The Government's Role in Unleashing Impact Investing's Full Potential

Abstract

Impact investing refers to investments made in organizations, companies, or funds with the intent to generate measurable social or environmental impact along with a financial return. Since its start in 2008, this industry has become a vibrant tool to address a wide variety of local and global issues, resulting in higher standards of living, lower rates of prison recidivism, clean technology and more.

Impact investing is no longer a novel concept. Rather, it has successfully pushed the boundaries from the separate methods of conventional investing and philanthropy, blending them together to create sustainable solutions to social and environmental problems. By using the private sector for good, impact investing has demonstrably proven that "doing well while doing good" can make a difference—harnessing the forces of entrepreneurship, private capital, and innovation to confront today's challenges.

However, like any emerging financial model, several barriers must be overcome before impact investing can fully flourish. This Article calls for the government to use its influence to enact policy and regulatory changes so the industry can achieve sustainable growth. By reducing risk and encouraging investment, the government can also benefit from the positive social effects impact-oriented investments have on communities. This Comment concludes that promoting impact investing will permit the government to unleash an even wider net of social, environmental, and economic impact.

TABLE OF CONTENTS

I. INTRODUCTION

Within the United States, approximately 43.1 million people lived in poverty in 2015.[1] While an improvement from 2014, it was a mere 3.5 million less from 2014's poverty rate—the highest since 1959.[2] The federal government provides an average of $50 billion annually in low-income housing assistance programs, but only 25% of the eligible population actually receives support through these programs because households that receive assistance are still required to contribute at least 30% of their income to their housing expenses.[3] This is the United States' so-called "affordable" housing.[4] As the cost of living rises to new levels and minimum wage fails to keep up, some Americans battle to afford even mediocre housing.[5]

Habitat for Humanity International was founded in 1976[6] with the purpose of "build[ing] homes, communities, and hope," so even the less fortunate could have a place to live.[7] In fulfilling this mission, the nonprofit independently raised capital by offering mortgages with 0% interest as collateral for a loan to construct more homes.[8] Seeing an opportunity to

1. BERNADETTE D. PROCTOR ET AL., U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2015 12 (2016), https://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-256.pdf (reporting an official poverty rate of 13.5% in 2015).

2. *Id.*

3. CONG. BUDGET OFFICE, FEDERAL HOUSING ASSISTANCE FOR LOW-INCOME HOUSEHOLDS 1–4 (2015), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50782-lowincomehousing-onecolumn.pdf.

4. *Id.*

5. *See Why Shelter?*, HABITAT FOR HUMANITY INT'L, http://www.habitat.org/about/why-shelter (last visited Mar. 6, 2017) (explaining why Habitat for Humanity seeks to provide shelter for families in need).

6. *Habitat's History*, HABITAT FOR HUMANITY INT'L, http://www.habitat.org/about/history (last visited Mar. 9, 2017).

7. *Our Mission, Vision and Principles*, HABITAT FOR HUMANITY INT'L, http://www.habitat.org/about/mission-and-vision (last visited Mar. 6, 2017). Habitat for Humanity found that impoverished families were paying more rent per square foot and receiving far "less value for their scarce income." HABITAT FOR HUMANITY INT'L, ANNUAL REPORT FY2015 3 (2015), http://www.habitat.org/sites/default/files/annual-report-2015.pdf [hereinafter HABITAT FOR HUMANITY 2015 ANNUAL REPORT]. Because banks refused to give them loans, these families would conceptually, and sometimes literally, save up one brick at a time and deal with dreadful housing conditions in the meantime. *Id.* Thus, it was "expensive to be poor," and Habitat for Humanity sought a way to remedy this ongoing problem. *Id.*

8. JESSICA FREIREICH & KATHERINE FULTON, MONITOR INST., INVESTING FOR SOCIAL & ENVIRONMENTAL IMPACT: A DESIGN FOR CATALYZING AN EMERGING INDUSTRY 56 (2009), http://monitorinstitute.com/downloads/what-we-think/impact-investing/Impact_Investing.pdf [hereinafter MONITOR INST.].

improve efficiency, Habitat for Humanity developed the Flexible Capital Access Program (FlexCAP) to enable participating affiliates "to accelerate the receipt of income from their mortgages so that they can more quickly invest the capital to develop more homes" for low-income families.[9] Within 15 years, FlexCAP became a national program procuring approximately $140 million in loans for 270 United States affiliates,[10] funding nearly 3900 new homes.[11] Importantly, investors never experienced a single delinquency; the program maintained a 100% on-time repayment rate.[12] By 2017, Habitat for Humanity helped over 9.8 million people improve their living conditions.[13]

Successful organizations like Habitat for Humanity are generating excitement around the globe, creating for the first time, the blending of both purpose *and* financial reward.[14] This "creative capitalism" (as coined by Bill Gates) is a rapidly growing movement called impact investing.[15] In the past, there were divided approaches between commercial capital and philanthropy because charitable giving was usually considered as something done *after* getting rich.[16] However, the fundamental idea of impact investing represents a philosophical shift in which investing can "align the way a business generates profits with the way it generates positive social impact."[17]

Impact investing's progress is catching attention across a wide spectrum, from consumers to mainstream financial institutions, with the

---

9. *Id.*; *see also Habitat for Humanity's Flexible Capital Access Program Selected for ImpactAssets 50 2012*, HABITAT FOR HUMANITY INT'L (Oct. 9, 2012), http://www.habitat.org/newsroom/10-9-2012-ImpactAssets [hereinafter *FlexCAP Selected for ImpactAssets*] (explaining the new FlexCAP program "enables participating Habitat affiliates to leverage their mortgage portfolios, thereby generating additional funding to produce decent, affordable housing in partnership with low-income families").

