and nays, 47-12, on June 16, 2016.

#### **ADMINISTRATION POSITION:**

A Statement of Administration Policy can be found [here](#).

#### **CONSTITUTIONAL AUTHORITY:**

Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3.

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