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Before the U.S. House Committee on Financial Services
Subcommittee on Capital Markets
Hearing on "Sophistication or Discrimination? How the Accredited Investor Definition Unfairly Limits Investment Access for the Non-wealthy and the Need for Reform"

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Chair Wagner, Ranking Member Sherman, and distinguished members of Subcommittee on Capital Markets, my name is Jennifer Schulp, and I am the Director of Financial Regulation Studies at the Cato Institute's Center for Monetary and Financial Alternatives.

I thank you for the opportunity to take part in today's hearing entitled, "Sophistication or Discrimination? How the Accredited Investor Definition Unfairly Limits Investment Access for the Non-wealthy and the Need for Reform."

The focus of my testimony is on the drawbacks and pitfalls of the accredited investor definition—which limits investment by non-wealthy investors in certain private securities offerings—as currently conceived.

**Background**

The Securities Act of 1933 requires that all public offers and sales of securities be registered with the Securities and Exchange Commission (SEC). Issuers of such securities must file a registration statement, which includes a prospectus containing audited financial statements and detailed disclosures about the issuer's business operations, financial condition, risk factors, and management. Such issuers are also generally subject to ongoing disclosure requirements under the Securities Exchange Act of 1934. This constellation of disclosures—which has increased in volume and complexity substantially since the passage of the Securities Act—is the hallmark of securities sold in our public markets.

Offers and sales of securities that are not made to the public, however, are not subject to these same requirements.[1] What exactly makes an offering "non-public" has varied over time, but most private offerings today are made in accordance with regulatory exemptions

[1] *See* 15 U.S.C. § 77d(a)(2).

from the Securities Act's requirements.[2] The exempt offering framework is complicated—a problem in and of itself—but, in general, investors are required to be provided less information about the security being offered than in a registered offering, and there are often restrictions on reselling the security. Private securities offerings are diverse and include direct investment in individual companies as well as pooled investment into private equity, hedge, or other funds.

Rule 506 of Regulation D is one of the most popular avenues for raising capital via an exempt offering.[3] An issuer may raise an unlimited amount of capital under Rule 506 as long as the issuer complies with the rule's requirements about, among other things, investor eligibility. Whether a person is eligible to invest in a Rule 506 offering is largely determined by whether he or she meets the definition of an "accredited investor."

The term "accredited investor" was added to the Securities Act in 1980, which directed the SEC to create rules to qualify "any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management" as an accredited investor.[4] The SEC promulgated rules in 1982 defining a natural person with a net worth that exceeds $1,000,000 or an annual income in excess of $200,000 (or $300,000 jointly with a spouse) to be accredited.[5] These rules have remained largely unchanged since 1982, with two exceptions. In 2010, the Dodd-Frank Act directed the SEC to adjust the calculation of a natural person's net worth by excluding the value of a person's primary residence from the calculation,[6] shrinking the pool of people qualified as accredited investors. In 2020, the SEC extended accredited investor status to natural persons who hold certain professional credentials and who are "knowledgeable employees" of the issuer of the securities being offered.[7] Under this small expansion, individuals with the Financial Industry Regulatory Authority Inc.'s Licensed General Securities Representative (Series 7), Licensed Investment Adviser Representative (Series 65), and Licensed Private Securities Offerings Representative (Series 82) certifications qualify as accredited investors.[8]

To put this into perspective, the SEC estimates that about 13 percent of U.S. households qualify as accredited investors.[9] Such investors are permitted to invest in offerings made under

