Office of The President
1630 South Commerce Street, Las Vegas, NV 89102 ● Tel (702) 386-5120 ● Fax (702) 386-5290-3415
WWW.UNITEHERE.ORG ● facebook.com/UNITEHERE ● @UNITEHERE

June 1, 2017

Honorable Members of the House of Representatives
U.S. House of Representatives
Washington, DC 20515

Dear Representative,

On behalf of UNITE HERE's 275,000 members who live with the negative consequences of failed banking and financial policies every day, we urge you to oppose the Financial CHOICE Act of 2017 (H.R. 10).

Despite President's Trump's August 2015 assertion that the "hedge fund guys are getting away with murder", Section 437 of the Financial Choice Act of 2017 (H.R. 10) would enable Business Development Companies (BDCs) to shift capital away from small businesses to risky Wall Street financial services vehicles.[1]

In November 2015, the House Financial Services Committee voted for the innocuously named "Small Business Credit Availability Act", (H.R. 3868), sending the bill to the House floor. [2] While the bill was not taken up by the full House, it was incorporated into the Financial Choice Act of 2016 and now into t he Financial Choice Act of 2017 under "Subtitle H: Small Business Credit Availability".[3][4]

Rather than making it easier for small businesses to get loans, however, the bill would allow tax-advantaged entities called Business Development Companies (BDCs) to shift their focus away from small businesses and nearly double their investments in Wall Street financial vehicles.[5]

BDCs, established by Congress in 1980, are investment vehicles that were designed to inject capital into small and mid-size companies. As an incentive to invest, BDCs are not required to pay corporate income tax.[6]

Between 2003 and June 30, 2015, BDCs have grown tenfold from managing $5 billion to $52.3 billion.[7] Under current law, BDCs must invest at least 70% of their capital into small and medium size companies.[8]

However, Section 437 of the Financial Choice Act of 2017 would permit BDCs to shift their investment focus away from small and medium-sized businesses and into much more risky financial service companies and other alternative investments. This proposed legislation would cut the threshold that BDCs must invest in small businesses to 50%.[9]

Former US Securities and Exchange Commission (SEC) Chair Mary Jo White stated in a November 2015 letter to the House Financial Services Committee that:

"The explicit exclusion of financial institutions from the definition of "eligible portfolio company" in the Act was intended to encourage BDCs to focus their investment activities on operating companies that

1 http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=401784
2 H.R. 3868 Roll Call Vote
3 Choice Act 2016 Text. Pg. 390
4 H.R. 10 Text. Pg. 208
5 SEC Chair Mary Jo White Letter to House FSC. November 2015.
6 Small Business Investor Allaince "BDC Modernization Agenda". 2015.
7 SEC's Mary Jo White rips bill to ease restrictions on BDCs
8 SEC Chair Mary Jo White Letter to House FSC. November 2015.
9 North American Securities Administrators Association Testimony to House FSC. April 2017.

directly produce goods or produce services rather than on other financial institutions that serve primarily as conduits of capital… In my view the proposed amendments likely would result in a diversion of capital from small, growing businesses that BDCs were originally created to help."[10]

All this and BDCs would still maintain their corporate income tax break.

In addition to allowing BDCs to invest more in risky investments, the proposed legislation would let BDCs become even more risky by allowing them to take on twice as much leverage. [11]

A. Heath Abshure, past president of the North American Securities Administrators Association (NASAA) and former Arkansas Securities Commissioner raised concern about this provision in testimony delivered to the House Financial Services Committee on a similar bill in 2013, noting that:

"Excessive leverage by some of our largest financial institutions...was at least part of the problem we faced as part of the most recent financial crisis and many other crises before it."[12]

Interestingly, the "Small Business Credit Availability Act" and other attempt to deregulate BDCs have been funded by not-so-small business— including Ares Management, a $100 billion dollar alternative asset manager.[13] Through its BDC, Ares Capital Corporation, the company has spent approximately $1.44 million between 2012 and 2015 to lobby Congress on BDCs, with $430,000 spent in lobbying efforts in 2016. In Q1 2017, Ares spent an additional $90,000 in lobbying expenditures towards "issues involving reform of business development companies."[14]15

BDC deregulation would be a gift to Ares Capital – as of the end of 2015 the firm was nearly 30% invested in "investment funds" and "financial services", based on an analyst report.[16] In addition, Ares Capital is the largest BDC on the market, with approximately $12 billion in assets after acquiring the BDC American Capital in January 2017.[17][18]

Despite caution from the SEC and others, the House Financial Services Committee voted in favor of The Small Business Credit Availability Act even though it is poses a threat to small businesses and retail investors alike. Now, the House FSC has sent the CHOICE Act of 2017 to the floor for consideration, including all the previous bill's BDC reform provisions.

Small and medium-sized businesses are the bedrock of our economy. Now more than ever, these businesses need credit to grow and create jobs. But Section 437 of the Financial Choice Act of 2017 (H.R. 10) would instead shift BDCs' tax-free investments to risky financial services vehicles. Again, our union urges you to oppose H.R. 10.

Sincerely,

D. Taylor
President
UNITE HERE

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10 SEC Chair Mary Jo White Letter to House FSC. November 2015.
11 Ibid.
12 North American Securities Administrators Association Testimony to House FSC. October 2013.
13 https://www.aresmgmt.com/
14 Ares Capital lobbying disclosures: 2015(Q1, Q2, Q3, Q4), 2014 (Q1, Q2, Q3, Q4), 2013 (Q1, Q2, Q3, Q4), 2012 (Q1, Q2, Q3, Q4)
15 https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=8A318B45-001A-452D-9C9A-2C2AAB251C7E&filingTypeID=51
16 Based on sector exposure of 21.2% to investment funds and 4.6% to financial services, J.P. Morgan. "Ares Capital: Risks and Opportunities Abound". North America Equity Research. 25 February 2016. Pg. 4.
17 Ares Capital Investor Presentation on American Capital Acquisition. November 22, 2016
18 https://www.americancapital.com/