10. *FlexCAP Selected for ImpactAssets*, *supra* note 9.

11. HABITAT FOR HUMANITY INT'L, FLEXIBLE CAPITAL ACCESS PROGRAM (FLEXCAP) 1, https://www.missioninvestors.org/system/files/tools/Habitat%20for%20Humanity's%20FlexCAP%20summary.pdf (last visited Mar. 9, 2017).

12. *Id.* at 2.

13. HABITAT FOR HUMANITY INT'L, ANNUAL REPORT FY2016, at ii (2016) [hereinafter HABITAT FOR HUMANITY 2016 ANNUAL REPORT].

14. *See infra* Section II.A.

15. MONITOR INST., *supra* note 8, at 12; *see also infra* notes 35–36 and accompanying text.

16. MARGUERITE H. GRIFFIN, N. TR. CORP., LINE OF SIGHT: IMPACT INVESTING 4 (2013) [hereinafter N. TR. CORP.].

17. *Id.*

desire to forward the goal of "'doing well' while 'doing good.'"[18] Impact-oriented organizations, whether for-profit or nonprofit, are redefining how businesses can make a difference in addressing the most urgent social problems, including alleviating poverty, providing renewable energy solutions, protecting the environment, and establishing gender equality.[19] Conventional investments can create jobs, produce economic value, and improve the standard of living, while impact investments, if leveraged, can harness the forces of entrepreneurship, private capital, and innovation to confront today's social and environmental challenges.[20] But like other industries, impact investing faces several barriers that block the movement from reaching its full potential.[21]

The new financing model of impact investing is the perfect solution to fill in the gaps, because government spending and traditional resources of philanthropy fall short of supporting social and economic interests in America and abroad.[22] Impact investing refers to "investments made into companies, organizations, and funds with the intention to generate social and economic impact alongside a financial return."[23] The magnitude of impact investing's development largely depends on the federal government to enact policy and regulatory changes given the government's ability to influence and shape markets.[24] To accomplish this, two objectives must be met: reduce the risks of impact investing and find ways to encourage

18. *Id.* at 3.

19. *See infra* notes 41–52 and accompanying text. After opening in 2006, TOMS Shoes' One for One Movement not only swept the nation's department stores, but also led the way for a new business model: for each pair of shoes purchased, TOMS donated a new pair to a child in need. *About TOMS: TOMS Company Overview*, TOMS SHOES, http://www.toms.com/about-toms#companyInfo (last visited Mar. 4, 2017). Founder Blake Mycoskie explained that "we didn't start a company with a mission, but we had a mission that turned into a company." Shana Lebowitz, *On the 10th Anniversary of TOMS, Its Founder Talks Stepping Down, Bringing in Private Equity, and Why Giving Away Shoes Provides a Competitive Advantage*, BUS. INSIDER (Jun. 15, 2016, 10:00 AM), http://www.businessinsider.com/toms-blake-mycoskie-talks-growing-a-business-while-balancing-profit-with-purpose-2016-6.

20. *See infra* Section IV.B.

21. *See infra* Section III.B.

22. *See infra* note 79 and accompanying text.

23. *What You Need to Know About Impact Investing*, GLOBAL IMPACT INVESTING NETWORK, https://thegiin.org/impact-investing (last visited Mar. 6, 2017); *see also infra* notes 35–36 (describing impact investing as a combination of traditional investing—investing for profit—and philanthropy—investing for purpose).

24. *See infra* Part IV.

investment.[25] With the government's participation, impact investing would no longer be at a stage of "uncoordinated innovation," but rather, could be catalyzed for maximum growth and large social impact.[26] Thus, the question is: will impact investing be merely a phase, or will it be utilized as a valuable, effective, and powerful solution to overcoming the world's social and environmental challenges?