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[2] *See generally* Thaya Brook Knight, "Your Money's No Good Here: How Restrictions on Private Securities Offerings Harm Investors," *Cato Institute*, Policy Analysis No. 833 (February 9, 2018), available at https://www.cato.org/policy-analysis/moneys-no-good-here-how-restrictions-private-securities-offerings-harm-investors.
[3] 17 C.F.R. § 230.506.
[4] 15 U.S.C. § 77b(a)(15).
[5] 17 C.F.R. § 230.501(a)(5), (6).
[6] 17 C.F.R. § 230.501(a)(5)(i); *see also* 15 U.S.C. § 77b note.
[7] 17 C.F.R. § 230.501(a)(10), (11).
[8] *See* Securities and Exchange Commission, "Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status," Order, available at https://www.sec.gov/rules/other/2020/33-10823.pdf
[9] Securities and Exchange Commission, "Accredited Investor Definition," Final Rule, at 100, available at https://www.sec.gov/rules/final/2020/33-10824.pdf; *see also* PK, "How Many Accredited Investors Are There in America?," *DQYDJ.com* (June 8, 2021), available at https://dqydj.com/accredited-investors-in-america/ (estimating that 10.6% of American households were accredited in 2020).

Regulation D without limitation, but the vast majority of Americans who do not qualify as accredited are, with limited exception, excluded from those investment opportunities.

Rule 506(c) offerings are entirely off-limits to non-accredited investors, while Rule 506(b) permits offerings to be made to up to 35 non-accredited investors under special circumstances. Under Rule 506(b), non-accredited investors must still "ha[ve] such knowledge and experience in financial and business matters that [they are] capable of evaluating the merits and risks of the prospective investment," either on their own or together with a representative, and issuers must provide disclosures to non-accredited investors who meet these requirements, including financial statement information.[10] It is no surprise, then, that few offerings are made to unaccredited investors under Rule 506(b); from 2013 to 2018, only six percent of Rule 506(b) offerings included at least one unaccredited investor.[11]

Importantly, offerings made pursuant to these exemptions are no small portion of the capital raised by businesses. Indeed, from July 1, 2021 to June 30, 2022, more money was raised under Rule 506(b) ($2.3 trillion) than by all registered offerings ($1.2 trillion).[12] Even offerings under Rule 506(c) offerings, a much less often used exemption, raised more money ($148 billion) than was raised in IPOs ($126 billion).

**The Accredited Investor Definition Needs Reform**

Approximately 90% of American households are unable to participate in the segment of capital raising that dwarfs the investing opportunities available from companies raising money in public markets. This, alone, should raise a red flag as to the wisdom of the accredited investor definition, but the problems with the definition go beyond this simple fact.

*The Accredited Investor Definition is Fundamentally Unfair*

The accredited investor definition gives the SEC the authority to decide who gets to invest where: public markets for most, but public *and* private markets for those it judges to be worthy. Such paternalism—limiting how people can invest their money—is objectionable in itself. The SEC should not be charged with protecting individuals from their choices to take certain kinds of financial risk.[13]

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[10] 17 C.F.R. § 230.506(b)(2)(ii); 17 C.F.R. § 230.502(b).

[11] Securities and Exchange Commission, "Amending the Accredited Investor Definition," Proposed Rule, at 105, available at https://www.sec.gov/rules/proposed/2019/33-10734.pdf.

[12] Securities and Exchange Commission, Office of the Advocate for Small Business Capital Formation, "Annual Report Fiscal Year 2022," Annual Report, at 13, available at https://www.sec.gov/files/2022-oasb-annual-report.pdf. *See also* Securities and Exchange Commission, "Amending the Accredited Investor Definition," Proposed Rule, at 12, available at https://www.sec.gov/rules/proposed/2019/33-10734.pdf (noting that in 2018, Rule 506 offerings raised $1.7 trillion, compared to $1.4 trillion raised in registered offerings).

[13] *See, e.g.,* Thaya Brook Knight, "Your Money's No Good Here: How Restrictions on Private Securities Offerings Harm Investors," *Cato Institute*, Policy Analysis No. 833 (February 9, 2018), available at https://www.cato.org/policy-analysis/moneys-no-good-here-how-restrictions-private-securities-offerings-harm-investors; Jennifer J.

*The Accredited Investor Definition Does Not Meet Its Aims*

But even judged by its own goals—limiting private offerings to investors with sufficient financial sophistication—the accredited investor definition is ineffective.

