AFR Americans for Financial Reform

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

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington DC, 20515

March 25, 2025

Re: Hearing entitled "Beyond Silicon Valley: Expanding Access to Capital Across America."

Dear Chairman Hill and Ranking Member Waters:

Americans for Financial Reform (AFR) appreciates the opportunity to submit a letter in advance of the House Financial Services Committee "Beyond Silicon Valley: Expanding Access to Capital Across America" hearing. AFR is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, AFR continues to work towards a strong, stable, and ethical financial system. We are committed to eliminating economic and racial inequity in the financial system and fighting for a just and sustainable economy.

Well regulated public markets are critical to both companies seeking capital and investors seeking wealth-building opportunities. But the legislative proposals noticed for today's hearing threaten to undermine the integrity of the market itself by substantially weakening investor protections through exemptions, carve-outs, and definitional changes that in the end would harm investors, investor confidence, and ultimately the ability of companies to raise capital.

If the question of capital formation is solely about how companies can more easily access investors, the answer will always be to weaken the safeguards that protect not only investors but the market itself. Safeguarding investors must always be on at least an equal footing as the interests of the companies seeking investors. Smaller, retail investors are especially vulnerable to informational asymmetry, losses, and steep fees they cannot afford from opaque, risky, and illiquid private markets.

Under the guise of capital formation and democratizing finance, the slate of noticed legislation (much of it mirroring the Project 2025 blueprint) would sweep away the safeguards for smaller, retail investors. The accredited investor rule is intended to protect the smallest investors that have the least capacity to take losses from outsized risks. Today's legislation would severely erode the accredited investor rule, create new exemptions for private and micro offerings and registrations, and create additional initial public offerings loopholes for emerging growth companies. These measures do not strengthen capital formation, they expose smaller, retail investors to opaque, volatile, highly risky markets without disclosing the scale and scope of those risks.

I. America's Securities Regulatory Institutions Face a Moment of Crisis

As the Committee knows, recently personnel from the U.S. Department of Government Efficiency Service (USDS)[1] entered the Securities and Exchange Commission (SEC). Recent public reporting

[1] On January 20, 2025, President Donald Trump issued an executive order (E.O.) titled "Establishing and Implementing the President's 'Department of Government Efficiency'" (DOGE), which reorganized an entity in the Executive Office of the President, the U.S. Digital Service, as the U.S. DOGE Service, using the same acronym as its predecessor (USDS). The E.O. directs the

confirms that these USDS cuts will lead to unprecedented cuts to SEC resources and personnel in FY 2026. The scale of the contemplated cuts threaten to undermine the agency's ability to perform core aspects of its mission to protect investors and preserve market integrity.

Earlier this month the SEC made buyout offers to employees who have been with the agency since before January 2024 if they quit or resign by April.[2] In addition, the Government Services Administration (GSA) plans to close the regional offices in Los Angeles, Philadelphia and Chicago, which have traditionally played a key role in shaping the SEC's investigative priorities.[3] The SEC is planning to lay off all of the regional office directors.[4]

This targeting of SEC personnel and resources by the USDS coincides with an unprecedented assault on independent federal regulatory agencies by the administration and the President. For example, on February 18, President Trump issued an executive order purporting to eliminate the independence of independent regulatory agencies, specifically targeting the SEC and the Federal Trade Commission.[5] Last week, President Trump illegally fired both Democratic commissioners of the Federal Trade Commission.[6]

In light of these aggressive changes, now is not the time for Congress to loosen the statutory or regulatory reins on corporate insiders that could expose retail investors to substantially greater risks that could imperil their long-term economic security. Congress should instead defend the long-standing regulatory safeguards and statutory mission of the SEC to protect investor rights that foster market stability, integrity, and democratic participation. The unprecedented assault on the rule of law by the executive branch is stripping independent agencies of their regulatory authority and oversight powers. Passing laws that undermine public markets, empower corporate insiders or weaken investor protections would make it easier for powerful actors to manipulate the system at the expense of ordinary investors, the broader public, efficient long-term capital formation, and economic stability.