This Comment reviews the history of the impact investing movement,[27] identifies the obstacles that are preventing the industry from flourishing,[28] and presents how the solution hinges upon greater government action.[29] Part II provides a snapshot of how the evolution of impact investing developed and explains the main types of impact investments.[30] Part III discusses the lessons to be learned from past successful subsets of investing with a purpose and then pinpoints the areas preventing impact investing from thriving.[31] Part IV offers several resolutions the government must implement to reduce risks and encourage investors to participate in impact investing.[32] Part V discusses the effects of impact investing,[33] and Part VI concludes.[34]

II. BACKGROUND AND HISTORY

A. *The Drive for Impact Investing and Who Is Behind It*

Impact investing—the meeting point of philanthropy and the finance industry—is a quickly evolving market in which investors "can benefit from financing socially oriented businesses"[35] but look beyond merely gaining

25. Brianna Baily, *An Institutional Truth: Increasing Institutional Investor Involvement in Climate Finance*, 27 GEO. INT'L ENVTL. L. REV. 447, 462 (2015).
26. *See infra* Part V.
27. *See infra* Section II.C.
28. *See infra* Section III.B.
29. *See infra* Part IV.
30. *See infra* Part II.
31. *See infra* Part III.
32. *See infra* Part IV.
33. *See infra* Part V.
34. *See infra* Part VI.
35. Jennifer Miller Oertel et al., *Proving that They Are Doing Good: What Attorneys and Other Advisers Need to Know About Program Assessment*, 59 WAYNE L. REV. 693, 701 (2013). In 2014, J.P. Morgan and the Global Impact Investing Network reported that impact investing was

alpha—the active return on an investment.[36] One of the major motivators accelerating the impact investing movement is the desire to provide products or services to the poor and grow foreign markets where economic development is currently constrained due to the lack of access to capital.[37] Further, consumers and investors alike now seek to align their social values in the investments or purchases they make.[38] The trend toward impact investing is driven not only by high-net-worth individuals seeking to "make a difference,"[39] but also by corporations, governments, leading institutions, private foundations, and prominent and wealthy families.[40]

Businesses—now more than ever—are incorporating social missions into their corporate frameworks and policies, including making changes in investment portfolios to participate in opportunities that have an explicit social impact.[41] For instance, Google is committed to funding almost $2.5

---

approximately a $46 billion industry, increasing by 20% from the previous year. U.S. NAT'L ADVISORY BD. ON IMPACT INVESTING, PRIVATE CAPITAL, PUBLIC GOOD 4 (2014), https://static1.squarespace.com/static/539e71d9e4b0ccf778116f69/t/53aa1681e4b04a6c515fac31/1403655809489/Private_Capital_Public_Good.pdf [hereinafter NAB].

36. Kristi Combs, *More than Just a Trend: The Importance of Impact Investing*, 2014 WL 3715105, at 3 (2014); *see also* Mitch Nass, *The Viability of Benefit Corporations: An Argument for Greater Transparency and Accountability*, 39 J. CORP. L. 875, 875–76 (2014). Typically, alpha measures "the performance of an investment against a market index used as a benchmark." *Alpha*, INVESTOPEDIA, http://www.investopedia.com/terms/a/alpha.asp (last visited Mar. 6, 2017). When an investment succeeds and returns extra funds relative to the return of the benchmark, the amount gained is the alpha. *Id.*

There are three main types of impact investors: (1) impact first: those who invest for the purpose of maximizing impact first, and then expect financial returns second; (2) investment first: those who invest for the purpose of maximizing return first, and then seek a social or environmental impact second; and (3) catalyst first: those who invest merely to build the industry and infrastructure of impact investing. N. TR. CORP., *supra* note 16, at 2.

37. MONITOR INST., *supra* note 8, at 16.

38. *Id.* (noting the increase in demand in areas such as organic, fair trade, and green products); Nass, *supra* note 36, at 876–77 (emphasizing that the goal for investors goes beyond simply generating revenue, but rather toward supporting a social and environmental cause); *see, e.g.*, *id.* at 877 (quantifying consumers' willingness to spend an additional 20% on socially based products or services, which leads to an increase in corporate environmental or socially responsible policies in response to consumer behavior). Studies have shown that millennials—the next generation to take on the financial industry and invest an estimated $41 trillion over the upcoming decades—"place considerable emphasis on aligning their investments with their values." NAB, *supra* note 35, at 14.

39. MONITOR INST., *supra* note 8, at 16, 59.

40. Combs, *supra* note 36, at 3 (specifying in regards to wealthy individuals that "private capital plays a critical part in the success of our economy"); NAB, *supra* note 35, at 14; *see also* Nass, *supra* note 36, at 877 (finding that the corporate world has significantly adopted the principle of impact investing by marketing itself as being socially and environmentally friendly).

41. NAB, *supra* note 35, at 14.

billion in renewable energy projects,[42] while Coca-Cola invested $1 billion in its 5by20 Program dedicated to providing business skills to five million female entrepreneurs by the year 2020.[43] Revolution Foods, a prime example of impact investing, distributes one million healthy meals per week to students from low-income households throughout the United States.[44] Others, such as Patagonia and Etsy, are incorporated as Certified B Corporations[45] and are committed to a higher standard of social responsibility in their performance and transparency.[46]

Additionally, private foundations are playing an important role in the transition to impact investing.[47] The Bill & Melinda Gates Foundation, one of the leading organizations in impact investing, is an institution that oversees $1.5 billion worth of income-generating, program-related investments[48] to address extreme poverty in developing countries.[49] Likewise, the W.K. Kellogg Foundation focuses on childhood development to reduce the vulnerability caused by poverty and racial inequity.[50] The F.B. Heron Foundation classifies itself as a "mission investor" whose sole purpose is to help people and communities escape poverty.[51] Following the success of allocating 40% of its assets to impact investing, the F.B. Heron Foundation is now committed toward a goal of 100%.[52]

As the push toward impact investing has expanded and changed, so too have the different forms that make up the category of "impact

---

42. *Id.*; *see also Solving for Sustainability*, GOOGLE ENV'T, https://environment.google/approach/ (last visited Mar. 9, 2017).