The concept of limiting private market investments to certain investors can be traced to the Supreme Court's 1953 opinion in *SEC v. Ralston Purina*.[14] In that opinion, the Supreme Court said that "[a]n offering to those who are shown to be able to fend for themselves is a transaction 'not involving an public offering,'" and thus, not subject to the registration requirements of the Securities Act.[15] Over time, this has come to be understood as requiring investors in private offerings to have a certain degree of financial sophistication.[16] Regardless of whether this understanding is a fair reading of *Ralston Purina*,[17] the SEC has historically taken the view that the accredited investor definition is "intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or fend for themselves render the Securities Act's registration process unnecessary."[18] Since 1982, the determination of whether one has such sophistication is a bright line wealth test: individuals making more than $200,000 per year or with a net worth of over $1,000,000 are judged to be financially sophisticated enough to invest in private offerings.[19]

But being wealthy is no proxy for financial sophistication. This line drawing lumps the elderly with substantial retirement savings and lottery winners with windfall profits in with people whose earnings have depended on some financial know-how. It also excludes those who do not have a substantial nest egg but have a great deal of general investment knowledge or have experience with the industry in which they seek to invest.

A generic wealth test is also a poor fit if the goal is to limit access to private investments to only those who can "afford" to take the loss. Setting aside the fact that ability to bear the risk of loss is, itself, not a criterion supported by either case law or statute as a reason for limiting investor access, loss tolerance also rests on more than a naïve wealth determination. Older investors may be more sensitive to loss than younger investors who have a longer investing

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Schulp, "Let Investors Decide, Part I," *Cato At Liberty (blog)* (June 1, 2020), available at https://www.cato.org/blog/let-investors-decide-part-1.

[14] SEC v. Ralston Purina Co., 346 U.S. 119 (1953).

[15] *Id*. at 125.

[16] *See, e.g.,* 15 U.S.C. § 77b(a)(15).

[17] *See, e.g.,* Andrew N. Vollmer, "Abandon the Concept of Accredited Investors in Private Securities Offerings," Mercatus Center Working Paper (October 22, 2020), at 7-10, available at https://www.mercatus.org/research/working-papers/abandon-concept-accredited-investors-private-securities-offerings-0 (explaining whether investors could fend for themselves relates to whether those investors possessed or had access to the information that would be in a registration statement, not the investor's sophistication).

[18] Securities and Exchange Commission, "Accredited Investor Definition," Final Rule, at 5, available at https://www.sec.gov/rules/final/2020/33-10824.pdf (internal quotation marks and citation omitted).

[19] While the SEC's most recent amendment to the definition tweaks the historical view by identifying individuals who either have the requisite financial sophistication *or* the ability to bear the risk of a loss, most accredited investors continue to be qualified through the wealth test. *Id.* at 6.

time horizon. Moreover, investors can be motivated by many goals, not all of which are solely related to return on investment: for example, the desire to invest in a compelling idea, an interest in supporting a local entrepreneur, or the need to diversify their portfolio. None of these motivations is captured by a generic metric for loss tolerance.

The truth is that no simple, blanket rule can capture individual investor sophistication.

*The Accredited Investor Definition Harms Investors (And Entrepreneurs)*

The mismatch between bright-line wealth tests and investor sophistication, however, is not just a theoretical concern. By effectively excluding middle- and lower-income individuals from many of the offerings in the market, the current regulatory regime limits the ability of such individuals to amass wealth, diversify holdings, and hedge certain risks. The accredited investor definition reinforces wealth gaps that exist in American society by reserving private market opportunities for the already wealthy, harming both investors and the entrepreneurs that rely on those investors to fund their businesses.

