



March 12, 2024

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Review of the “Accredited Investor” Definition under the Dodd-Frank Act

Dear Chair Gensler:

The U.S. Chamber of Commerce (the “Chamber”) writes to comment on the Securities and Exchange Commission (the “SEC” or “Commission”) December 2023 Staff Report entitled “Review of the ‘Accredited Investor’ Definition under the Dodd-Frank Act” (the “Report”).¹

The Chamber is concerned with any changes to the accredited investor definition that will inequitably reduce the pool of persons deemed accredited investors. Such changes would limit options for investors and adversely impact the capital formation ecosystem at a precarious time for the American economy. According to the SEC’s Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions, the Commission appears to be contemplating updates to the accredited investor definition in conjunction with a proposed rulemaking relating to Regulation D and Form D improvements (slated for April 2024).² The Chamber urges the SEC to expand, not further restrict, the definition of the accredited investor.

The Chamber recognizes the need for strong public and private capital markets. The private offering market, particularly under Regulation D, is an attractive vehicle for businesses to raise capital and investors to grow with them. Both Congress and the SEC have taken steps over the years, particularly since the Jumpstart Our Business Startups (JOBS) Act of 2012, to expand or create new exemptions from registration to promote capital formation and increased investment opportunities, while maintaining investor protections. While the Chamber has generally supported these efforts and commends the Commission for the amendments to the accredited investor definition it approved in 2020, we believe there are additional efforts the

¹ Review of the “Accredited Investor” Definition under the Dodd-Frank Act, a report by the staff of the Securities and Exchange Commission (December 14, 2023), available at <https://www.sec.gov/files/review-definition-accredited-investor-2023.pdf>.

² See Regulation D and Form D Improvements, *available at* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=3235-AN04>.

Commission can undertake to facilitate capital formation by further expanding the accredited investor definition.

Fewer companies are going public, and for those that do, it is much later in their lifecycle. When companies go public at a relatively mature age, many of the early-stage returns generated by those businesses accrue only to investors allowed to invest in private offerings. Qualifying as an accredited investor is significant because it permits an individual to participate in private investment opportunities not available to non-accredited investors. Furthermore, the vast majority of companies are private, not public, and there is a societal interest in enabling people to help support, fund, and grow with these businesses.

One recurring topic with respect to the definition of accredited investor is whether the income or net worth dollar amounts should be indexed for inflation. The Report noted that the SEC has substantively amended the definition four times since the adoption of Regulation D in 1982, including at the behest of Congress by excluding the value of an individual's primary residence when calculating net worth.³ We are concerned that a significant portion of the Report is devoted to providing different methodologies for inflation-adjusting the various financial criteria for qualifying as an accredited investor. We believe inflation-adjusting the dollar thresholds for achieving accredited status is misguided.

Efforts to inflation-adjust the dollar thresholds assume that the thresholds the SEC established in 1982 (and 1988 with respect to joint income), which at that time allowed just 1.8% (and 0.7% with respect to joint income) of U.S. households to qualify as accredited investors,⁴ represented an optimal level of income or net worth for participation in the private capital markets. Quite to the contrary, the dollar amounts set in 1982 and 1988 were selected somewhat arbitrarily and, in any event, there is no magic dollar amount (then or today) at which an investor gains or loses the ability to make prudent financial decisions. If the Commission intends to further adjust these amounts, there needs to be a discussion and an analysis as to why individuals below a certain amount of net worth or income are deemed unsophisticated or unworthy to participate in the private markets. As the Report noted, and as the Commission found in its 2020 amendments to the accredited investor definition, net worth and income alone are poor proxies for financial acumen. The Report states: “[I]imited information is available on the financial sophistication of accredited investors, which makes it challenging to assess the effectiveness of the definition’s financial thresholds as a proxy for such sophistication.”⁵

³ Staff Report, p. 14.

⁴ Staff Report, p. 23.

⁵ Staff Report, p. 35.

