

## EQUAL OPPORTUNITY FOR ALL INVESTORS ACT OF 2023

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MAY 30, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. MCHENRY, from the Committee on Financial Services,  
submitted the following

### R E P O R T

[To accompany H.R. 2797]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2797) to amend the Securities Act of 1933 to require certification examinations for accredited investors, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Equal Opportunity for All Investors Act of 2023”.

#### SEC. 2. CERTIFICATION EXAMINATIONS FOR ACCREDITED INVESTORS.

(a) IN GENERAL.—The Securities and Exchange Commission shall revise the definition of “accredited investor” under Regulation D (section 230.501 of title 15, Code of Federal Regulations) to include any natural person who is certified through the examination required under subsection (b).

(b) ESTABLISHMENT OF EXAMINATION.—Not later than 1 year after the date of the enactment of this Act, the Securities and Exchange Commission shall establish an examination (including a test, certification, or examination program)—

(1) to certify an individual as an accredited investor; and

(2) that—

(A) is designed with an appropriate level of difficulty such that an individual with financial sophistication would be unlikely to fail; and

(B) includes methods to determine whether an individual seeking to be certified as an accredited investor demonstrates competency with respect to—

- (i) the different types of securities;
- (ii) the disclosure requirements under the securities laws applicable to issuers and private companies as compared to public companies;
- (iii) corporate governance;
- (iv) financial statements and the components of such statements;

(v) aspects of unregistered securities, securities issued by private companies, and investments into private funds, including risks associated with—

- (I) limited liquidity;
- (II) limited disclosures;
- (III) variance in valuation methods;
- (IV) information asymmetry;
- (V) leverage risks;
- (VI) concentration risk; and
- (VII) longer investment horizons;

(vi) potential conflicts of interest, when the interests of the financial professionals and their clients are misaligned or when their professional responsibilities are compromised by financial motivations; and

(vii) other criteria the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(c) ADMINISTRATION.—Beginning not later than 180 days after the date the examination is established under subsection (b), such examination shall be administered and offered free of charge to the public by a registered national securities association under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

#### PURPOSE AND SUMMARY

Introduced on April 24, 2023, by Representative Mike Flood, H.R. 2797, the *Equal Opportunity for All Investors Act*, would expand the “accredited investor” definition to include individuals who are certified through an examination established by the Securities and Exchange Commission (SEC) and administered by Financial Industry Regulatory Authority (FINRA).

#### BACKGROUND AND NEED FOR LEGISLATION

The accredited investor definition is intended to limit private market investments to only those investors who are considered “sophisticated.” However, using wealth as a proxy for determining sophistication excludes a large pool of investors who may have other types of expertise or experience. To qualify as an accredited investor, an individual must have an annual income of at least \$200,000 (of \$300,000 with a spouse) for each of the previous two years or a net worth of over \$1 million (either alone or with a spouse). In August 2020, the SEC adopted amendments to expand the accredited investor definition to include individuals with certain professional certifications or credentials from accredited educational institutions.

This bill would expand the pathways to qualify as an accredited investor by allowing certification for individuals who pass an examination established by the SEC and administered by FINRA. This approach modernizes the existing definition that has inappropriately sidelined sophisticated-but-not-wealthy individuals from high-growth asset classes historically reserved for the wealthiest individuals.

#### HEARING

The Subcommittee on Capital Markets of the Committee on Financial Services held a hearing examining matters relating to H.R. 2797 on February 8, 2023.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 26, 2023, and ordered H.R. 2797 to be reported favorably to the House as amended by a recorded vote of 42 ayes to 1 nay.

(Record vote no. FC-38), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Flood by voice vote.

#### COMMITTEE VOTES

Clause 2(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.R. 2797 was ordered reported favorably to the House as amended by a recorded vote of 42 ayes to 1 nay (Record vote no. FC-38), a quorum being present.