43. NAB, *supra* note 35, at 14; *see also 5by20: What We're Doing*, COCA-COLA CO., http://www.coca-colacompany.com/stories/5by20/5by20-what-were-doing/ (last visited Mar. 6, 2017).

44. SOC. IMPACT INV. TASKFORCE, IMPACT INVESTMENT: THE INVISIBLE HEART OF MARKETS (2014) [hereinafter SIIT].

45. NAB, *supra* note 35, at 14. Certified B Corporations are "for-profit entities that consider society and the environment in their business decisions." *Id.*

46. *See infra* notes 127–28 and accompanying text.

47. NAB, *supra* note 35, at 14.

48. *See infra* notes 65–70 and accompanying text; *see also* NAB, *supra* note 35, at 14.

49. Combs, *supra* note 36, at 3; NAB, *supra* note 35, at 14.

50. Combs, *supra* note 36, at 3.

51. *The Evolution of Heron*, F.B. HERON FOUND., http://heron.org/enterprise/evolution/mission-investor (last visited Mar. 6, 2017).

52. NAB, *supra* note 35, at 14. In 2015, the F.B. Heron Foundation's impact-oriented investment portfolio reached 70% of its 100% endowment. *Building an Impact Portfolio: Portfolio Journey Status*, F.B. HERON FOUND., http://heron.org/market (last visited Mar. 6, 2017).

investments."[53] Within the United States, successful movements in the areas of microfinance, community development, and clean technology have not only proven that impact investing works, but that there is a large potential for additional types of social impact investments to enter the marketplace.[54] To better understand what constitutes an impact investment, the following section explains the main types and how they differ from regular capital investments.[55]

B. Types of Impact Investing

Impact investments are distinctive from what most refer to as "normal" investments because they "*actively* seek to place capital in businesses and funds that can provide solutions at a scale that purely philanthropic interventions usually cannot reach."[56] Impact investments take a variety of forms, including debt and equity investments, loans, loan guarantees, cash deposits, fixed income, and working capital lines of credit.[57] These typically fall under the following subcategories of impact investing: (1) socially responsible investments (SRIs); (2) program-related investments (PRIs); (3) mission-related investments (MRIs); or (4) social impact bonds (also known as "pay for success" contracts).[58]

"Socially responsible investments" is a common phrase used in impact investing that generally refers to portfolios that consider social and corporate governance criteria (ESG). Historically, SRI has also referred to the process of portfolio screening (positive and negative) as well as dealing more frequently with liquid investments.[59] Investors positively screen investment portfolios by incorporating ethically committed companies that are dedicated to overcoming a social or environmental challenge.[60] On the other hand,

53. *See infra* Section II.B.

54. MONITOR INST., *supra* note 8, at 5; *see also infra* Section II.C.

55. *See infra* Section II.B.

56. MONITOR INST., *supra* note 8, at 5; *see also* N. TR. CORP., *supra* note 16, at 3 (affirming that impact investments are an "emerging, separate asset class" in themselves). Note, however, that the lines between for-profit and social sectors are being "blurred" as an increasing number of investors, businesses, or even consumers are seeking to add a social-purpose element in every investment, business practice, or product purchased. SIIT, *supra* note 44, at 9.

57. MONITOR INST., *supra* note 8, at 5.

58. N. TR. CORP., *supra* note 16, at 3.

59. Combs, *supra* note 36, at 1.

60. *Id.*

investors negatively "screen out" certain companies whose business practices are unethical or against the investors' values or mission.[61] SRI investors typically fall under the "investment first" classification[62] because, although they are "mission-driven," the mission is secondary to the investors' primary goal of returning considerable profits.[63] Some examples of SRIs include clean technology investments and community-development loan funds supporting job creation.[64]

PRIs are investments made by companies that further a charitable purpose.[65] However, the tax exemption under I.R.C. § 4944(c) prohibits PRIs from containing any aspect that results in the "production of income or the appreciation of property," or from having any influence on legislation and political campaigns.[66] In other words, PRI investors fall under the "impact first" category[67] by primarily focusing on charity contributions rather than producing financial returns.[68] PRIs may take the form of low-interest loans, loan guarantees, or equity or real estate investments, and depending on the size and needs of the charity, range from $250,000 to $5 million.[69] An example of a PRI includes an investment in a nonprofit's housing project for low-income families.[70]

61. *Id.* (listing areas typically screened out include gambling, adult entertainment, alcohol, animal testing, and weapons); *see also* N. TR. CORP., *supra* note 16, at 23. Positive and negative screening also supports corporations' fiduciary duty of making responsible investment choices, especially given the latest market scandals. *Id.* This screening process is a central form of risk management to avoid lawsuits, boycotts, and other liabilities. *Id.*

62. *See generally* Combs, *supra* note 36.

