

April 14, 2017

Submitted electronically to submissions@banking.senate.gov

The Honorable Mike Crapo
Chairman
Senate Committee on Banking, Housing
and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Senate Committee on Banking, Housing
and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Request for Proposals to Foster Economic Growth

Dear Chairman Crapo and Ranking Member Brown,

Thank you for the opportunity to comment to the Senate Banking Committee on how the Committee can work in a bi-partisan way in the 115th Congress to create jobs and grow the economy. The Investment Program Association (“IPA”) commends your strong bi-partisan leadership and soliciting of ideas, and looks forward to working with you and all Members of the Committee to promote public policy that supports American investors and creates jobs.

The IPA was formed in 1985 to provide proactive national leadership for the direct investment industry. The IPA supports individual investor access to a variety of portfolio diversifying investments not correlated to the traded markets. These investment opportunities have historically been available primarily to institutional investors. The funds that invest in these asset classes include publicly registered, non-listed real estate investment trusts (“NL REITs”), publicly registered, non-listed business development companies (“NL BDCs”), and other publicly registered, non-listed direct participation programs (“Other DPPs,” and collectively with NL REITs and NL BDCs, “Public Programs”). In addition, the IPA along with the Financial Services Institute (“FSI”) represents Independent Broker-Dealers (“IBD”) firms who provide business support to financial advisors who are self-employed independent contractors. Independent financial advisors are small-business owners with strong ties to their communities and know their clients personally. For over 30 years the IPA has successfully championed the continued growth of our industry, best practices and regulations that effectively serve the investing public. These offerings have become increasingly important to financial professionals and investors alike. Public Programs have been held in more than 3 million investor accounts. With over \$135 billion in capital investments, Public Programs function as a critical component of effectively diversified investment portfolios and serve an essential capital formation function for national, state, and local economies.

There are several issues within the Committee that could potentially help the Public Program community and our customers.



Definition of Accredited Investor:

As you know Dodd-Frank reformed the definition of an accredited investor to exempt the value of a primary residence. The current definition of \$200,000 in individual income (\$300,000 for a couple) or \$1,000,000 in net worth is supposed to be reviewed every four years. In late 2015 the SEC released a report with a number of potential changes, including indexing the definition retroactive, or creating concentration limits.

Changes such as retroactive indexing or concentration limits would have a negative impact on our products and would put us at a competitive disadvantage to other asset classes such as real estate and mutual funds who are not subject to such restrictions. Adding additional regulations and restrictions would only create more confusion in the marketplace, without actually reducing risk or increasing transparency. Additionally, changes would prevent investors from accessing portfolio diversifying investments in support of their long term investment goals.

A better approach would be to keep the income minimums the same and index them forward for inflation based on CPI. In addition, while income thresholds play an important role, they are not the only way to ensure someone knows the risk of a non-public offering. The IPA would recommend that certain people with credentials such as a Series 7, CFA or other such credentials be considered accredited for the purpose of being able to invest in non-public offerings. Finally, in order to grow the economy and jobs we know there is a hunger for people who may not match the current income definitions of accreditation but who are willing to invest in non-public offerings. For these individuals, a simple test should be available for them to understand the risks of investing in a non-public offering to be able to achieve accreditation status.

IPA supports the initiatives of a bi-partisan group of Senators who are looking to proactively promote legislation to change the definition of an accredited investor to expand the pool of individuals who can invest in Public Programs.

Changes to 12G

The JOBS Act was a bi-partisan success that led to a number of important changes in capital formation for early stage and high growth companies.

One of the major victories in the JOBS Act was Section 501, which increased the threshold for registering as public reporting companies from 500 to 2,000 investors, and no more than 500 non-accredited investors. This was an important change to existing rules that promised to open up tremendous new avenues to raise capital.

By changing the definition of “accredited investor” when implementing Section 501, the SEC made it nearly impossible for any fund with more than 500 investors to control



whether it becomes a public reporting company. Given the extremely high cost of public reporting, this makes taking advantage of the expanded capital raising opportunity created by Section 501 too risky for many companies to use. The cost would significantly impact the performance of the funds and directly impact the investing public. The rule contains a requirement that companies with more than 500 investors need to implement procedures to determine on an annual basis whether they have a reasonable belief as to the accredited investor status of their investors, rather than determining accredited investor status only at the time of the sale of securities, as provided in the existing definition of “accredited investor.”

IPA urges the Committee to consider legislation to return the verification of accredited investor status back at the time of the sale of the security instead of on an annual basis. This change to the previous status quo, will not increase investor risk and will in fact decrease cost of compliance for the plan sponsor and increase returns to investors.

Business Development Company Modernization

Business Development Companies (“BDCs”), which were developed in 1980, play an important role in helping small and medium size businesses gain access to private capital so they can grow their business. BDCs make direct investments in smaller, developing American businesses, providing access to capital for companies that may not be able to access capital from traditional sources such as banks or the public equity markets. By statute, BDCs are required to invest at least 70% of their assets in small- and medium-sized U.S. operating businesses (“Eligible Portfolio Companies”). For most BDCs, the percentage of Eligible Portfolio Companies among their investments is well above 70%, making BDCs an efficient vehicle for direct investments in American companies.

Your Committee has the potential to increase the ability of BDCs to further economic growth through bi-partisan common sense changes to existing regulation.

The IPA supports three modest changes to the regulatory framework for business development companies BDCs. These changes would promote economic growth by reducing costs for BDCs (providing savings that will be passed along to investors) and expanding the ability for BDCs to provide greater access to capital to small and mid-market U.S. companies.

The first two of these legislative changes were previously included in the “Small Business Credit Availability Act” (H.R. 3868) from the 114th Congress, which was approved by the House Financial Services Committee in November of 2015 by a vote of 53-4. The IPA supports the two key provisions that made up the cornerstone of H.R. 3868: (1) the provision that would implement offering reforms to put BDCs back on a level footing with companies that received relief under the 2005 securities reforms; and (2) the provision that would provide a modest increase in leverage limits from 1:1 to 2:1. The IPA views



these changes as the core components of the effort to modernize the BDC regulatory regime.

The third change supported by the IPA would put BDCs on level footing with mutual funds and real estate investment trusts (“REITs”) by permitting BDCs to offer multiple classes of common stock to investors. Not only would this change put BDCs on a level playing field with mutual funds and REITs, it is a key component of the ability of BDCs to comply with the Department of Labor’s Conflict of Interest Rule (“Fiduciary Rule”). Separate legislative text for this change is attached to this document as Addendum B.

The IPA supports these three modest reforms of the existing regulatory structure, to allow BDCs to more easily and efficiently raise and deploy capital and fulfill the congressional mandate of providing funding to small and mid-sized U.S. companies. We believe these proposed changes will benefit borrowers (predominantly small and mid-market U.S. companies) through greater financing alternatives and a reduced cost of capital, and will also benefit investors by enabling BDCs to construct more conservative, diversified portfolios.

Thank you again for the opportunity for the IPA to share our ideas in support of job creation and economic growth. The IPA looks forward to working with all of the members of your Committee to further job creation for American workers.

Sincerely,



Anthony Chereso
President & CEO, Investment Program Association