First, the accredited investor definition makes it harder for those who are not already wealthy to amass wealth by locking them out of a private capital market that is larger than the public one. As noted above, Regulation D offerings raise more money than all registered offerings combined. These markets are not only larger, but they also present different opportunities for investors than investing in the public markets.[20]

The median age of companies accessing the public markets through an IPO over the past twenty years is about 11 years.[21] While this average has varied over time, it is generally true that companies stay private longer these days; indeed, as of November 1, 2022, the United States had 667 "unicorns," or non-publicly traded companies valued at more than $1 billion.[22]

[20] While most of the data and discussion in this space focuses on primary offerings of securities, the accredited investor definition also plays an important role in limiting access to such securities in secondary trading. *See* Jeff Thomas, *Redefining Accredited Investor: That's One Small Step for the SEC, One Giant Leap for Our Economy*, 9 Mich. Bus. & Entrepreneurial L. Rev. 175 (2020), available at https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1107&context=mbelr; *see also* Usha Rodrigues, *Securities Law's Dirty Little Secret*, 81 Fordham L. Rev. 3389 (2013), available at https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1938&context=fac_artchop (examining the accredited investor definition through the lens of secondary market trading).

[21] Jay R. Ritter, "Initial Public Offerings: Median Age of IPOs Through 2022," (January 5, 2023), available at https://site.warrington.ufl.edu/ritter/files/IPOs-Age.pdf; Stephen Dover, "FOMO? Investors Fear Missing Out as Companies Stay Private for Longer," *Franklin Templeton* (May 24, 2019), available at https://global.beyondbullsandbears.com/2019/05/24/fomo-investors-fear-missing-out-as-companies-stay-private-for-longer/; Carol Ryan, "Today's Tech IPOs Offer Lower Growth for Top Dollar," *Wall Street Journal* (August 17, 2019), available at https://www.wsj.com/articles/todays-tech-ipos-offer-lower-growth-for-top-dollar-11566050580.

[22] Jordan Rubio, "Unicorn companies tracker," *PitchBook* (February 1, 2023), available at https://pitchbook.com/news/articles/unicorn-startups-list-trends; *see also* Ellen Huet, "There Are Now 1,000 Unicorn Startups Worth $1 Billion or More," *Bloomberg* (February 8, 2022), available at https://www.bloomberg.com/news/features/2022-02-09/there-are-now-1-000-unicorn-private-company-startups-worth-1-billion-or-more.

Given the extended period of time that many companies remain private, it is likely that many companies are past their high growth phase by the time most people can invest in them.

There are also fewer public companies today than there were 20 years ago, and there is a higher concentration of stock market capitalization in the top handful of companies.[23] The SEC's Asset Management Advisory Committee describes investment opportunities for retail investors as "less diversified than 15 years ago."[24] In short, people have fewer choices in the public markets, and those choices may offer lower potential returns and fewer opportunities for diversification.

Second, although there is debate about whether investors can earn better average returns in private markets,[25] private markets unquestionably offer investors different investment opportunities than those available in the public markets. For example, an investor may choose to support a compelling idea or a local entrepreneur. An investor may also seek out a riskier investment in the private markets to balance an investor's portfolio as a whole.

Importantly, it is precisely the riskiness of private offerings that can make them appealing to investors because investors are compensated for risk with the chance at higher returns. Prohibiting investment because of perceived risk may eliminate exposure to the potential downside but it also excludes realization of the potential upside.

Third, the impact of the accredited investor definition is not felt evenly across racial and geographic lines in American society. Those who qualify as accredited investors are disproportionately white and concentrated on the country's coasts.[26] There is a significant

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[23] FRED, "Number of Listed Companies for United States," *St. Louis Fed*, available at https://fred.stlouisfed.org/series/DDOM01USA644NWDB; Securities and Exchange Commission, Asset Management Advisory Committee, "Final Report and Recommendations for Private Investments," Final Report, at 5, available at https://www.sec.gov/files/final-recommendations-and-report-private-investments-subcommittee-092721.pdf.

[24] Securities and Exchange Commission Asset Management Advisory Committee, "Final Report and Recommendations for Private Investments," Final Report , at 5, available at https://www.sec.gov/files/final-recommendations-and-report-private-investments-subcommittee-092721.pdf.

