NFIB
The Voice of Small Business.

December 19, 2014

Kevin M. O'Neill
Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Recommendation of the Investor Advisory Committee: Accredited Investor Definition

These comments are submitted to the U.S. Securities and Exchange Commission (SEC) regarding the *Recommendation of the Investor Advisory Committee: Accredited Investor Definition* issued on October 9, 2014.

NFIB is the nation's leading small business advocacy association, representing members in Washington, DC, and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents about 350,000 independent business owners who are located throughout the United States.

As a result of language included in the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC is charged with reviewing the definition of accredited investor. Small businesses avail themselves of accredited investors primarily through angel investors, and in particular those who are close to them personally or in proximity to their business. This type of investing is a critical source of funding for startup and expanding companies, which drive job growth in the American economy.

Therefore, NFIB believes it is critical that in reviewing the definition, the SEC take great care not to shrink the pool of accredited investors. In general, the recommendations of the Investor Advisory Committee (IAC) seek to protect too many potential investors from themselves by disqualifying themselves from the opportunity to invest, which would greatly narrow sources of financing for small companies. From that viewpoint, here are our comments on the IAC's recommendations.

<u>IAC Recommendation No. 1</u>

In its first recommendation, the IAC says if the SEC revises the definition, which the IAC suggests, it does not believe that financial thresholds are a perfect proxy for financial sophistication. Subsequently, it recommends that the SEC not rely strictly on financial thresholds.

While NFIB agrees that these thresholds do not perfectly predict one's ability to be a sophisticated investor – a nebulous term to begin with – the IAC does not offer evidence to show that there is a problem with the current financial thresholds. Specifically, no evidence is provided demonstrating the prevalence of currently accredited individuals experiencing excessive losses in such investments beyond what would be considered a normal success rate for higher risk angel investments. NFIB believes that this recommendation would have the effect of substantially restricting the number of potential investors.

Furthermore, it appears as though the IAC is seeking a perfect definition of accredited investor in which individuals make few, if any, investments that ultimately fail. NFIB does not believe that Congress, in passing the Securities Act of 1933, nor the Supreme Court, in its 1953 ruling that accredited investors should be those "able to fend for themselves" meant to perfectly define a sophisticated investor. There is inherent risk in all investments (including investing in publicly traded companies), and the SEC should recognize the importance of protecting important financing sources as opposed to an overprotective scheme that substantially dries up funding for many small businesses.

NFIB applauds the recommendation of the IAC for the SEC to obtain additional data about how the accredited investor marketplace is working currently, since there seems to be insufficient data at this time. However, we caution against the IAC's recommendation that the burden of data collection be placed on issuers. SEC should seek the least intrusive and time consuming means of obtaining this data.

<u>IAC Recommendation No. 2</u>

The IAC's second recommendation is that the SEC should revise the definition to enable individuals as accredited investors based on their financial sophistication. NFIB agrees that individuals should be allowed to demonstrate sophistication in lieu of their financial position – this is perhaps a way to allow individuals with fewer resources than the current thresholds to participate in the process. However, NFIB cautions against requiring time consuming paperwork or testing requirements as such red tape would serve to discourage, rather than encourage, individuals to seek accredited status.

<u>IAC Recommendation No. 3</u>

The IAC's third recommendation is that if the SEC chooses to rely on an approach that mainly uses financial thresholds it should consider alternative approaches to setting such thresholds. For example, the IAC says, investments in private offerings should be limited to a percentage of assets or income.

NFIB believes this approach could have merit if used to broaden the pool of accredited investors, rather than – as the IAC would prefer – to limit these investors. As an example, the SEC could lower the net worth threshold to $500,000 and limit the percentage of assets those investors with a net worth of $500,000 to $1 million can use towards the purchase of private securities.

<u>IAC Recommendation No. 4</u>

The IAC believes the SEC should take concrete steps to encourage development of an alternative means of verifying accredited investor status that shifts the burden away from issuers who may, in some cases, be poorly equipped to conduct that verification, particularly if the accredited investor definition is made more complex.

NFIB agrees that verifying status can be a burden on some issuers; however, any third party verification program should be simple to use and relatively inexpensive. Failure to meet these two requirements would likely result in discouraging issuers or investors from participating in this financing process. NFIB also believes that the self-assessment of the investor, who has the predominate interest in protecting their investment funds, would provide the most efficient means of verification.

<u>Conclusion</u>

In general, NFIB strongly cautions the SEC against rubberstamping the recommendations of the IAC. Angel investing via accredited investors is a critical part of small business financing. As traditional lending sources have made access to credit more difficult in recent years, it is more important than ever to preserve accredited investor financing.

NFIB believes the IAC's recommendations are too cautionary. The IAC appears to aim to protect too many worthy investors from the risks inherent in business investment. The IAC recommendations do not improve the risk quality of new venture opportunities that an investor might evaluate; they just make it more difficult for an individual to take advantage of promising opportunities. The consequence of their recommendations would be to reduce the availability of substantial sources of entrepreneurial financing. NFIB cannot overstate the importance of protecting the current pool of accredited investment funding, and believes the SEC should seek simple and cost effective means of expanding such funding.

We appreciate the opportunity to comment on the recommendations. Should the SEC require additional information, please contact NFIB's manager of regulatory policy, Dan Bosch, at [redacted].

Sincerely,

Amanda Austin

Amanda Austin
Vice President, Public Policy
NFIB