



March 31, 2025

House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515
Via email: fsc119@mail.house.gov

Re: Feedback on Legislative Proposals to Increase Investor Access and Facilitate Capital Formation

To the Members of the House Financial Services Committee:

On behalf of the Investor Choice Advocates Network (ICAN), I am writing to provide feedback on the legislative proposals recently considered by the Committee aimed at strengthening public and private markets through increased investor access and improved capital formation.

ICAN is a nonprofit public interest litigation organization dedicated to breaking down barriers to entry to capital markets and pushing back against regulatory overreach. We serve as a legal advocate and voice for small investors and entrepreneurs whose efforts help fuel vibrant local and national economies driven by innovation and entrepreneurship.

Access to Capital: Challenges and Solutions

The greatest challenge facing companies of all sizes, entrepreneurs, and fund managers when raising capital is the outdated regulatory framework that disproportionately favors large, established market participants while creating significant barriers for smaller entities and retail investors. Current regulations designed for large companies are often applied uniformly, resulting in prohibitive compliance costs for small businesses seeking capital.

Our recommendations focus on modernizing the accredited investor definition, revitalizing public markets by reducing unnecessary regulatory obligations, and reforming SEC enforcement practices to strike a better balance between investor protection and capital formation.

Modernizing the Accredited Investor Definition

We strongly support the Committee's consideration of H.R.835, the Fair Investment Opportunities for Professional Experts Act, and H.R.1579, the Accredited Investor Definition Review Act. These proposals address one of the most significant barriers to capital formation: the outdated accredited investor definition.

The current accredited investor definition, which relies primarily on arbitrary wealth and income thresholds, creates a two-tiered system that excludes the vast majority of Americans from private investment opportunities. In 2022, ICAN filed a petition with the SEC urging the Commission to reduce barriers for accredited investors by replacing net worth and income requirements with non-financial metrics.

In connection with our advocacy efforts, ICAN filed a petition for writ of mandamus with the Ninth Circuit Court of Appeals in December 2024, challenging the SEC's failure to respond to our 2022 rulemaking petition despite its obligation to review the accredited investor definition every four years. This legal action seeks to compel the SEC to act on our petition and remains ongoing. Over the past few years in connection with its SEC rulemaking petition, ICAN has interviewed numerous capital markets participants who have shared real-world insights about the adverse impact of the accredited investor rule.¹

Nathan Leung, a software engineer who became an accredited investor by passing the Series 65 exam, noted that "living in Silicon Valley and working in Silicon Valley, you hear about these amazing investors who were the first checks into these iconic companies," but arbitrary wealth requirements prevent participation. After successfully passing the exam and being approved by the SEC, Leung was later contacted by the SEC and told to withdraw his registration. As Leung explained, "The investment adviser registration process isn't really designed for people to just use it to invest."

Jasmin Sethi, a member of the SEC's Small Business Capital Formation Advisory Committee, observed that "one of the areas that's been talked about by the committee multiple times throughout the years is the accredited investor definition. Interestingly, that does seem to be a bipartisan issue on the committee... people who are in the business world don't necessarily see it as a political issue. They see it more as what can practically help small businesses."

Dar'shun Kendrick, a securities attorney and Georgia state representative, pointed out the fundamental flaw in the definition: "I understand the reason for having that accredited investor definition, but the problem with the definition as it stands right now is, I think, it assumes that if you're wealthy, then you're knowledgeable, and that that is not necessarily true." Kendrick highlighted the absurdity of the situation, noting that "I have been practicing securities law for the last 10 years, and even I didn't qualify as an accredited investor outside of the financial threshold."

Omi Bell, CEO of Black Girl Ventures, questioned the logic behind the wealth threshold: "Why did all of a sudden having a million dollars mean you were somehow financially smart?" She further criticized the stagnant nature of SEC rules: "How is one section of the country, a portion of our government just staying stagnant while the entire industry of tech and the way we invest in businesses, and the way banking may work, or alternative access to capital, all of that is constantly innovating while the industry that governs it is not?"

Lou Kerner, founder of Crypto Oracle Collective, was blunt in his assessment: "For a long time, in order to invest in private companies, you needed to be an accredited investor. So, our government was saying, 'unless you have millions of dollars, you're too stupid to invest in private companies' - which are the greatest wealth creators in the history of humanity. But the government tells you, 'Instead of investing in Facebook when it's private, why don't you go down the street and buy a lottery ticket?'"

Mike Jarmuz, founder of Lightning Ventures, questioned the inconsistency in regulation: "How is it that somebody can go onto Coinbase, or one of these exchanges, and buy something called 'Dog with Hat' and put an unlimited amount of money into this thing for whatever happens. How

¹ Relevant excerpts of these video interviews are available at https://youtu.be/hQ3_3FfIOes?si=y_jB0WCTN68l392a

is that okay? But somebody investing five grand into 'I think this thing called Google is a good idea', no, no, no, no, no, you must meet the qualification to do that."