[25] *See, e.g.,* The Economist, "Everyone now believes that private markets are better than public ones," *The Economist* (January 30, 2020), available at https://www.economist.com/finance-and-economics/2020/01/30/everyone-now-believes-that-private-markets-are-better-than-public-ones; Securities and Exchange Commission Asset Management Advisory Committee, "Final Report and Recommendations for Private Investments," Final Report, at 8-10, available at https://www.sec.gov/files/final-recommendations-and-report-private-investments-subcommittee-092721.pdf.

[26] *See, e.g.,* Neil Bhutta, Andrew Chang, Lisa Dettling, and Joanne Hsu, "Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances," *FEDS Notes* (September 29, 2020), available at https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm; Securities and Exchange Commission, "Report on the Review of the Definition of "Accredited Investor," SEC Report, at 112-113, available at https://www.sec.gov/corpfin/reportspubs/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf ; Emmie Martin, "This map shows how much money Americans make in every US state," *CNBC* (December 10, 2018), available at https://www.cnbc.com/2018/12/07/median-household-income-in-every-us-state-from-the-census-bureau.html. Recent amendments to the accredited investor definition that include certain financial professionals as accredited

earnings and wealth gap between white households and Black and Hispanic households. The average Black or Hispanic household earns about half as much as the average White household and own about 15 to 20 percent as much net wealth.[27] While 10.8 percent of white households earned more than $200,000 per year in 2019, only 5.3 percent of Hispanic households and 4.6 percent of Black households earned the same.[28] Similarly, the median net worth of a white household was $188,200, 7.8 times greater than that of a Black household ($24,100).[29]

As such, the accredited investor definition—based on a bright-line wealth test—not only blatantly discriminates on the basis of wealth, it also has discriminatory effects on the ability of minorities and those in less wealthy areas to grow their own wealth. For example, nearly 75 percent of the families in the wealthiest 1 percent own privately held business and private business assets make up more than one-third of their balance sheets.[30] Despite the importance of private business ownership to wealth accumulation, the accredited investor definition prevents a disproportionate portion of minority households from accessing such an equity ownership stake in a private business.[31]

And, although it is not the focus on this hearing, it is important to note that these detrimental effects are similarly reflected for would-be entrepreneurs in less wealthy communities who are accordingly limited in their ability to turn to those they know best when

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will have no meaningful impact on the demographics of those who are eligible. Eighty-five percent of retail brokers and financial advisers are white, compared to 5% Hispanic and 3% Black. Miriam Rozen, "Nearly a Decade After Landmark Case, Brokerage Industry Shows Scant Progress on Diversity," *AdvisorHub* (October 4, 2022), available at https://www.advisorhub.com/nearly-a-decade-after-landmark-case-brokerage-industry-shows-scant-progress-on-diversity/.

[27] Aditya Aladangady and Akila Forde, "Wealth Inequality and the Racial Wealth Gap," *FEDS Notes* (October 22, 2021), available at https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.html#fig1.

[28] *See* Kristen E. Broady and Cynthia Hester, "Reducing the Facial Financial Health Gap: The Opportunity for Responsible Fintech," *PayPal* (September 30, 2021), at 8, available at https://publicpolicy.paypal-corp.com/sites/default/files/2021-11/PP-Reducing-the-Racial-Financial-Health-Gap.pdf; *see also* Securities and Exchange Commission Office of the Advocate for Small Business Capital Formation, "Annual Report Fiscal Year 2022,"Annual Report, at 54, available at https://www.sec.gov/files/2022-oasb-annual-report.pdf.

[29] Kristen E. Broady and Cynthia Hester, "Reducing the Facial Financial Health Gap: The Opportunity for Responsible Fintech," *PayPal* (September 30, 2021), at 9, available at https://publicpolicy.paypal-corp.com/sites/default/files/2021-11/PP-Reducing-the-Racial-Financial-Health-Gap.pdf.