II. AFR's Views on Noticed Legislation Related to Capital Formation

The legislation noticed in connection with today's hearing represents yet another effort to replicate and expand on the demonstrably failed experiment Congress initiated thirteen years ago when it simultaneously relaxed regulatory requirements for both public and private companies issuing securities under the JOBS Act of 2012. The proposed capital formation legislative vehicles would

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reorganized USDS to "implement the President's DOGE Agenda, by modernizing Federal technology and software to maximize governmental efficiency and productivity." Two additional executive orders identify other USDS activities related to agency hiring freezes and hiring plans. *See* Fiorentino, Dominick A. and Clinton T. Brass. Congressional Research Service. "Department of Government Efficiency (DOGE) Executive Order: Early Implementation." February 6, 2025. https://www.congress.gov/crs-product/IN12493

[2] Prentice, Chris. "US SEC offers staff $50,000 to resign or retire, memo says." Reuters. March 3, 2025.

[3] Schroeder, Pete. "US SEC says Trump administration to terminate building leases for Los Angeles, Philadelphia regional offices." Reuters. March 3, 2025.

[4] Almazora, Leo. "SEC reportedly cutting regional director roles as DOGE efforts continue." Investment News. February 26, 2025.

[5] Executive Order 14215. "Ensuring Accountability for All Agencies." February 18, 2025.

[6] Godoy, Jody. "Trump fires both Democratic commissioners at FTC." *Reuters*. March 18, 2025.

weaken investor protections, expose more families and their savings to riskier and more opaque markets, and threaten market integrity.

AFR opposes legislation that would reduce regulatory requirements for public securities issuers and lower the bar for issuers raising capital in public markets. The public securities markets allow companies to raise capital to create jobs, drive economic growth, and enable workers and investors of all stripes to grow their personal savings over time to enjoy a secure retirement with dignity and stability. Unfortunately, many of the bills proffered in connection with today's hearing stand to cause profound damage to public securities markets by lowering the bar that issuers must meet to raise capital in these markets.

AFR opposes several draft legislative proposals that would further expand and entrench unnecessary regulatory accommodations for so-called "Emerging Growth Companies" (EGCs).[7]

In the years since 2012, when Congress initially established the reduced disclosure regime for EGCs, the primary discernable impact has been to enable and justify additional deregulatory legislation and regulatory rollbacks, as issuers not initially eligible for EGC status have sought the same regulatory forbearance as EGCs in the name of equitable treatment of public companies.

When policymakers make exceptions for one group or subset of market participants, other market participants inevitably take notice and seek similar regulatory carve-outs and lenient treatment. Often, the end result is a lowering of the bar for all market participants. Rather than expand the EGC regime, Congress should take a hard look at the flood gates it has already opened when creating EGCs in 2012 and move to close these unnecessary and damaging loopholes.

AFR also opposes legislation to undermine the public markets by amending the Exchange Act to exclude qualified institutional buyers (QIBs) and institutional accredited investors from counting toward the mandatory registration thresholds set forth in Section 12(g) of the Exchange Act.[8]

AFR opposes efforts to expand private securities markets, increase fraud and risk to mom and pop investors, and discourage companies from pursuing IPOs. Private markets stack the deck against ordinary "mom and pop" investors. They have a well-earned reputation for being opaque, risky, illiquid, and inefficient – but most significantly, perhaps, they are a quintessentially insider's game, where issuers "permissibly discriminate between investors, providing some investors with no information and others with information that is both more timely and more reliable."[9]

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[7] For example, the discussion draft proffered by Mr. Nunn to amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the SEC for confidential review, and for other purposes. The discussion proffered by Mr. Haridopolos to amend the federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes.