Jim Row, Founder and Managing Partner of Entoro, suggested alternatives: "It should be, you know, either you sign off on it, or there's a test, or something besides just saying, 'Because you don't make a certain amount of money, or your family doesn't make a certain amount of money, that makes you stupid.' I mean, why should I be restricted, as a smaller investor, from being able to take on some of the opportunities that the big boys have?"

From our SEC rule petition and our many conversations with capital markets participants, it is clear the accredited investor rule's wealth-and-income-based criteria should be replaced with metrics that focus on knowledge, experience, and capability, such as (but not limited to):

1. Educational attainment certifications (e.g., high school diploma, associate's, bachelor's, master's degrees)
2. Professional certifications (e.g., CPA, attorney, CFA, CFP, CMFC, FPQP)
3. Evidence of working with a registered investment adviser
4. Completion of standardized financial literacy assessments

Revitalizing Public Markets and Reclaiming Growth-Stage Opportunities for Retail Investors

The decline in public companies over the past two decades is troubling. As has been widely reported, in the 1990s, the average IPO was a 7-year-old company with about \$50 million in revenue. Today, the average IPO is a 12-year-old company with \$200 million in revenue. This shift reflects the increased cost of accessing public capital markets and means that retail investors miss out on key periods of company growth, with those returns being captured almost exclusively by investors other than unaccredited investors.

To facilitate access to public capital for entrepreneurs and earlier-stage investment opportunities for retail investors, we support the proposals to enact meaningful reform of Regulation A. In 2015, as mandated by the Jumpstart Our Business Startups (JOBS) Act of 2012, the SEC promulgated comprehensive reforms of Regulation A. In doing so the SEC staff created a good foundation for a comprehensive regime to regulate small public offerings. Recognizing the importance of Regulation A as a framework for small public company regulation, the SEC has since expanded issuer eligibility and related provisions. In November 2020, the SEC further increased the maximum offering amount to \$75 million. The additional amendments contemplated in several of the bills under consideration by the Committee will enhance the original rule amendment and encourage the return of earlier-stage public offerings and investment opportunities.

In this regard, we strongly support the following bills, which remove structural impediments to Regulation A: H.R. __, Regulation A+ Improvement Act, increasing the offering limit of Regulation A offering from \$50 million to \$150 million and H.R. __, Restoring the Secondary Trading Market Act, which preempts Regulation A reporting issuers and other issuers from state "blue sky" regulations restricting "secondary" or resales of such securities.

Relatedly, we also support the following bills, which would facilitate investors' and founders' access to investments and capital sources: H.R. __, Unlocking Capital for Small Businesses Act of 2025 to amend the Securities Exchange Act of 1934 to create a safe harbor for finders and private placement brokers; and H.R. __, Small Entrepreneurs' Empowerment and Development (SEED) Act of 2025.

We also support H.R.2793, the Encouraging Public Offerings Act of 2025, which would reduce barriers to going public by expanding the JOBS Act testing the waters and confidential filings to all issuers, not just Emerging Growth Companies. Further, we urge the Committee to also consider streamlining the Division of Corporation Finance review processes by mandating timelines for review and comment and implementing tiered review standards for filings based on issuer size and risk profile.

Reducing Enforcement Overreach to Improve Capital Formation

The SEC's Enforcement Division, while important to investor protection, can inadvertently create significant barriers to capital formation when its powers are applied too broadly or unpredictably. Enforcement overreach discourages entrepreneurs from accessing capital markets due to fear of lengthy investigations, unpredictable outcomes, and potentially severe penalties for technical violations. Further, when the SEC engages in “shadow rulemaking” through case-by-case enforcement actions rather than through providing notice and an opportunity for public comment, the unfair lack of appropriate notice chills legitimate capital markets activity.

Based on our experience representing clients impacted by such overreach, we offer the following recommendations to improve regulatory balance in Enforcement:

- Reform the SEC's Internal Enforcement Performance Metrics: Better align staff incentives with the Commission's mission of both protecting investors and promoting capital formation, rather than prioritizing case counts or penalty amounts.
- Reform of SEC Investigation Duration: Limit pre-Wells Notice investigations to 12 months and require clear scope definitions and periodic staff updates to the Commission, preventing entrepreneurs from being trapped in investigative limbo that drains resources and deters others from entering the market.
- Increased Transparency: Before embarking on Enforcement initiatives to implement new policies, require the SEC to provide more detailed guidance on its interpretation of securities laws through increased use of Section 21(a) reports, compliance grace periods, and a reformed No-Action Letter process, giving market participants clearer pathways to compliance.
- Abolish Disgorgement for Non-Fraud Violations: Eliminate disgorgement for non-fraud, violations that cause no pecuniary injuries to victims while maintaining disgorgement authority for fraud cases, preventing disproportionate financial judgments against unintentional conduct that chill innovation and entrepreneurship.

ICAN strongly believes that removing unnecessary barriers to capital markets will benefit both small businesses seeking funding and everyday Americans looking to build wealth through investment opportunities. The legislation being considered by the Committee represents important steps toward creating a more inclusive and dynamic capital formation environment.

We appreciate the opportunity to provide feedback on these important issues and would welcome the chance to discuss our recommendations further.

Sincerely,

Nicolas Morgan
Founder and President
Investor Choice Advocates Network