## Record vote no. FC- 38

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	—	—	Ms. Waters	X	—	—
Mr. Hill	X	—	—	Mrs. Velázquez	—	—	—
Mr. Lucas	—	—	—	Mr. Sherman	—	—	—
Mr. Sessions	X	—	—	Mr. Meeks	—	—	—
Mr. Posey	X	—	—	Mr. Scott	X	—	—
Mr. Laetkemeyer	X	—	—	Mr. Lynch	X	—	—
Mr. Huelskamp	X	—	—	Mr. Green	X	—	—
Mrs. Wagner	X	—	—	Mr. Cleaver	X	—	—
Mr. Barr	X	—	—	Mr. Himes	X	—	—
Mr. Williams (TX)	X	—	—	Mr. Foster	X	—	—
Mr. Emmer	—	—	—	Mrs. Beatty	X	—	—
Mr. Loudermilk	X	—	—	Mr. Vargas	X	—	—
Mr. Mooney	X	—	—	Mr. Gottheimer	X	—	—
Mr. Davidson	X	—	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	—	—	Mr. Casten	X	—	—
Mr. Steil	X	—	—	Ms. Pressley	—	—	X
Mr. Timmons	X	—	—	Mr. Horsford	X	—	—
Mr. Norman	X	—	—	Ms. Tlaib	—	—	—
Mr. Meuser	X	—	—	Mr. Torres	—	—	—
Mr. Fitzgerald	X	—	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	—	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	X	—	—	Mr. Nickel	X	—	—
Mr. Donalds	—	—	—	Ms. Petersen	X	—	—
Mr. Flood	X	—	—				
Mr. Lawler	X	—	—				
Mr. Nunn	X	—	—				
Ms. De La Cruz	X	—	—				
Mrs. Houchin	X	—	—				
Mr. Ogles	X	—	—				

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 2797 is to expand the pathways to qualify as an accredited investor by allowing certifications for individuals who pass an examination established by the SEC and administered by FINRA.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1973.

## CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

<b>H.R. 2797, Equal Opportunity for All Investors Act of 2023</b>			
<b>As ordered reported by the House Committee on Financial Services on April 26, 2023</b>			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases net direct spending in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2034?	No	<b>Mandate Effects</b>	
		Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between zero and \$500,000.			

H.R. 2797 would require the Securities and Exchange Commission (SEC) to develop an exam and certify people who pass as “accredited investors,” which would allow them to make investments for which they are not currently eligible. Under current law, accredited investors are defined as people or entities with sufficient financial sophistication and resources to sustain the risk of loss, in-

cluding banks, broker-dealers, and investment companies. Accredited investors may participate in investment opportunities not available to nonaccredited investors, such as purchasing securities that are exempt from registration with the SEC.

Based on the cost of similar provisions, CBO estimates that implementing H.R. 2797 would cost \$1 million in both 2023 and 2024. CBO expects that the SEC would need three employees, at an average annual cost of \$300,000 per employee, to establish the examination and amend the current rules on accredited investors. However, because the SEC is authorized to collect fees each year to offset its annual appropriation, CBO expects that the net effect on discretionary spending over the 2023–2028 period would be negligible, assuming appropriation actions consistent with that authority.

If the SEC increases annual fees to offset the costs of implementing provisions of H.R. 2797, it would increase the costs of an existing private-sector mandate on entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small and would fall well below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$198 million in 2023, adjusted annually for inflation).

The bill contains no intergovernmental mandates.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Andrew Laughlin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L SWAGEL,  
*Director, Congressional Budget Office.*

#### FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

Per the estimate from CBO, H.R. 2797 could increase the cost of an existing mandate on private entities if the SEC increased costs to implement the bill. However, this increase would still fall below the annual threshold for private-sector mandates as defined in the Unfunded Mandates Reform Act.

The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

## DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section cites H.R. 2797 as the *Equal Opportunity for All Investors Act of 2023*.

*Section 2. Certification examination for accredited investors*

This section amends the definition of an accredited investor to include individuals who are certified through an examination established by the Securities and Exchange Commission (SEC) and administered by Financial Industry Regulatory Authority (FINRA). This section requires that the examination be designed with an appropriate level of difficulty such that an individual with financial sophistication would be unlikely to fail and may include methods to determine competency with respect to different types of securities, disclosure requirements under the federal securities laws, corporate governance, financial statement, aspect of unregistered securities, potential conflicts of interest between financial professionals and their clients, and other criteria the SEC determines necessary. This section also requires that the examination be offered free of charge to the public.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2797 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by clause 3(e)(1)(B) of rule XIII of the House of Representatives.