[Date]

The Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

House of Representatives

[Office Address]

***Re: U.S. Congress: “Responsibly Funding our Priorities” Legislation (“RFOP”)***

Dear Representative \_\_\_\_\_\_\_\_\_:

My name is [Name] and I am a mortgage professional that actively makes loans to and invests in small businesses and business start-ups.

I am writing you today to discuss my concern with Section 138312 of the RFOP. This proposed legislation would devastate my company’s ability to invest in private small businesses and business start-ups, which are the backbone of our country and already suffer from the ravages of the COVID-19 pandemic. I believe that this proposed legislation has far-ranging unintended and materially adverse consequences for companies like mine, as well as for small businesses and business start-ups that rely on mortgage funds for capital and growth. I am deeply concerned that the costs, benefits, risks, and returns of this legislation are not currently understood by policymakers and want my voice to be heard.

The purpose of my letter is to provide you information to make an informed decision regarding Section 138312 of the RFOP. As described below, this Section would:

* Severely restrict investment in small businesses,
* Create havoc in existing small business investment funds by forcing divestment,
* Force small IRA investors to shift to large Wall Street investments, and
* Raise no additional tax revenue.

As proposed, this bill could force my company to shut down as we rely upon IRA investors to invest in our small business.

**What is the RFOP?**

 On September 15, 2021, the House Ways and Means Committee approved the RFOP, a comprehensive tax bill that includes numerous restrictions on IRA investments, among other tax-generating proposals.

Section 138312 of the RFOP prohibits IRA investments conditioned on the account holder’s status, and provides generally as follows:

The bill prohibits an IRA from holding any security *if the issuer of the security requires the IRA owner to have certain minimum level of assets or income* or have completed a minimum level of education or obtained a specific license or credential.

For example, *the legislation prohibits IRAs from holding investments which are offered to accredited investors because those investments are securities that have not been registered under federal securities laws*.

*IRAs holding such investments would lose their IRA status***.**

This section generally takes effect for tax years beginning after December 31, 2021, but there is a *2-year transition period* for IRAs already holding these investments.

I understand that the motivation for precluding the use of IRA assets appears grounded in the highly publicized story about Peter Theil by *Publica* where the PayPal founder and early Facebook investor “*turned a retirement account worth less than $2,000 in 1999 into a $5 billion tax-exempt piggy bank.”*

**Background**

I would like to take this opportunity to explain how my company directly and indirectly supports small businesses and business start-ups in the United States. First, some background:

In 1982, Congress adopted Regulation D with the stated purpose “to simplify existing rules and regulations to facilitate capital formation, particularly for small businesses, consistent with the protection of investors.” Regulation D is a regulation of the Securities and Exchange Commission (“SEC”) that governs the issuance of non-public securities, which are typically used as investment capital in the form of debt or equity provided to small businesses.

These securities are typically provided to Accredited Investors, typically meaning a married couple with greater than $300,000 of annual income or an excess of $1,000,000 in net worth. The issuance of a non-public security typically requires an investor to be an Accredited Investor because private offerings are not subject to the expensive and cumbersome process of issuing a public security. These investors are assumed to have certain financial sophistication permitting them to understand the relevant risks of a private investment. In summary, Regulation D allows small businesses to capitalize more easily.

Regulation D has been a smashing success. From 2009 to 2019, the number of Regulation D offerings dwarfed the number of IPOs 242,070 vs. 2,333, with $13.576 billion of raised. During the same period, the median size of Regulation D offerings was $2.25 million, the median years since corporate inception was 2, and the average number of investors in the offering was 10. These statistics speak to the success of supporting small, entrepreneurial businesses, which of course, is the lifeblood of the U. S. economy.

Similarly, Regulation D offerings consistently outpace public offerings in terms of dollars raised. For example, in 2019 Regulation D offerings raised $1.56 trillion in 41,196 offerings whereas IPOs accounted for $1.2 trillion in 2,413 public ventures.

