[Date]

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

House of Representatives

[Office Address]

***Re: U.S. Congress: “Responsibly Funding our Priorities” Legislation (“RFOP”) – SAVE MY IRA!***

Dear [Representative] [Senator] \_\_\_\_\_\_\_\_\_:

I am one of your constituents. My name is [Name] and I am a[n**]** [Insert Profession] who has been diligent about contributing to my individual retirement account (IRA) over numerous years. I want to be perfectly clear, I am not wealthy, but have been trying my best to save and invest prudently to help me reach my retirement goal. I use my IRA to invest in small businesses and business start-ups related to real estate.

I am writing you today to discuss my concern with Section 138312 of the RFOP. This proposed legislation would devastate my 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 private investors like me, as well as for small businesses and business start-ups that rely on private investments like mine. 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 like me to shift to large Wall Street investments, and
* Raise no additional tax revenue.

**Please help me protect the retirement I have been working so hard to achieve.**

**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 *ProPublica* 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 IRA investments directly and indirectly support 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.

**I Use My Self-Directed IRA Investments to Fund Small Businesses**

I prefer to use my IRA to fund small businesses through the use of a Regulation D offering, rather than invest in massive publicly traded companies in the public debt and equity markets such as banks and large technology companies. My investments do not simply benefit me, they also benefit small business, local communities and the United States.

My IRA investments in these private securities offerings sometimes involves greater risk, but they also give me the opportunity to earn a much higher return on my investment.

**This Section of the RFOP Will End My Investments In Small Businesses and Hurt the U.S. Economy**

I choose to invest in private real estate by making loans to small businesses and business start-ups that (1) build additional housing units and/or (2) rehabilitate and return older residential housing stock to productive use. The additional units or improvements are typically financed either through direct investment or by loans to real estate investors who build the additional units or make the improvements.

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 loans, private lenders receive investments from individual investors, like me, who choose to use self-directed IRAs to make an investment in the private lending company, typically referred to as a mortgage fund (“Mortgage Fund”). Mortgage Funds then makes loans directly to borrowers and provide consistent returns to me and other individual investors.

If this legislation passes, no IRA investment could be made into these Mortgage Funds. This will dramatically reduce capital available to local developers, contractors and others who rely on private lenders 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. In addition, preventing IRA investment will eliminate essential capital to investors and contractors who are adding well needed units to the housing and rental markets across the Country.

I also use my IRA funds to purchase private real estate assets and hold them similar to my other investments. I 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 me to divest my IRA investments in Regulation D securities within two years. This forced withdrawal would:

* Harm small businesses that rely on me and similar investors for funds,
* Leave me with no clear mechanism to exit these investment, which are generally illiquid,
* Create havoc to the small businesses that I have invested in when divesting my investment mid-stream and while the funds are still invested in various projects; and
* Significantly and adversely affect my retirement savings.

**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 Me to Invest in Large Wall Street Ventures Instead of Small Businesses.**

Section 138312will force me todivest my 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 my public equity market-invested funds will remain in tax-deferred traditional IRAs until withdrawal - - or will never be taxed at all if I 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 small IRA investors like me 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.

Sincerely,

[Name]

[Address]

[City, State and Zip]

[Phone Number]

[Email Address]