

Indexing the Accredited Investor Standard to Inflation: A Bad Idea

Now that the election is over, it is unclear, at least to me, which direction startup public policy will take. It is in all of our best interests that we have a startup public policy that promotes innovation and creativity. Too often we have laws that slow us down, impede us, or flat out make it illegal, whatever new product or innovation it is we are working on.

It appears that one of the first acts of Congress is going to be [the Financial Choice Act](#). There are provisions of this act that will affect the startup ecosystem. We should make our voices heard if we care about this.

Section 452 of the Financial Choice Act would do the following:

- Repeal [Section 413 of Dodd-Frank](#). The primary effect of this would be to take out of the SEC's hands the review and modification of the accredited investor standards. Section 413 also requires the SEC to review and issue a report on the definition every 4 years. You can read [the first report here](#). This would apparently go away with the repeal of section 413 as well. I agree in general that the SEC should not be able to make the definition of accredited investor worse, but it ought to be able to make it better (meaning, bringing more people into the definition, perhaps, for example, by imposing investment limitations on individuals that do not meet the current financial thresholds). I liked the SEC's first report on the matter. It had some good ideas. Such as allowing Indian tribes to qualify as accredited investors (by a weird quirk of the way the current SEC rules are written, Indian tribes do not qualify as accredited investors, even if they have tens of millions of dollars in assets and investments).
- Codify the financial thresholds to qualify as an accredited investor. I would also view this as a positive.
- Set the financial thresholds to qualify to automatically adjust with inflation. I view this as a negative.
- Create two new categories of accredited investor:
 - anyone who is currently licensed or registered as a broker or investment advisor by the SEC, FINRA, or an equivalent SRO, or the securities division of a state or equivalent state division responsible for licensing or registration of individuals in connection with securities activities; and
 - anyone the SEC determines, by regulation, to have demonstrable education or job experience to qualify as having professional knowledge of a subject related to a particular investment, and whose education or job experience is verified by FINRA or an equivalent SRO.

Both of the latter two ideas are good ideas. But as far as testing in, I am not sure FINRA is the right

entity to administer such a test. Wouldn't it be great if individual state securities administrators could administer such a test? The young MBA grad, for example, who doesn't have \$1M in net worth, but is young and has a long investment time horizon, seems to me ought be allowed to test in.

Indexing is a Bad Idea

I know different people have different thoughts on this. But I personally think indexing the financial thresholds to adjust with inflation is a bad idea. Sure, inflation has been low for years. But for all we know we will go through a period again, in the not too far future, where we have significant inflation. If we do, then this law will start automatically defining people out of the category of accredited investor. I think it would be more logical to leave the current numbers in place, and if Congress decides to change them in the future, Congress can change them.

To put it in context, one of the early versions of Dodd-Frank would have adjusted the financial thresholds to inflation, going all the way back to when they were set. We estimated that 2/3rds of all angel investors in America would no longer have qualified as accredited investors.

If Congress wants to index something to inflation that will improve the business regulation environment, it ought to index the \$600 1099 threshold to inflation. That number hasn't changed in forever. If it had been set to adjust to inflation, it would be something on the order of \$5,000 right now.