According to a 2020 SEC report on Regulation D to Congress, small businesses suffer from limited access to securities markets and commonly rely on personal savings, business profits, outside debt, and friends and family. The report also found that:

* 64 percent of small businesses rely on private placements to raise capital;
* A significant share of small businesses cannot meet all their credit needs, and
* Under-represented minorities faced significantly higher hurdles in obtaining external financing.

Similarly, an estimated 5.9 million investors participated in Regulation D offerings from 2009 through 2019, and only 221 SEC-related civil complaints were filed. That works out to a complaint rate of 0.001243%, which means that 99.88% of the time there is no complaint.

In summary, Regulation D has been a bipartisan success and its implementation has spurned innovation, and opportunity for small businesses nationally.

**Small Independent Mortgage Businesses are the Life Blood of Small Businesses**

Small independent mortgage companies such as my company make loans to small businesses and business start-ups that rehabilitate and return older residential housing stock to productive use. Improvements are typically financed either by loans to real estate investors who make the improvements. In addition, companies like mine invest in small businesses and business start-ups who renovate existing real estate by adding additional housing units in areas where they are desperately needed.

Banks and other large financial institutions are reticent to make these loans because the properties are often dilapidated and require substantial improvements before they can be used as properties habitable by homeowners and/or tenants.

Unlike banks and other depository institutions who use deposits to fund loan, my company receives investments from individual investors, many of whom choose to use their IRAs to make investments in my company.

My company then makes loans directly to small businesses and other borrowers and provide consistent returns to these individual IRA investors. It’s a win-win for the small business who is rehabilitating the property, adding housing units, revitalizing the community, providing me and my employees with a living, and the investor with income to live off of in retirement.

**This Section of the RFOP Will Cripple Investments In Small Business and Hurt the U.S. Economy**

If this legislation passes, no IRA investments could be made into small mortgage companies such as mine. This will dramatically reduce capital available to local developers, contractors and others who rely on private mortgage companies to provide capital for these transitionary real estate projects. These projects take properties which are neglected, vandalized, and otherwise abandoned and transform them into productive real estate and much needed homes for families, as well as adding housing units in areas where they are desperately needed.

IRA investors also purchase private real estate assets and hold them similar to my other investments. They will no longer be able to do so if the RFOP becomes law.

Further, and more problematic, not only does the RFOP prohibit future investment in private investments, such as mortgage funds, the legislation would require IRA accounts to divest funds in Regulation D securities within two years. This forced withdrawal would trigger financial calamity and chaos to small businesses, including mine. Most private investments are illiquid in nature. This means that there is no clear mechanism for this governmentally-forced withdrawal other than a potential liquidation of the entire business.

**This Section of the RFOP Does Not Generate New Tax Revenues**

 The RFOP is designed to raise revenues to offset the financial impact of the investment bills currently before Congress. Section 138312*raises no new revenue*.

**This Section of the RFOP Will Force IRA Investors to Invest in Large Wall Street Ventures Instead of Small Businesses.**

Section 138312will force IRA investors todivest their investments in private offerings and move to the public equity markets or other publicly available investment opportunities. This does not achieve the stated goals on the RFOP, because public equity market-invested funds will remain in tax-deferred traditional IRAs until withdrawal - - or will never be taxed at all if investors hold these investments in a Roth IRA. **This will yield no new tax revenues for Congress**.

**Conclusion**

The intended goal of the RFOP is to raise revenues and to stop the “Peter Thiel” effect. However, Section 138312 does not achieve this purpose. Instead, this Section will:

* Severely restrict investment in small businesses,
* Create havoc in existing small business investment funds by forcing divestment,
* Force IRA investors to shift to large Wall Street investments, and
* Raise no additional tax revenue.

Thank you for your consideration, and please feel free to contact me if you would like to discuss this issue further. **Please help me save my business.**

Sincerely,

[Name]

[Address]

[City, State and Zip]

[Phone Number]

[Email Address]