The Chamber opposes increasing the existing monetary thresholds for accredited investors.⁶ Since 18.5% of U.S. households qualified as accredited investors in 2022,⁷ any increase in the individual income and net worth thresholds would (1) shrink the number of households that qualify as accredited investors, (2) shrink the pool of capital available to private businesses, and (3) disproportionately impact diverse founders of businesses.⁸ Because the demographics of the United States have changed significantly since 1982, inflation-adjusting would also stifle efforts to improve participation in the private markets by qualified women, minority, and rural investors. Without the other reasonable pre-requisites under consideration by both the SEC’s Government Forum on Small Business Capital Formation and Congress, as discussed below, SEC rules that rely on arbitrary metrics such as income and net worth will continue to create investor distortion by favoring high-cost, high-income geographic areas. As an example, a married couple in a high-income urban area would be able to reach the accredited investor income threshold much earlier than an individual or a couple in a rural area. Disenfranchising women, minority, and rural investors would roll back the clock on over 40 years of societal progress, and in the process would also impede the development of diverse entrepreneurial ecosystems.

In addition, the Report highlights a series of policy reforms that have been recommended or considered in the past. Excluding defined contribution retirement assets from the assets that count towards the accredited investor threshold is a problematic concept that should not be adopted. Defined contribution plans have been a success in ensuring more Americans are saving for the future and gaining financial literacy. The Chamber does not agree with the idea that an investor who made the long-term, prudent decision to invest earnings pre-tax in a 401(k) or in an IRA should be denied access to additional investment options because they chose a tax-efficient investment strategy.

As the Commission considers potential changes to the accredited investor definition, we urge it to ensure that any future rulemaking touching the definition will both support and stimulate economic growth. The SEC’s Government-Business Forum on Small Business Capital Formation, which also opposes increasing the dollar thresholds to qualify as an accredited investor, put forward a number of sensible proposals in its 2023 annual report worthy of further SEC consideration. These proposals include expanding the accredited investor definition to include any person who invests not more than 10% of that person’s annual income or net assets,

⁶ The SEC’s Small Business Capital Formation Advisory Committee also expressed their opposition to inflation-adjusting the thresholds at a February 27, 2024 meeting, available at <https://www.sec.gov/news/sec-webcasts>.

⁷ Id.

⁸ “Investors tend to invest in people and products they identify with, so policies based on wealth have an impact on which entrepreneurs receive capital. It’s important to understand the impact the ability to qualify as an accredited investor has on diverse founders.” Report on the 42nd Annual Small Business Forum (April 2023), page 8, available at https://www.sec.gov/files/2023_oasb_annual_forum_report_508.pdf.

expanding the definition to include additional measures of sophistication such as professional certifications or designations, ensuring capital-raising rules provide equitable access to capital for underrepresented founders and investors, providing additional resources to entrepreneurs, improving the exempt offering framework to reduce concentration in sources of capital and increase diversity, allowing non-accredited investors to participate in venture capital funds, and undertaking other related efforts to improve diversity among fund managers.⁹ In addition, we recommend the SEC permit an investor, whether a natural person or an entity, that is advised by a registered investment adviser or broker dealer, to be considered an accredited investor.¹⁰

The Chamber also encourages the SEC to ensure that its efforts are not at odds with the bipartisan intentions of Congress. The House and Senate have considered ways to facilitate capital formation through affirmative legislation. In particular, three bills approved by the House during the current Congress are worthy of the Commission's further attention. The Fair Investment Opportunities for Professional Experts Act (H.R. 835) would expand the accredited investor definition to additional categories of persons who have satisfied prescribed educational requirements or attained certain professional experience. The Accredited Investor Definition Review Act (H.R. 1579) would similarly focus on education and other certifications beyond financial status. And the Equal Opportunity for All Investors Act of 2023 (H.R. 2797), which the House approved by a 383-18 vote, would increase pathways to qualify as an accredited investor for those who pass an examination testing knowledge of various objective criteria. The Chamber is supportive of each of these bills, and we believe the SEC could implement the objectives of these bills under its existing statutory authority.

Thank you for your attention to these comments.

Sincerely,



Kristen Malinconico
Director
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

⁹ Report on the 42nd Annual Small Business Forum (April 2023), available at https://www.sec.gov/files/2023_oasb_annual_forum_report_508.pdf.

¹⁰ This idea was recommended by the U.S. Treasury in its report "A Financial System That Creates Economic Opportunities: Capital Markets," (October 2017), p. 44, available at <https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>.

cc: The Honorable Hester Peirce, Commissioner
The Honorable Caroline Crenshaw, Commissioner
The Honorable Mark Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
Mr. Erik Gerding, Director, Division of Corporation Finance
Ms. Jessica Wachter, Chief Economist and Director, Division of Economic and
Risk Analysis