



September 28, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

On behalf of the Small Business Investor Alliance (SBIA), the nation's leading voice for Small Business Investment Companies (SBIC), Rural Business Investment Companies (RBIC) and private equity and venture funds invested in American small businesses, I write share our strong concerns with Sections 138149, 138150, and 13812 in the tax portion of the House-proposed FY22 Budget Reconciliation package. As written, they will disproportionately harm small business investors and the small businesses they are helping to grow.

SBIA's members make long-term, illiquid investments in American small businesses. Investors provide capital and meaningful management support that increases a small business' chance for survival and to help it scale, grow and to create jobs expand prosperity in their communities. None of these investments are "quick flip" investments.

The following proposed tax provisions, as drafted, would restrict investments and, in some cases, prevent small business investment in favor of investments in large, publicly traded corporations. This is bad small business policy.

If left unchanged, these provisions would effectively restrict and distort investments in America's small businesses that are the engines of economic growth and jobs:

Section 138312 (Prohibition of IRA investments)

This provision would prohibit Individual Retirement Account (IRA) owners from investing in any security that requires them to meet a certain income or asset threshold, or to have obtained a specific license or credential. This apparently is intended to prohibit ownership of such securities that meet the SEC's "accredited investor" test. This provision was written in a manner that ignores the impacts on funds supplying capital to small businesses and the long-term, illiquid nature of these investments and the very long-term nature of commitments to these investment funds by IRAs. Smaller funds invest in smaller businesses and smaller funds tend to have individual investors and IRAs. Larger funds invest in larger businesses and have fewer individual and IRA investors. This provision hits small business investors harder than any other platform.

All IRA holders, including individual retirees and not just "mega" IRAs, would be prohibited from making such investments after December 31, 2021, while current IRA holders would face a two-year transition period to liquidate their holdings. Forcing all IRA holders to invest only in large publicly traded assets or passive investment funds makes them the subject to the whims of Wall Street and exposed to volatile downturns in the public stock market. In so doing bars this prohibition bars IRA capital from being in

investment vehicles that are focused exclusively on patient capital and small business growth. Contractual commitments to small funds are generally ten years in length so a two -year transition is minimal help.

This provision would harm retirement savers by requiring a “fire sale” of investments including in SBIC and RBIC assets prior to the two-year deadline. These positions in small business investment funds cannot be readily traded on a public exchange. A forced liquidation presents significant and costly operational challenges. This section is not supported by any available data or evidence as to why it is in the best interest of small business investors and should be removed entirely. Commitments made to invest in Small Business Investment Companies, Rural Business Investment Companies, and the like are generally 10-year commitments and are into small funds. Divesting a very small IRA position from a small fund where there is minimal, if any, readily available secondary is patently unfair to people who made honest, long-term investments for their retirement via bona fide small business funds.

While the Administration has clearly outlined its desire to build a robust and diverse small business community, these provisions from the tax portion of the House-proposed FY22 Budget Reconciliation package would undermine that effort by restricting access to capital and removing incentives to invest in America’s small businesses.

In sum, as written this provision targets “mega” IRAs, but hits regular IRAs and small business.

Section 138149 (Carried Interest)

This provision would extend the holding period required for long-term capital gains treatment from the current three years to effectively 8-10 years because the clock on the investment holding period begins only when an investment fund has invested “substantially all” of its committed capital.

This provision includes a special carve out for real estate, but no relief for small business investors including funds that invest in the lower middle markets. Small business investors create and sustain jobs across the country and continue to create jobs beyond a specific and finite parcel of land. Small business investors are long- term investors but, as written, this provision would encourage investments principally in large real estate.

SBICs and RBICs, in addition to other types of small private equity and venture funds are federally licensed public purpose investment vehicles with a statutory obligation to serve small and rural businesses or underserved communities. If left unchanged, this provision would trigger major tax increases for them, and it creates a misalignment of interests between general partners and limited partners. There is also no grandfathering clause or transition period included for partnership interests that are about to vest.

SBIA urges Congress to treat small and rural business investors no worse than any other investor because small businesses and their investors are the job growth engine of the country.

Section 138150 (Section 1202 Gains)

The provision would amend section 1202(a) of the Internal Revenue Code to disqualify taxpayers many taxpayers from beneficial tax rates for making very long-term equity (five year minimum) investments in small business stock that is sold after September 13, 2021. Many small business investors made long-

term investments in these businesses over five years ago with a clear tax regime to encourage these investments. Had they exited these investments on September 12th or before, they would have been given the treatment the tax code promised because they qualifying criteria. This provision pulls the rug out from underneath long-term small business investors. There are many other long-term investments that were made in small businesses that are approaching the five-year trigger point that are also having the rules changed on them near the finish line. If Congress wants to promote long-term investing in American small businesses, then it should not make radical changes years after the investments were made.

SBIA urges Congress to strike this provision because, as drafted, it is patently unfair to profoundly change the tax treatment under which these long-term investments were made. At a bare minimum Congress should provide a “grandfather” clause or transition period. Americans should have a tax code that encourages capital access for small businesses and not one that punishes it.

The SBIA recommends amending these proposals to better align with the greater interest to support America’s small businesses.

Sincerely,



Brett Palmer, President
Small Business Investor Alliance

Cc: Senate Committee on Finance
Ways and Means Committee
Senate Committee on Small Business & Entrepreneurship
House Small Business Committee