63. N. TR. CORP., *supra* note 16, at 23.

64. *Id.*

65. *Id.* at 5; *see also* I.R.C. § 4944(c) (2006). Charitable purposes include gifts or contributions supporting an entity "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, . . . or for the prevention of cruelty to children or animals." I.R.C. § 170(c)(2)(B) (2015).

66. I.R.C. § 4944(c); N. TR. CORP., *supra* note 16, at 5.

67. *See supra* note 34.

68. NAB, *supra* note 35, at 24. While foundations of many kinds and sizes can make PRIs, they are predominantly provided by independent foundations, such as the Ford Foundation, F.B. Heron Foundation, and the Bill and Melinda Gates Foundation. STEVEN LAWRENCE, FOUND. CTR., DOING GOOD WITH FOUNDATION ASSETS xiii, xlv–xv (2010), http://foundationcenter.org/gain knowledge/research/pdf/pri_directory_excerpt.pdf.

69. N. TR. CORP., *supra* note 16, at 6. PRIs typically come in the form of loans. LAWRENCE, *supra* note 68, at xv.

70. *Id.* The MacArthur Foundation, for instance, launched the Window of Opportunity initiative to help low- and moderate-income families rent apartments or homes in the United States. MACARTHUR FOUND., WINDOW OF OPPORTUNITY PRESERVING AFFORDABLE RENTAL HOUSING 3

MRI is a relatively new term that describes "market rate investment[s] by private foundation endowments that use the tools of social investing."[71] Although various definitions for MRIs exist, they are mainly used in reference to market or below-market-rate investments.[72] The name explains it all: mission-related investments are investments made to further an investor's mission while seeking financial return.[73] In comparison to PRI investors, MRI investors strive for "investment first,"[74] whereas § 4944 requires the primary purpose of PRIs to be charitable.[75] For example, a hypothetical MRI investment could include an investment in a certificate of deposit at a bank that then loans the funds to local women entrepreneurs to further the community and create jobs.[76] In return, it pays the original depositor 1.5% interest while charging a below-market rate of 2.5% to the business.[77]

Lastly, pay for success or social impact bonds are newer tools that governments utilize to gain private capital from investors to fund social programs.[78] Investors in pay for success bonds place money up-front toward a government program "currently beyond the reach of limited government funding."[79] Pay for success bonds create financial arrangements between a government agency—most United States social impact bonds are state,

(2007), https://www.macfound.org/media/article_pdfs/MAC_1107_SINGLES.PDF. The program was created in response to the hardships Americans faced in affording decent homes in a rising housing market where one-third of households were rented rather than owned. *Id.* In 2007, the PRI "preserved 45,000 affordable rental homes at an average per unit cost of $81,000—about half the cost to build a new rental apartment." *Id.* It is now the MacArthur Foundation's vision to invest $150 million over the next ten years in the Window of Opportunity PRI. *Id.* at 5.

71. MONITOR INST., *supra* note 8, at 14.

72. N. TR. CORP., *supra* note 16, at 6.

73. NAB, *supra* note 35, at 24.

74. *See supra* note 34.

75. N. TR. CORP., *supra* note 16, at 12.

76. *Id.*

77. *Id.* As shown in this example, impact investment intermediaries—organizations such as community development banks or private equity and venture capital funds—are utilized to collect capital from numerous sources and invest toward social impact entities that also bring financial return. *Id.*

78. *Id.* at 25.

79. NAB, *supra* note 35, at 10; *see also infra* note 197 (providing a hypothetical example of limited funding from the U.K. government in support of social issues, such as childcare, and the possibility of instead leaning on for-impact enterprises to provide services that alleviate the need for childcare).

county, or city-led[80]—and an outside nonprofit or for-profit intermediary organization.[81] The governmental entity then determines the specific social outcome the bond is to achieve over a particular period of time.[82] For governments, the appeal for social impact bonds is that investors are only repaid if the program actually completes the targeted goal, thereby saving tax dollars.[83] Pay for success bonds are becoming a more prevalent form of impact investing, evidenced by examples such as the first globally offered pay for success bond launched collectively by the State of New York, Social Finance US, and Bank of America Merrill Lynch.[84] This social impact bond raised $13.4 million for the Center of Employment Opportunities, which assists former incarcerated persons find employment.[85]

Over the past few decades, the transition of incorporating social responsibility into financial decisions has led to the creation of numerous new instruments and areas of impact investing.[86] Thus, an overview of the industry's history helps to better comprehend the massive pull toward impact investing.[87]

C. History of Impact Investing

The first glimpses of impact investments made in the United States occurred in a post-World War II period to promote global investing and international development.[88] For example, the United States provided political risk insurance to protect investments abroad.[89] In 1958, after finding that existing credit institutions failed to offer adequate equity capital and long-term loans for small businesses, the Small Business Investment Company (SBIC) program was created by Congress to close the "equity

80. NAB, *supra* note 35, at 10.

81. Oertel et al., *supra* note 35, at 704.

82. *Id.* Social outcomes include reducing anything constraining economic development, such as addressing illiteracy, children going into care, sickness, school dropout rates, or unpreparedness for employment. SIIT, *supra* note 44, at 5, 14.