[8] Discussion draft proffered by Mr. Garbarino to amend the Securities Exchange Act of 1934 to exclude qualified institutional buyers and institutional accredited investors when calculating holders of a security for purposes of the mandatory registration threshold under such Act, and for other purposes.

[9] See Fletcher, Gina-Gail S. Professor of Law at the Duke University School of Law. Testimony before the Subcommittee on Capital Markets. House Financial Services Committee, February 8, 2023 at 4.

The Accredited Investor definition is the central component of the most widely used exemptions from SEC registration, including Rules 506(b) and 506(c) of Regulation D.[10] These two registration exemptions allow issuers to sell securities "to an unlimited number of accredited investors with no limit on the amount of money that can be raised from each investor or in total,"[11] and are routinely used by hedge funds, private equity funds, and venture funds to raise capital.

Under SEC rules, accredited investors may purchase these risky investments because, in the view of the SEC, their "financial sophistication" and "ability to fend for themselves" render "the protections of the Securities Act's registration process unnecessary."[12] AFR strongly opposes efforts to expand the accredited investor definition without improving or updating the definition, which contains a flat, non-inflation adjusted wealth and income thresholds.

AFR opposes draft legislation that would revise the definition of accredited investor to include individuals receiving individualized investment advice or individualized investment recommendations from investment adviser professionals.[13] Because most retail investors make their investments through their broker or investment adviser, the practical impact of this extremely ill-conceived provision would be to make most retail investors accredited. This would open the door for issuers conducting private offerings of risky and illiquid securities to sell them to mom and pop investors. AFR strongly opposes such a policy.

AFR also opposes the Investment Opportunity Expansion Act, which would permit individuals who do not meet the income or net worth thresholds be recognized as accredited investors to invest up to 10 percent of their income or net worth in a private offering.[14]

Importantly, both bills would not only increase risk to retail investors but directly undermine the public securities markets by making private offerings more attractive.

The contours of the accredited investor rule should be modernized. Details matter, especially around the idea of a test for sophistication that might create loopholes to the accredited investor thresholds which could present risks to investors and/or fail to accurately discern true sophistication. AFR supports excluding retirement assets and retirement income from accredited investor wealth and income thresholds and updating these thresholds to account for inflation.[15]

AFR also strongly opposes the enactment of new and unnecessary federal and state securities registration exemptions. The fleet of noticed bills also includes several that would establish new exemptions to federal and state securities registration requirements. For example, the SEED Act

[10] The amount of capital raised under Rule 506(c) seems poised to increase significantly as a result of a striking "no action" letter issued by the SEC on March 12, 2025, that reversed a dozen years of precedent regarding an issuer's obligation to take reasonable steps to verify the accredited status of a purchaser.
[11] SEC Concept Release on Harmonization of Securities Offering Exemptions, 84 Fed. Reg. 123. June 26, 201, at p. 30470.
[12] SEC. Regulation D Revisions; Exemption for Certain Employee Benefit Plans. 52 Fed. Reg. 3015. January 30, 1987 at 3017.
[13] Discussion draft to a bill to amend the definition of an accredited investor to include individuals receiving advice from certain professionals, and for other purposes.
[14] Discussion draft proffered by Mr. Stutzman to amend the Securities Act of 1933 to add additional investment thresholds for an individual to qualify as an accredited investor, and for other purposes.
[15] The anonymous discussion draft on Accredited Investor Definition Reforms includes these elements.

would amend Section 4 of the Securities Act of 1933 to create a new exemption from registration.[16] To qualify for this so-called micro-offering exemption, an offering would have to meet certain criteria regarding the number of purchasers, their relationship to the issuer, and the amount of capital raised. There is no evidence whatsoever to support the idea that there is a market need requiring Congress to create a safe harbor to permit unregistered securities offerings and sales, including through general solicitation, regardless of investor sophistication or financial wherewithal. Even as Section 2402 proposes to introduce new and totally unnecessary risk into securities markets, the goal of the provision remains unclear and its necessity is, at best, not well-established. AFR is also concerned that under the terms of the bill, even people who have been barred from the securities industry, convicted or otherwise prohibited from selling securities to the general public would technically be able to sell these unregistered offerings, without any notice to regulators that they are being sold. This failure to disqualify "bad actors" creates an impossible situation for regulators attempting to protect investors.

