



Assessing Accredited Investors under Regulation D



What is an “accredited investor”?

For many companies raising capital in the private markets, the [accredited investor](#) definition largely determines who is in their pool of potential investors, and for investors whether they are eligible to invest in many early-stage companies.

An investor qualifies as an accredited investor if they meet [certain standards](#) outlined in [Rule 501\(a\)](#) of [Regulation D](#). Individuals (i.e., natural persons) may qualify as accredited investors based on wealth and income thresholds, as well as other measures of financial sophistication or certain professional certifications. Entities, depending on their structure or assets, may also qualify as an accredited investor.

Qualifying as an accredited investor determines whether an investor can invest in companies conducting certain types of offerings under [Regulation D](#).

What are a company’s obligations when assessing whether an investor is accredited?

If a company wants to raise capital from an accredited investor in a [Rule 506\(b\) private placement transaction](#) or in a [Rule 506\(c\) general solicitation offering](#), it must assess whether the investor meets the accredited investor standards. Rules 506(b) and 506(c) of Regulation D each require the company to meet a different standard when making that assessment.



Rule 506(b): Reasonable belief

Under Rule 506(b), the company must have a “reasonable belief” that the investor is an accredited investor.

Whether the company has reasonable belief as to an accredited investor’s status is a facts and circumstances analysis and depends (among other things) on

- the issuer’s relationship to the investor; and
- the information the issuer has about the investor.

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Assessing Accredited Investors under Regulation D *(continued)*



Rule 506(c): Reasonable steps to verify

Under Rule 506(c), the company must take “reasonable steps to verify” that investors in the offering are accredited investors.

Rule 506(c) sets forth a flexible *principles-based* method of verification. The rule requires the company to make an objective determination whether the steps taken are “reasonable” in the context of the particular facts and circumstances of each investor and transaction. Among the factors that a company should consider under this principles-based method are:

- the nature of the investor and the type of accredited investor the investor claims to be;
- the amount and type of information that the company has about the investor; and
- the nature of the offering, such as:
 - how the investor was solicited to participate in the offering; and
 - the terms of the offering, such as a minimum investment amount.

In addition to this principles-based method, Rule 506(c) includes a *non-exclusive list of verification methods* that companies may use, but are not required to use, when seeking greater certainty that they satisfy the verification requirement, including:

- verification based on income, by reviewing copies of any Internal Revenue Service form that reports income (e.g., W-2, 1099, Schedule K-1 of Form 1065, and 1040);
- verification of net worth, by reviewing specific types of documentation dated within the prior three months (e.g., bank statements, brokerage statements, certificates of deposit, tax assessments, and a credit report from at least one of the nationwide consumer reporting agencies), and obtaining a written representation from the investor;
- written confirmation from a registered broker-dealer, an SEC-registered investment adviser, a licensed attorney, or a certified public accountant stating that within the last three months they
 - have taken reasonable steps to verify that the investor is an accredited investor; and
 - have determined that the investor is an accredited investor; and
- for any investor the company previously took reasonable steps to verify was accredited, so long as the company is not aware of information to the contrary, written representation from the investor at the time of sale that they qualify as an accredited investor. A written representation under this method of verification will satisfy the company’s obligation for a period of five years from the date the investor was previously verified.

Issuers may use different verification methods in the same Rule 506(c) offering to verify the accredited investor status of different investors.

Did You Know?

Self-certification by the investor alone (by checking a box) without the company having any other knowledge of the investor’s financial circumstances or sophistication is not sufficient to meet either the “reasonable belief” standard or the “reasonable steps to verify” requirement.

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