

April 8, 2010

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

RE: Negative Impact of Section 926 of the “Restoring American Financial Stability Act of 2010” on Capital Formation

Dear Leaders Reid and McConnell:

The undersigned organizations, representing businesses of all sizes and from every sector of the American economy, strongly oppose Section 926 of the discussion draft of the “Restoring American Financial Stability Act of 2010,” as reported by the Senate Committee on Banking, Housing and Urban Affairs, because it would significantly harm the ability of companies to raise capital and expand their enterprises through private placements pursuant to Rule 506 of Regulation D (Reg D) of the Securities Act of 1933. The provisions of Section 926 would disrupt the well-established federal framework that governs private securities offerings, create new uncertainty for American business, and limit access to capital for companies during a time when capital is already scarce.

Congress and the Securities and Exchange Commission (SEC) have built a robust framework of statutory provisions and administrative rules to streamline and modernize private offerings. In doing so, Congress and the SEC demonstrated a clear intent to facilitate capital formation in the United States by recognizing that purchasers in Reg D offerings (i.e., accredited investors) can fend for themselves and the variations among state Blue Sky laws warrant a clear federal preemption. Federal preemption of Rule 506 offerings allows businesses, especially small, innovative businesses, to offer and sell securities to accredited investors without being subjected to the duplicative, time consuming, and expensive process of registering or qualifying securities under multiple and inconsistent state Blue Sky laws.

Section 926 would unwind this progress and create uncertainty and additional expenses that would preclude many businesses from engaging in private offerings under Reg D:

- First, private placements would be subject to greater uncertainty because Section 926 could force businesses to register under or otherwise comply with state regulations if the SEC does not review an issuer’s Form D filing within the prescribed 120-day period. This would create an environment where issuers would have no way of knowing in advance whether state laws are preempted under Reg D. Subjecting issuers to the prospect of bearing the substantial cost burden of multiple, often conflicting, state regulations would create enormous uncertainty and many businesses would conclude that an offering simply does not make sense from an economic standpoint.

- Second, the bill would direct the SEC to consider determining whether certain Rule 506 offerings should not qualify as “covered securities,” and thus fall outside of the federal framework, taking into consideration the size of the offering, the number of states in which the securities are offered, and the status of the offerees. This determination would be particularly detrimental to small businesses, forcing them back into a framework of multiple state regulators where they must devote substantial time and resources to registering the offering in each state where they plan to sell securities.

We urge the Senate to consider the severe and unintended consequences Section 926 would create for capital formation in the United States, including forcing capital formation offshore to the detriment of the U.S. economy, investors, and businesses. We thank you for your thoughtful consideration of our concerns and are willing to work with members of the Senate to improve the bill as it is being considered by the full Senate.

Sincerely,

The Financial Services Roundtable
Investment Program Association
National Association of Real Estate Investment Trusts
Private Equity Council
Real Estate Investment Securities Association
The Real Estate Roundtable
Securities Industry and Financial Markets Association
U.S. Chamber of Commerce

Cc: The Members of the United States Senate