AFR Opposes Legislation that Places the Interests of the Financial Services Industry before the Interests of Investors. The current investor disclosure regime under the federal securities laws serves the needs of investors. The Improving Disclosure for Investors Act does absolutely nothing to improve disclosure for investors.[17] Rather, the goal of the bill is to enable the financial services industry's desire to expedite the transition of the provision of required disclosure to investors from mail to e-mail. Any legislative legislation that would alter existing disclosure requirements must also include substantial improvements to enhance disclosures and protect investors. This legislation does not include any tangible improvements.

AFR also opposes H.R. 1013, the Retirement Fairness for Charities and Educational Institutions Act, which would amend the federal securities laws to authorize the use of collective investment trusts (CITs) and unregistered insurance companies separate accounts within 403(b) retirement savings plans. Notwithstanding misleading comparisons regarding the ability of 401(k)'s and 403(b)'s to invest in CITs,[18] the bill would create a new loophole that would facilitate the sale of unregistered securities — namely mutual funds and variable annuities — by unregistered brokers, to both ERISA and non-ERISA 403(b) plans and plan participants.

Similarly, AFR continues to oppose the Increasing Investor Opportunities Act, which has been posted in the form of a discussion draft.[19] The bill would prohibit the SEC from imposing any limit on closed-end companies' investments in private funds. Existing SEC policies prohibit closed-end funds sold to non-accredited investors from investing more than 15 percent of their net assets in

[16] Discussion draft proffered by Mr. Garbarino to amend the Securities Act of 1933 to provide small issuers with a micro-offering exemption free of mandated disclosures or offering filings, but subject to the antifraud provisions of the Federal securities laws, and for other purposes.
[17] Discussion draft proffered by Mr. Huizenga to provide for the electronic delivery of certain regulatory documents required under the securities laws.
[18] Currently, the federal securities laws require mutual funds and variable annuities that are sold to 403(b) plans to register with the SEC. Such registration requirements serve to ensure the disclosure of essential information about the products, including their key features, risks, and costs. SEC staff review these disclosures to ensure that they provide full and fair disclosures and comply with rules relating to the proper form and content of registration statements.
[19] Discussion draft proffered by Ms. Wagner to amend the Investment Company Act of 1940 with respect to the authority of closed-end companies to invest in private funds.

private securities on the grounds that such a limitation is necessary for investor protection. We do not believe that Congress should override the SEC in this determination.

AFR Supports Thoughtful Efforts to Improve Protections for Elderly Investors. The Senior Security Act of 2025 would establish an inter-divisional Senior Investor Taskforce within the SEC. The taskforce would be required to report on topics relating to investors over the age of 65, including industry trends and serious issues impacting such investors, and make recommendations for legislative or regulatory actions to address problems encountered by senior investors. The proposed legislation would also require the Government Accountability Office to report on the financial exploitation of senior citizens. While AFR supports the goal of the bill and the establishment of an inter-divisional task force at the Commission to improve internal coordination within the agency on issues implicating seniors, and external engagement with older American Americans, we question whether the taskforce is sufficiently robust and up to the task. Specifically, we are surprised and disappointed that the posted version of the bill does not require participation by the SEC's Division of Trading and Markets and Division of Investment Management. We urge the Committee to amend Section 2 of the bill to add these two critical divisions.

Thank you for your attention to our views. Please do not hesitate to contact Oscar Valdés Viera oscar@ourfinancialsecurity.org with any additional questions or concerns.

Sincerely,

Americans for Financial Reform