83. NAB, *supra* note 35, at 10. This means that if the goal is not reached, the investors will receive absolutely nothing. *Id.*; Oertel et al., *supra* note 35, at 704.

84. NAB, *supra* note 35, at 10.

85. *Id.*

86. *See infra* Section II.B.

87. *See infra* Section II.C.

88. NAB, *supra* note 35, at 12.

89. *Id.*

gap" and allow private investors to "capitalize professionally-managed investment funds . . . that finance small businesses."[90] Heading into the 1960s, impact investing expanded globally with President Kennedy's enactment of the Foreign Assistance Act of 1961,[91] which also led to the creation of the United States Agency for International Development (USAID)—the first ever United States Government agency aiming to end extreme world poverty and promote economic prosperity.[92] With the increase of international aid, USAID developed several finance operations throughout the 1970s, which resulted in the formation of the Overseas Private Investment Corporation (OPIC).[93] Additionally, the 1970s witnessed the beginning of the microfinance industry,[94] including the launch of the Grameen Bank, which makes small loans to the impoverished without requiring collateral.[95]

During the 1980s and 1990s, strides were taken in community development finance—a subset of impact investing—after several years of

---

90. *SBIC Program*, U.S. SMALL BUS. ADMIN., https://www.sba.gov/category/lender-navigation/sba-loan-programs/sbic-program-0 (last visited Mar. 7, 2017); Allan E. Korpela, *Construction and Effect of Statutory Provisions as to Small Business Investment Companies (15 U.S.C.A. § 681–687h)*, 7 A.L.R. FED. 224, § 5 (1971) (defining a licensed small-business investment company as an incorporated entity that is "organized and chartered under state law solely for the purpose of supplying equity capital on long-term loans to small business concerns"); *see also* 15 U.S.C. §§ 631–697g (2015).

91. 22 U.S.C. § 2151 (2000).

92. *Mission, Vision and Values*, USAID, https://www.usaid.gov/who-we-are/mission-vision-values (last visited Mar. 7, 2017). The period of advances in international assistance and aid during President Kennedy and President Johnson's administrations is known as the "decade of development." *USAID History*, USAID, https://www.usaid.gov/who-we-are/usaid-history (last updated Nov. 7, 2016).

93. NAB, *supra* note 35, at 12. The OPIC mobilizes private capital to better position businesses in emerging markets and opportunities around the globe, thus furthering U.S. foreign policy. *Who We Are*, OPIC, https://www.opic.gov/who-we-are/overview (last visited Mar. 7, 2017). It achieves this mission by providing investors with political risk insurance, as well as support for private equity investment funds, guarantees, and financing. *Id.* Since its formation in 1971, the "OPIC operates on a self-sustaining basis at no net cost to American taxpayers." *Id.*

94. NAB, *supra* note 35, at 12. Microfinancing has received much attention since the 1970s "with the total volume of microloans growing at a 44[%] annual rate from 2001 and 2006." MONITOR INST., *supra* note 8, at 9. While many microfinance institutions were founded in the 1970s, the industry became more mainstream during the mid-2000s, attracting a wider net of investors and capital. *Id.* at 23.

95. NAB, *supra* note 35, at 12. The Grameen Bank in Bangladesh received a Nobel Peace Prize in 2006 for its advancements in social developments and microfinance. *Nobel Peace Prize 2006*, GRAMEEN BANK (Nov. 13, 2006), http://www.grameen-info.org/nobel-peace-prize-2006/.

grassroots advocacy for policy changes.[96] Pivotal to the industry's evolution was the passing of the Community Reinvestment Act (CRA) in 1977, which encouraged financial institutions to serve poor communities.[97] Although the CRA initially brought minimal results, it took larger effect as an incentive for banks to improve CRA ratings during the reoccurring bank mergers and acquisitions in the early 1990s.[98] In 1992, the CRA led to the creation of the Community Development Finance Institution (CDFI) Coalition, the first organization to bring together the various community development financial institutions across the country and nationally advocate for policy transformation.[99] The CDFI Coalition's work successfully led to the passing of the Riegle Community Development and Regulatory Improvement Act of 1994, which established the CDFI Fund "to promote economic revitalization and community development."[100]

The CDFI Coalition was also instrumental in the passage of the New Market Tax Credit (NMTC) initiated under the Community Renewal Tax Relief Act of 2000.[101] The NMTC, similar to the Low-Income Housing Tax Credit (LIHTC) passed in 1986,[102] offered tax incentives for investments intended to improve development in economically distressed areas of the

---

96. MONITOR INST., *supra* note 8, at 26.

97. *Id.* The CRA prompted banks to actively promote affordable mortgage programs, small-business loan products, and other forms of community development financing in low-income communities. NAB, *supra* note 35, at 16.

