



November 1, 2017

Dear Representative:

On behalf of Americans for Financial Reform (AFR), we are writing to urge you to vote against H.R. 1585, which is being considered on the House floor today under suspension of the rules.<sup>1</sup> By codifying the current flawed definition of “accredited investor” this bill would eliminate regulatory discretion to reform the definition to better protect retirees and the elderly.

The definition of “accredited investor” is crucial in securities laws to determine whether a transaction qualifies for the private offering exemption from investor protection requirements. According to a Supreme Court ruling, this exemption is available to “an offering to those who are shown to be able to fend for themselves.”<sup>2</sup> In other words, accredited investors are those individuals who do not need the registration and disclosure protections afforded by the Securities Act of 1933, because they would be able to evaluate potentially risky and illiquid private offerings without the investor protections provided in a public offering.

H.R. 1585 proposes to expand the current definition of “accredited investors” to include individuals who hold a current state financial services license and those with a relevant education or job experience. This seems like a reasonable extension of the definition, so long as the exams and qualifications covered are sufficiently rigorous.

However, this legislation would also lock in statute the current Securities and Exchange Commission (SEC) definition of “accredited investor”, which is based on arbitrary financial thresholds. The bill defines accredited investors as individuals or couples with a net worth of \$1 million excluding their primary residence, individuals with an income above \$200,000 in each of the last two years, or couples with a joint income above \$300,000 in each of the last two years.

This definition is deeply flawed, and by placing it in statute HR 1585 would remove the SEC’s discretion to change it. Many of the individuals who qualify under the definition based on financial thresholds are retirees dependent on their savings to live, and a net worth of \$1 million does not provide a sufficient cushion to both support retirement and to absorb potential losses from high-risk and illiquid investment products. Indeed, the \$1 million asset threshold was originally set by rule in 1982 and has not been updated since then. Recent research clearly

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<sup>1</sup> Americans for Financial Reform is an unprecedented coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of coalition members is available at <http://ourfinancialsecurity.org/about/our-coalition/>

<sup>2</sup> See: Securities and Exchange Commission v. Ralston-Purina Co.



demonstrates that the current SEC accredited investor definition does not work to protect retirees and the elderly.<sup>3</sup> We should not codify a definition that does not work.

The state securities administrators (North American Securities Administrators Association, or NASAA) also oppose this bill in its current form, due to many of the same concerns expressed above.<sup>4</sup>

The SEC's Investor Advisory Committee (IAC) has also found that the current accredited investor definition based on financial thresholds is inadequate. The IAC has opposed codifying this definition in law, instead advocating for a new rulemaking that would improve the definition to permit more sophisticated investors to access private offerings while better protecting less sophisticated retirees.<sup>5</sup> H.R. 1585 would contradict these recommendations and eliminate the SEC's discretion to update and improve the definition of the term "accredited investor." We urge you to reject it.

For more information please contact AFR's Policy Director, Marcus Stanley, at [marcus@ourfinancialsecurity.org](mailto:marcus@ourfinancialsecurity.org) or 202-466-3672.

Sincerely,

Americans for Financial Reform

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<sup>3</sup> Guo, Tao and Finke, Michael S. and Browning, Chris, The Unsophisticated Sophisticated: Old Age and the Accredited Investors Definition (July 22, 2015). Available at SSRN: <https://ssrn.com/abstract=2634818>.

<sup>4</sup> North American Securities Administrators Association, "Letter from NASAA President and Alabama Securities Director Joseph P. Borg to the HFSC Chair and Ranking Member regarding markup of H.R. 3758, H.R. 477, H.R. 3857, H.R. 2201, and H.R. 1585", October 11, 2017. Available at <http://bit.ly/2xK1Lag>

<sup>5</sup> See: Recommendation of the Investor Advisory Committee: Accredited Investor Definition (October 9, 2014). Available at <http://bit.ly/22HoUHw>.