

October 19, 2017

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hensarling:

On behalf of the Investment Program Association (IPA), I write to express our views on H.R. 1585, “Fair Investment Opportunities for Professional Experts Act,” as reported by the Committee. We appreciate the Committee’s efforts to broaden the definition of accredited investor in a safe and responsible manner and look forward to working with you on this important issue.

For over 30 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), lifecycle 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. In addition, the IPA represents independent broker-dealer 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.

H.R. 1585, as amended, updates and modernizes the current definition of “accredited investor” under Section 2(a)(15) of the Securities Act of 1933, by, in part, codifying the income and net worth requirements under Rule 501 of Regulation D and indexing them for inflation based on CPI on a going-forward basis. The bill also recognizes that people with certain credentials such as registered broker-dealers or investment advisers, should qualify as accredited investors, and provides the U.S. Securities and Exchange Commission (“SEC” or “Commission”) with authority to qualify additional persons with certain “demonstrable education or job experience.”

Many IPA members offer private placement products to accredited investors under Regulation D. We strongly support legislation that will expand the current definition of accredited investor in a manner that is safe and responsible, while not unduly shrinking the current pool of eligible investors. We believe that H.R. 1585 is a substantial step in that direction.

IPA is concerned, however, that the language only applies prospectively, and would not grandfather current investors who may lose their accredited investor status upon the inflation adjustment. Without this addition to the bill, existing accredited investors could be excluded from investments in which they have participated previously. We believe that a reasonable solution would

be for a grandfathering provision to be incorporated to allow existing investors to participate in future investments in the same issuer to avoid dilution of their current investments.¹

IPA also believes that the bill should include a reasonable belief standard in its codification of income and net worth standards. A reasonable belief standard currently exists in Rule 501(a) of Regulation D—allowing an issuer to establish a reasonable belief as to an investor’s accredited investor status—and should be consistent in H.R. 1585.²

Finally, IPA appreciates that the bill recognizes that income thresholds are not the only way to qualify an investor as accredited. The IPA strongly supports provisions that allow people with credentials such as a Series 7, CFA or other credentials to be considered accredited for the purpose of being able to invest in non-public offerings.³ The IPA also supports including additional categories of investors as accredited based on education, job experience and/or certain non-financial thresholds.

H.R. 1585 as amended has the potential to increase the pool of accredited investors in a manner that maintains investor protections while allowing persons with knowledge and expertise to take advantage of portfolio diversifying investments. However, the IPA believes that the two issues raised in this letter should be addressed as the bill advances to ensure that the definition of accredited investor remains workable for everyone.

The IPA appreciates the Committee’s effort to update the accredited investor definition, and we look forward to working with you on H.R. 1585 as it progresses towards consideration in the House of Representatives. If the IPA may be of any assistance to the 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

¹ The SEC staff made a recommendation to grandfather issuers’ existing investors that are accredited investors under the current definition with respect to future offerings of their securities. See SEC Report on the Review of the Definition of “Accredited Investor,” December 18, 2015, available at <https://www.sec.gov/files/review-definition-of-accredited-investor-12-18-2015.pdf>

² “Accredited investor shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person...” 17 CFR 230.501 (emphasis added). Under Rule 506(c), unlike other Rules under Regulation D, the issuer must “verify” accredited investor status.

³ See e.g., SEC Advisory Committee on Small and Emerging Companies, Recommendations Regarding the Accredited Investor Definition, July 20, 2016, available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-accredited-investor.pdf>.