[30] *Id.* at 10; Jesse Bricker, Sarena Goodman, Kevin B. Moore, and Alice Henriques Volz, "Wealth and Income Concentration in the SCF: 1989-2019," *FEDS Notes* (September 28, 2020), available at https://www.federalreserve.gov/econres/notes/feds-notes/wealth-and-income-concentration-in-the-scf-20200928.html.

[31] *See* Investor Choice Advocates Network, "Petition for Rulemaking – Replacing Net Worth and Income Requirements Under Rule 501(a) to Reduce DEI Barriers," available at https://www.sec.gov/rules/petitions/2022/petn4-796.pdf (quoting Ramon Orgeta, CEO and Founder of My Money My Future: "[I]ndeed, in the U.S., most wealth has been created through investing in or building businesses. For example, in the Silicon Valley 'ecosystem,' the observed pattern has been that early investors of private companies that eventually go public or are acquired are the ones who receive windfalls of capital that can completely change the trajectories of wealth for their families and communities.").

building their businesses.[32] Indeed, 74 percent of aspiring entrepreneurs cite networks and connections as barriers to accessing capital, and businesses in rural areas, for example, raise comparatively less capital.[33] The SEC has recognized that minority-owned businesses and businesses in lower-cost-of-living areas, in particular, may benefit from increased access to accredited investors.[34] Such investment is crucial for small businesses,[35] which have an outsized impact on job creation.[36]

**Investors Should Be Given More Opportunities To Access Private Market Investments**

In light of these circumstances, the accredited investor definition should be reformed, at a minimum, to allow more access to private offerings for individual investors. Breaking down

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[32] As the SEC's Office of the Advocate for Small Business Capital Formation noted, "[w]omen, minorities, and rural communities have expressed disproportionate challenges with the standard, which often draws a line between the investors' network and qualification for the most attractive offering exemptions." Securities and Exchange Commission Office of the Advocate for Small Business Capital Formation, "Annual Report for Fiscal Year 2019," Annual Report, available at https://www.sec.gov/files/2019_OASB_Annual%20Report.pdf; *see also* Mariah Lichtenstern, "Investors still engage in racist redlining. Why haven't we done something about it?," *Fortune* (January 6, 2021), available at https://fortune.com/2021/01/06/redlining-black-latinx-entrepreneurship-investment-sec/; Investor Choice Advocates Network, "Petition for Rulemaking – Replacing Net Worth and Income Requirements Under Rule 501(a) to Reduce DEI Barriers," available at https://www.sec.gov/rules/petitions/2022/petn4-796.pdf (collecting statements about detrimental effect of accredited investor definition on investment in minority-owned businesses); Jennifer J. Schulp, "Let's Not Backtrack on Loosening 'Accredited Investor' Rules," *MarketWatch* (January 29, 2021), available at https://www.cato.org/commentary/lets-not-backtrack-loosening-accredited-investor-rules.

[33] Securities and Exchange Commission Office of the Advocate for Small Business Capital Formation, "Annual Report for Fiscal Year 2020," Annual Report, at 28 and 69, available at https://www.sec.gov/files/2020-oasb-annual-report.pdf. These same entrepreneurs are hampered in accessing capital from angel investors, who tend to invest in near-by businesses. *Id.* at 32. Five metro areas were estimated to have contributed to 50 percent of net new firm creation between 2010 and 2014. Ewing Marion Kauffman Foundation, "Access to Capital for Entrepreneurs: Removing Barriers" (April 2019), at 7, available at https://www.kauffman.org/wp-content/uploads/2019/12/CapitalReport_042519.pdf.

[34] Securities and Exchange Commission, "Amending the 'Accredited Investor' Definition," Proposed Rule, at 106, available at https://www.sec.gov/rules/proposed/2019/33-10734.pdf.

