



## ANGEL CAPITAL ASSOCIATION

June 29, 2020

The Honorable Mike Crapo  
Chairman, Senate Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Sherrod Brown  
Ranking Member, Senate Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown,

We would like to take this opportunity to make you aware of some unintended consequences that may severely impact the small business community and impinge upon an economic recovery if current legislation entitled the Anti Money Laundering Act of 2020 is attached to S. 4049 as proposed. Our concerns stem from the definition of an owner and who would have to provide beneficial ownership data for emerging early stage start-up companies.

While we support the goal of preventing foreign nationals from exploiting United States corporations and limited liability companies (LLCs) for criminal gain, the Angel Capital Association (“ACA”) writes to express our strong opposition to “beneficial ownership” provisions outlined in the bill. Forcing small businesses with fewer than 21 employees to report who every person is that has ownership in that business will present a burdensome reporting requirement that will jeopardize growth. If these startups don’t comply, they face substantial fines and potential jail time.

In addition to the data security, privacy, and reporting burdens outlined below, the Angel Capital Association also believes that passage of these provisions would significantly dampen investment in small, start-up companies that are the engine fueling economic growth and job creation in our country. At a time when the pandemic and social unrest have significantly hurt our national well-being, further discouraging investment in innovative, small firms will hinder the very behavior our nation needs to encourage job formation and regain our economic footing. Nowhere is this more important than in Middle America still struggling from the demise of manufacturing. Angel investors invest in their own neighborhoods and are the major source of capital for small businesses and startups. Further, the ACA data demonstrate that more than 53% of US angel capital is invested in the Middle America known as the “flyover states” to venture investors. These states already have challenges in attracting venture investment from outside the region, and these provisions would only aggravate the problem.

As currently worded, duplicative reporting burdens would be imposed on millions of small businesses in the United States and threatens the privacy of law-abiding, legitimate small business owners. The Financial Crimes Enforcement Network’s (FinCEN) Customer Due Diligence (CDD) rule became applicable on May 11, 2018. The CDD rule already requires financial institutions to collect the “beneficial ownership” information of business customers when they open accounts.

This legislation would attempt to shift the reporting requirements from large banks – those best equipped to handle reporting requirements – to millions of small businesses – those least equipped to handle reporting requirements. The reporting requirements in the legislation would not only be duplicative, they would also be burdensome.

Recognizing the significant effort that has gone into drafting the bill at this point and understanding the critical time constraints, while we believe removing the “beneficial ownership” provisions is in the best interest of maximizing economic growth, a lesser, more acceptable position would be to remove the “control” clauses while maintaining the 25% ownership threshold and concurrently inserting provisions that would allow beneficial owner(s) who are an LP or LLC that have already otherwise disclosed beneficial owners in its FEIN or corporate charter documents to be exempt from this reporting requirement. Additionally, we believe consideration should be given to carving out a safe harbor for passive investors who bought preferred stock as part of a collective arm’s length financing, or passive investors owning less than 5%, or both. We do not believe the concept of “owners” is intended to capture angel investors doing good for the local community but rather to capture people who founded or have the ability steer the company for nefarious purposes. A correction at this point can keep the economic flywheel turning and we hope you will consider our position on this important matter.

#### **About the Angel Capital Association**

The ACA is the leading professional association supporting the success of accredited angel investors in high-growth and early-stage ventures. Our 14,000 members are among the angel investors that invest an estimated \$25 billion in 70,000<sup>1</sup> early-stage investments every year, with companies located in every state in the country.

Our comments today are in support of both angel investors and the nation’s startup entrepreneurs, those who create nearly all net new jobs in the country and many of the innovations that improve the quality of life throughout the world. It is vital that promising startups continue to attract angel capital, for their own growth and for the American economy. We appreciate the opportunity to provide these comments and are available to clarify any of the points listed above. You may reach us at [pgouhin@angelcapitalassociation.org](mailto:pgouhin@angelcapitalassociation.org) or 913-894-4700 Ext 1.

Respectfully,



Patrick Gouhin, CEO



Linda Smith, Chair Emeritus and Public Policy Chair

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<sup>1</sup> Center for Venture Research, University of New Hampshire, <https://paulcollege.unh.edu/center-venture-research/research>