



April 25, 2023

The Honorable Patrick McHenry
Chairman
House Financial Services Committee

The Honorable Ann Wagner
Chairwoman
Subcommittee on Capital Markets

Dear Chairman McHenry and Subcommittee Chairwoman Wagner:

On behalf of Americans for Prosperity (AFP) and the LIBRE Initiative and the millions of activists across the country we represent, we would like to thank Chairman McHenry, Subcommittee Chairwoman Wagner, and the rest of the Committee membership for their strong leadership in this week's markup of capital formation legislation. Specifically, we would like to thank the Committee for its efforts to expand the accredited investor definition and to applaud Chairman McHenry for his introduction of the *Expanding Access to Capital Act*, a transformational piece of legislation containing several provisions that would improve the capital formation landscape in both private and public markets.

Capital markets play a vital role in the U.S. economy, providing small businesses, entrepreneurs, and startups with the access to capital they need to innovate, grow, and create jobs. Over a decade ago, Congress passed the bipartisan Jumpstart Our Business Startups Act of 2012, otherwise known as the JOBS Act, which made vast improvements to capital formation mainly through right-sizing regulations. However, opportunities remain for policymakers to build off the success of the JOBS Act of 2012 by reducing and eliminating additional barriers that prevent businesses from securing the funds they need to launch and scale.

Underrepresented entrepreneurs are particularly impacted by these barriers. Latino entrepreneurs have started businesses at a faster rate than any other group in the United States over the past decade, yet access to capital remains a serious barrier to additional growth. Despite Latino-owned businesses accounting for fourteen percent of all businesses in the United States, generating over \$800 billion in annual revenue, and employing more than 3 million workers, these businesses receive less than 2 percent of all venture capital investments. Furthermore, Latino business owners are more likely to be denied traditional loan financing than non-Latino business owners, thus highlighting the need for additional pathways for raising capital.

Within private markets, the *Expanding Access to Capital Act* would make several important changes. Representative Garbarino's *Unlocking Capital for Small Businesses Act of 2023* would help clarify the SEC's regulatory status for "finders" by providing them with an exemption from broker registration requirements. This clarification will ensure businesses do not face unnecessary barriers to accessing investor pools and is especially helpful for small businesses launching in areas where few people meet SEC's accredited investor definition. As previous SEC Chairman Clayton observed, "Many small businesses face difficulties raising the capital that they need to grow and thrive, particularly when they are located in places that lack established, robust capital raising networks."¹ The SEC's current treatment of finders is unworkable and hurts small businesses across the country.

¹ <https://www.sec.gov/news/press-release/2020-248>

Additionally, entrepreneurs should not unknowingly face running afoul of SEC rules in soliciting small dollar funding for initial startup costs. Chairman McHenry’s *Small Entrepreneurs’ Empowerment and Development Act of 2023* (SEED) would create a micro-offering exemption for issuers that sell less than \$250,000 in securities over a 12-month period. Small businesses should be able to focus on growth and innovation without worrying about regulation getting in the way.

Addressing challenges within the latter stages of a business’s life cycle, the *Expanding Access to Capital Act* would make several changes that would help improve the vibrancy of public markets. Specifically, Representative Steil’s *Helping Startups Continue to Grow Act* would extend Emerging Growth Company (EGC) status for an additional five years beyond the 2012 JOBS Act timeframe. Temporarily exempting qualifying companies from several burdensome reporting requirements, the EGC designation has been an effective tool in encouraging smaller companies to pursue IPOs and this extension will help to make public markets a more attractive fundraising option for companies.

Policymakers should also be aware of regulatory efforts that would force companies into the IPO process earlier than required. In the Office of Management and Budget’s Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions, it notes a recommendation for amendments to be made to the “held of record” definition.² The *Expanding Access to Capital Act* contains an important provision that would help ensure companies are not forced to go public before they are ready and face the expensive IPO process by excluding certain institutional investors from held of record registration thresholds and preventing the SEC from changing the definition.

Finally, we applaud the Committee for its leadership in expanding the accredited investor definition, both through provisions within the *Expanding Access to Capital* legislation and additional standalone bills to be marked up this week. Individuals should have equal opportunities to invest their money regardless of wealth or status and businesses stand to benefit from an expanded pool of potential investors. It is important for Congress to ensure the accredited investor definition is as inclusive as possible, and not reserved exclusively to wealthy households or institutions.

While the United States has the largest capital markets in the world, it is important for policymakers to continually revisit the regulations surrounding these markets to ensure that the United States remains the world’s hub of innovation and job creation. Over the past few years, small businesses and startups have faced serious economic headwinds from supply chain disruptions, labor shortages, and rampant inflation. With the collapse of banks such as Silicon Valley Bank and the continued aggressive rate hike agenda from the Federal Reserve to combat inflation, ensuring unimpeded access to capital through private and public securities offerings becomes even more critical for advancing our economy.

Businesses of all sizes, including Latino-owned ones, stand to benefit from the legislation being considered by the Committee. Likewise, the expansion of investment choices is of value to all investors, both sophisticated and retail. We applaud the Committee for taking up these proposals and look forward to working with you to advance them in the 118th Congress.

Sincerely,

Brent Gardner
Chief Government Affairs Officer
Americans for Prosperity

Sandra Benitez
Executive Director
The LIBRE Initiative

² <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=3235-AN05>