[35] *See, e.g.,* Laura Lindsey and Luke Stein, "Angels, Entrepreneurship, and Employment Dynamics: Evidence from Investor Accreditation Rules," *SSRN* (February 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2939994 (using data from restriction in accredited investor population following Dodd-Frank amendments to conclude that angel investors are an important source of entrepreneurial finance to high-quality, competitive firms). Minority-owned businesses shuttered at a higher rate in 2020 due to the pandemic, and recent survey results show, in particular, that black business owners will face a tougher road to recovery after Covid-19. Chauncey Alcorn, "Black-Owned Companies are Shutting Down Twice as Fast as Other Businesses," *CNN* (August 4, 2020), available at https://www.cnn.com/2020/08/04/economy/black-business-coronavirus-study/index.html; Goldman Sachs, "Survey: Disappointed and Frustrated, Small Business Owners Feel Left Behind by Congress," *Goldman Sachs* (September 8, 2020), available at https://www.goldmansachs.com/citizenship/10000-small-businesses/US/infographic-left-behind.

[36] Securities and Exchange Commission Office of the Advocate for Small Business Capital Formation, "Annual Report for Fiscal Year 2020," Annual Report, at 28, available at https://www.sec.gov/files/2020-oasb-annual-report.pdf; U.S. Census Bureau, "Business Formation Statistics," available at https://www.census.gov/econ/bfs/index.html.

society's wealth divide requires removing barriers to opportunities for investors (and entrepreneurs) to make financial gains.

Unfortunately, despite recent small expansions in the accredited investor definition, the Securities and Exchange Commission seems poised to further limit investor access to private offerings. Revising the accredited investor definition is on the SEC's regulatory agenda, and while Chairman Gary Gensler has not affirmatively stated his intentions for that reform, it is noteworthy that two commissioners, including one who remains on the Commission, objected to the expansion of the accredited investor definition in 2020, calling instead for further restrictions on investor access by indexing the wealth thresholds to inflation retroactive to 1982.[37] Such a change runs counter to the recommendations of the SEC's Office of the Advocate for Small Business Capital Formation that the accredited investor definition be expanded to offer more opportunities to demonstrate financial sophistication as an alternative to the income and net worth thresholds.[38]

Proponents of such a dramatic contraction can point to no evidence of an increase in fraud or ill-advised investment as inflation has permitted more investors access to private offerings. The fact that private market investment is risky provides no sound basis for further limiting investor access. Investing in public securities markets is also risky. The public market also is no stranger to fraudulent misconduct or dramatic drops in value. And required public market disclosures do not mitigate the risk of investing in the company itself. Yet the SEC places no limits on investors' freedom to invest in public markets, regardless of an investor's degree of financial sophistication or ability to endure a loss.

For these reasons, Congress should act to act to prevent the agency from further exacerbating the problems that are associated with the accredited investor definition and should make statutory amendments to ensure greater access to private offerings than provided by the SEC's current iteration of the accredited investor definition. The Committee has put forth several proposals for doing so, and I look forward to discussing the potential benefits and drawbacks of each.[39]

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[37] Securities and Exchange Commission, "Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions," available at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode&showStage=active&agencyCd=3235; Allison Herren Lee and Caroline Crenshaw, "Joint Statement on the Failure to Modernize the Accredited Investor Definition," Securities and Exchange Commission (August 26, 2020), available at https://www.sec.gov/news/public-statement/lee-crenshaw-accredited-investor-2020-08-26.

[38] Securities and Exchange Commission Office of the Advocate for Small Business Capital Formation, "Annual Report Fiscal Year 2022," Annual Report, at 73, available at https://www.sec.gov/files/2022-oasb-annual-report.pdf. *See also* Securities and Exchange Commission Small Business Capital Formation Advisory Committee, Letter to Chair Gary Gensler (March 12, 2022), available at https://www.sec.gov/spotlight/sbcfac/sbcfac-accredited-investor-recommendation-021022.pdf (making similar recommendations).

[39] *See* Jennifer J. Schulp, "Let Investors Decide, Part II," *Cato At Liberty (blog)* (June 10, 2020), available at https://www.cato.org/blog/let-investors-decide-part-ii.

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Thank you for the opportunity to provide this information, and I welcome any questions that you may have.