98. MONITOR INST., *supra* note 8, at 26.

99. *Id.* Over $764 billion in small-business loans were issued in low-income communities from 1996 to 2014 by banks in partnership with CDFIs. NAB, *supra* note 35, at 16. The CRA also introduced other forms of regulations and products, such as CRA-related mutual funds and tax credits, to provide incentives for affordable housing investments. MONITOR INST., *supra* note 8, at 26. Thanks to these policies and financial products, over $4 billion was invested annually in community development finance by 2006. *Id.*

100. 12 U.S.C. § 4701 (2015). The CDFI Fund is one of the most prominent accomplishments by the Coalition and brought over $942 million in appropriations to the CDFI industry by 2015. *History and Mission*, CDFI COALITION, http://www.cdfi.org/about-cdfi-coalition/history/ (last visited Mar. 7, 2017).

101. CDFI COALITION, *supra* note 100; 26 I.R.C. § 45D (2014); *see also* Community Renewal Tax Relief Act of 2000, H.R. 5662, 106th Congress (2000). The Community Renewal Tax Relief Act was later incorporated into the Consolidated Appropriations Act of 2001. *See* Pub. L. No. 106-554, 114 Stat 2763 (2000).

102. The LIHTC, codified in the Tax Reform Act of 1986, is a permanent program distinctive from the NMTC, which had to be annually renewed. *1401 New Markets Tax Credit Is Extended Through Calendar Year 2013*, 2013 WL 787518, at 2 (2013). The NMTC program ultimately expired in 2014 and has yet to be reenacted. *Id.*

United States.[103] Each tax credit substantially increased the flow of capital to underserved communities with the NMTC reporting over $31.1 billion in transactions and creating approximately 560,000 new jobs since its establishment in 2000.[104]

By the twenty-first century, the Foundation Center followed 427 organizations dedicated to impact investing and found that almost 4000 PRIs had been financed, totaling to over $3 billion in investments.[105] While this is considerable progress, in comparison to the $200 billion in grants provided by the nation's top 100 foundations over the same period of time, the impact investing industry is only a small slice of the philanthropy pie.[106] In 2007, the Rockefeller Foundation held a conference between several leaders in finance and philanthropy where the term "impact investing" was coined to recognize socially minded investments that generate both financial return and social or environmental impact.[107] According to the Monitor Institute, this marked the point of transition for the impact investing industry from "uncoordinated innovation" to a more cohesive phase of "marketplace building."[108]

103. SIIT, *supra* note 44, at 24.

104. *Id.*

105. NAB, *supra* note 35, at 12. The Foundation Center was formed in 1956 to "connect[] people who want to change the world to the resources they need to succeed" by maintaining a comprehensive database that provides information regarding philanthropy worldwide. *Mission, Vision, Values*, FOUND. CTR., http://foundationcenter.org/about-us/mission-vision-values (last visited Mar. 7, 2017).

106. NAB, *supra* note 35, at 12. The Foundation Center found that as of 2015, total giving by the fifty leading foundations was approximately $20 billion. *Foundation Stats*, FOUND. CTR., http://foundationcenter.org/findfunders/topfunders/top100assets.html (last visited Mar. 7, 2017).

107. *Innovative Finance*, ROCKEFELLER FOUND., https://www.rockefellerfoundation.org/our-work/initiatives/innovative-finance/ (last visited Mar. 7, 2017).

108. NAB, *supra* note 35, at 12; *see generally* MONITOR INST., *supra* note 8, at 23 (providing three approaches to further build the marketplace for broad impact). The Monitor Institute is a mixture of a consultant group, think tank, and "incubator of new approaches," whose mission is to "help[] innovative leaders develop and achieve sustainable solutions to significant social and environmental problems." MONITOR INST., *supra* note 8, at ii. Impact investing has grown into a period the Monitor Institute calls "marketplace building." *Id.* at 12. This means impact investing has moved beyond the entrepreneurial entry into the market ("uncoordinated innovation" phase) and is at a major transition point in which greater activity will develop after further infrastructure and momentum is gained. *Id.*

III. CURRENT STATE OF THE LAW

Impact investing continues to gain attention in many nations' economies, especially in those facing social or economic disasters.[109] The potential for impact investing to become a fundamental form of investment is possible if key players in the financial industry are willing to participate and try new "unconventional" financing models.[110] There is much room for impact investing to improve, and with the help of organizations, foundations, investors, and governments, the movement can pass from the phase of "marketplace building" to a more mature phase of "capturing the value of the marketplace."[111]

Along with the growing interest from investors and consumers came growing challenges blocking the acceleration of impact investing, to which the 2008 global financial crisis undoubtedly contributed.[112] The macroeconomic slowdown shaped a "[g]eneral mistrust of markets" and particularly market innovations, such as impact investments, prompting investors to retreat to conservative financing.[113] However, the government's closer watch over the regulation, accountability, and transparency of the investment industry since the market drop has created an additional opportunity for impact investments to be an attractive option—where risk

---

109. YASEMIN SALTUK ET AL., J.P. MORGAN & THE GIIN, EYES ON THE HORIZON: THE IMPACT INVESTOR SURVEY 29 (5th ed. 2015) [hereinafter J.P. MORGAN]. Kenya, India, and Brazil are among the number of regional hubs of investment emerging as the industry matures because of the persistent need for social reform. *Id.* at 29–30. J.P. Morgan and the Global Impact Investing Network (GIIN) anticipate impact investing to increase the most in sub-Saharan Africa, followed by East and Southeast Asia, in addition to Latin America. *Id.* at 29.

