



ANGEL CAPITAL ASSOCIATION



Note to Members on Our 2016 Work - ACA Has Accomplished Much in Washington, DC

By [Chris McCannell](#), Partner at Eris Group

Editor's Note: ACA wants to share with our members our progress in Washington. It's an important use of member dues, and we believe it is worth every penny. We work with [Eris Group](#) on American public policy issues, and have had great results in the last year – from a 100% exemption on investment gains to House passage of bills that would ensure that demo days are not included in general solicitation and increasing the number of investors in an angel fund or syndicate from 99 to 249. With Eris Group, ACA has also helped move the conversation about the definition of accredited investor to a more positive one (in angels' view), and we are now regularly sought out by Members of Congress and other organizations for input and support of legislation and policy issues.

ACA learned in 2010 that Congress and regulators could have a huge impact on angel investors and the startups angels support. ACA was able to ensure [Dodd-Frank](#) didn't increase the financial thresholds for the accredited investor definition then, but the association learned it needed help from DC professionals to protect angels through that experience.

For the last four years, ACA has worked with me as your federal lobbyist. This year, I joined Eris Group, providing ACA with a larger team of bi-partisan support, including founder [Doyle Bartlett](#) and senior partner [Greg Mesack](#). The following is an overview of the work of ACA and Eris Group in the last nine months:

ACA started the year well when it secured a major win through Sen. Maria Cantwell (D-WA) and Rep. Lynn Jenkins (R-KS) when Congress passed legislation establishing a permanent 100% exemption on capital gains in [Qualified Small Business Stock](#) investments held for at least five years.

In January, the ACA Public Policy Committee and Eris Group scoped out a proactive agenda to support angel investing in Congress and regulators for 2016. Public policy work is one the most important but unfortunately least understood roles of ACA as a trade association among our members. We hope that with this update you will gain a better understanding of the work our lobbyists do every day as well as the issues impacting angel investors. Here are the details of our work since then:

Accredited Investor Definition – Do no harm. Keep the definition the same or limit increases to financial thresholds and expand the number of people who qualify. Our work has been with both the SEC and Congress:

- **SEC:** Dodd-Frank requires the SEC to review the definition of accredited investor every four years. As you know, the current definition is \$1M in net worth (not including your primary home) or \$200,000 in annual income for individuals. SEC staff released a [report](#) in December, which offered analysis of a variety of potential changes, such as indexing income and net-worth to inflation, allowing accreditation through a test, creating limits on non-public offerings and so forth could impact the investment pool and capital formation. ACA's consistent message of "do no harm" to job-creating investments has resonated with an SEC advisory committee which has studied this report and sent recommendations to the Commission. With the SEC currently at only three Commissioners, it is unlikely the Commission will review the accredited investor definition until they are at the full five member complement, and it doesn't look likely to happen before the November election. ACA is submitting more comments and you are welcome to do so too via this [link](#).
- **Congress:** Bi-partisan [legislation](#), led by Rep. David Schweikert (R-AZ), passed the House of Representatives, and it included a number of ACA championed proposals. The legislation keeps the current income and net worth levels unchanged and ensures that any changes going forward are based on CPI. The legislation also allows investors who do not meet the income or asset definition to become accredited investors through either credentials (securities license) or proof of financial sophistication. The House is essentially signaling to the SEC that they want the accredited investor pool to grow and not to make dramatic changes to the financial thresholds for qualification.

Unfortunately, the bill has some "wrinkles," as it envisions FINRA conducting investor sophistication tests, along with potentially others. As the regulator for broker-dealers, FINRA has very little insight into the angel investing world. ACA is working with Rep. Schweikert and Senate allies to modify the language to allow a wider choice of groups to accredit potential investors as well as enable ACA to potentially serve this role.

[HALOS Act](#) - Exempting Demo Days from the definition of general solicitation - Under the JOBS Act, which now allows entrepreneurs to generally solicit their offerings, "demo days" historically held by universities and economic development organizations are considered "general solicitation." Under general solicitation the entrepreneur has to take extra steps to verify that each investor is accredited. Many attorneys believe this means angels must get certifications from third parties to do this, and most angels are not willing to do that. To rectify this problem, ACA and Eris Group drafted updated legislation in the House and Senate called the HALOS Act, Helping Angels Lead our Startups – which the House has passed. Legislation is currently pending in the Senate. Working with our lead House sponsor Rep. Kyrsten Sinema (D-AZ), we are working to make this legislation become law by the end of this year.

Correcting the "99 Investor Problem" - Currently the SEC limits the amount of individual investors into angel funds or syndicates to 99 investors. The 99 limitation has impacted a number of large angel funds as well as on-line accredited platforms. Rep. Patrick McHenry (R-

NC) introduced [legislation](#) which was drafted in conjunction with ACA and member Angelist to lift the investor cap from 99 investors to 249 for funds of \$10 million or less. The bi-partisan legislation successfully passed the House of Representatives. While there is currently not Senate companion legislation introduced, Rep. McHenry's seat at the Republican leadership table and the bi-partisan support of the bill is encouraging. It is our hope that Rep. McHenry is successful to attaching this legislation to a larger piece of "must pass" legislation later this year.

CHOICE Act, House Republican Legislation to Replace Dodd-Frank – Introduced by House Financial Services Committee Chairman Jeb Hensarling (R-TX), the [Financial CHOICE Act](#) is "Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs." It is aimed at reforming the financial regulatory regime established by Dodd-Frank. ACA is interested in the CHOICE Act contains the ACA led HALOS Act in its base text as well as language on the definition of an accredited investor. ACA wrote a comment letter stating that any changes to the accredited investor definition must be made on a go forward basis, grandfathering in current accredited investors while also offering the ability for investors who do not match the income or net worth definition to become accredited through experience or external verification. Our letter stated that we do not believe that FINRA should be involved in conducting a test or other verification to allow a non asset/income based investor to become accredited. The House Financial Services Committee passed the CHOICE Act on a partisan basis with all Democrats opposing last week.

Conclusion:

Public policy is an important fundamental of what we do as a trade association and how we advocate for our members and the angel community. We are blessed with an active and engaged membership who understand the need to proactively seek legislative opportunities as well as team in Washington who allow ACA to punch above its weight.

With 2016 being a Presidential election year, and with the potential of the Republican led Senate to switch to Democratic control, it is more important than ever that we continue to educate and advocate for angel investors and a strong ecosystem which supports entrepreneurs and job creation.

If you are interested in learning more about our legislative agenda, please [email me](#), and consider joining our public policy committee or grassroots action network.