

November 3, 2017

The Honorable Bill Huizenga
Chairman
House Committee on Financial Services
Subcommittee on Capital Markets
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Carolyn B. Maloney
Ranking Member
House Committee on Financial Services
Subcommittee on Capital Markets
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Huizenga:

On behalf of the Investment Program Association (“IPA”), I write in support of discussion draft legislation, the “Small Business Credit Availability Act,” which is a focus of today’s hearing entitled “Legislative Proposals to Improve Small Businesses’ and Communities’ Access to Capital.” This legislative proposal contains straightforward changes that will significantly improve access to capital for small and mid-sized companies without sacrificing the robust investor disclosure and reporting regime of BDCs.

For over 33 years the IPA has supported individual investor access to a variety of asset classes with low correlation to the traded markets and historically available only to institutional investors, including: lifecycle real estate investment trusts (“REITs”), business development companies (“BDCs”), interval funds, energy and equipment leasing programs and real estate private equity offerings. These portfolio diversifying investment (“PDI”) products have been held in the accounts of more than 3 million individual investors. With over \$135 billion in capital investments, they remain a critical component of an effectively balanced investment portfolio and serve an essential capital formation function for national, state and local economies. The mission of the IPA is to advocate for PDIs through education and public awareness.

BDCs are highly regulated¹ closed-end investment funds created by Congress in 1980 as part of the bipartisan Small Business Investment Incentive Act of 1980.² BDCs play an important role in providing capital to small and mid-sized companies that may not have access to traditional sources of capital. BDCs also provide individuals with private equity and debt investment opportunities historically available only to institutional or wealthy investors. Under the Investment Company Act of 1940, as amended (“1940 Act”), BDCs are required to invest at least 70% of their total assets in the securities of “eligible portfolio companies,” defined as private U.S. operating companies and public U.S. operating companies with a market

¹ Unlike other non-bank lenders, BDCs are governed by the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 (“1940 Act”). BDCs register their securities and provide extensive disclosures; file periodic and other reports, including proxy statements and Forms 10-K, 10-Q and 8-K; and comply with additional regulatory requirements under the 1940 Act. Non-traded BDCs are also subject to state oversight and regulation under state “blue sky” laws.

² Small Business Investment Incentive Act of 1980, Pub. L. No. 96-477, 94 Stat. 2275 (1980); *see also* S. REP. NO. 96-958 (1980); H.R. REP. NO. 96-1341 (1980). The Act was approved by the U.S. House by a vote of 395-1 and by unanimous consent in the U.S. Senate.

capitalization of less than \$250 million.³ BDCs must also offer managerial and other support to their portfolio companies.⁴

The IPA strongly supports the two provisions of this bill. The first provides a modest increase in the permissible leverage limit for BDCs from a 1:1 debt-to-equity ratio to a 2:1 debt-to-equity ratio. This change would be effected by amending Section 61 of the 1940 Act to decrease the asset coverage requirement applicable to BDCs from 200% to 150%. Second, the bill would provide parity for BDCs in regards to offering and proxy rule reforms, thus leveling the footing with most other public reporting companies that obtained the relief under the 2005 securities reforms. Specifically, the bill would extend to BDCs eligibility to qualify for Well-Known Seasoned Issuer status, eligibility to file automatic shelf registration statements, and eligibility to incorporate by reference previously filed documents with the U.S. Securities and Exchange Commission. The IPA supports these changes along with other investor protections that are included in the bill.

The IPA views these changes as essential updates necessary to modernize the BDC regulatory regime. Modernization will 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. Investors will similarly benefit from greater investment opportunities, and reduced legal and administrative costs.

The IPA appreciates this Committee's effort to consider the legislation. If the IPA may be of any assistance to this Committee, please do not hesitate to contact me or Anya Coverman, IPA's Director of Government Affairs and General Counsel.

Sincerely,



Anthony Chereso
President & CEO, Investment Program Association

³ See 15 U.S.C. § 80a-2(a)(46), -54.

⁴ *Id.* §80a-2(a)(48)(B).