110. *See infra* notes 140–42 and accompanying text.

111. MONITOR INST., *supra* note 8, at 12. The Monitor Institute hopes the industry will massively gain traction in the next five to ten years and enter the "capturing the value of the marketplace" stage as more mainstream players enter the market and create a higher volume of activity. *Id.*

112. *Id.* at 15. Additionally, the twenty-first century experienced its share of financial scrutiny after the well-publicized scandals of major enterprises such as Enron, WorldCom, Tyco, and others. *See* Aarti Maharaj, *Ten Events that Have Changed Corporate Governance*, CORP. SECRETARY (July 18, 2012), https://www.corporatesecretary.com/articles/regulation-and-legal/12277/ten-events-that-have-changed-corporate-governance/. This ultimately resulted in the Sarbanes-Oxley Act of 2002 and other internal financial controls, which made reporting and accountability increasingly difficult for PRIs in measuring impact and numeric output, such as the number of children placed in foster care or the amount of meals served. Oertel et al., *supra* note 35, at 695–96. These increasing practices result in higher scrutiny on the administrative expenses of PRIs with some states passing laws that restrict funding to exempt organizations that spend a certain percentage of donations directly toward fulfilling the organization's mission. *Id.*

113. MONITOR INST., *supra* note 8, at 15.

can be lower and investors can account for factors beyond capital gain.[114]

A. Lessons From Successful Subsets of Impact Investing

The microfinance industry, for instance, gained momentum in the mid-2000s after infrastructure changes attracted a wider net of money and investors.[115] This dramatic progress was partially the result of industry associations that connected international agencies, nonprofits, financial institutions, and foundations with microfinance programs.[116] Further, microfinancing became a more reliable form of investing after the launch of the first rating service in 1996, MicroRate, and the MicroBanking Bulletin, which provided sufficient data to form accurate performance benchmarks.[117] In 2008, Standard & Poor's (S&P) also committed to creating global risk ratings of microfinance institutions, therefore allowing investors a standard metric on which to base investments.[118]

As mentioned, community development finance has a long history of grassroots advocacy and, in turn, nationally revolutionized the industry after the government issued tax credits, regulatory changes, and even various legislations still in existence today.[119] Similarly, the venture capital and private equity industries were advanced primarily by government policy

114. *Id.*

115. *Id.* at 23. Microfinancing is when microcredits, or little amounts of capital at low interest, are given to a borrower who otherwise would not be able to enter the market. *See* Alexandra O'Rourke, *Public–Private Partnerships: The Key to Sustainable Microfinancing*, 12 L. & BUS. REV. AM. 179, 179–80 (2006). Typically, microcredits are used to strengthen and build economies in the developing world, however, they also present an opportunity for small businesses to expand and stabilize. *Id.* at 179, 182.

116. MONITOR INST., *supra* note 8, at 23–24. The Small Enterprise Education and Promotion Network, Microcredit Summit Campaign, Consultative Group to Assist the Poor (housed at the World Bank), and the United Nation's (U.N.) Capital Development Fund are examples of international coalitions that developed microfinancing. *Id.* at 24; *see also* O'Rourke, *supra* note 115, at 182. In fact, the U.N. officially announced 2005 as the "International Year of Microcredit" to encourage member states to foster the microfinance industry. MONITOR INST., *supra* note 8, at 72.

117. MONITOR INST., *supra* note 8, at 24.

118. *Id.* Like any investment ratings, S&P's microfinance rating was based on an institution's long-term creditworthiness, which was assessed by the risk, market performance, governance, and performance of the institution. THE NEW MICROFINANCE HANDBOOK: A FINANCIAL MARKET SYSTEM PERSPECTIVE 408 (Joanna Ledgerwood et al. eds., 2013).

119. *See supra* notes 96–104 and accompanying text (summarizing the outcome of community development finance in the 1980s and 1990s, which included the Community Reinvestment Act, CDFI Coalition, CDFI Fund, the New Market Tax Credit, and the Low-Income Housing Tax Credit).

changes and tax incentives.[120] Government legislation in the 1950s led to the creation of privately funded investment firms that gave money to newly established companies, and although it initially failed to gain investment interest, the legislation "provided a forum in which venture capital entrepreneurs gained valuable experience" later applicable in the flux of venture capital.[121] Funding in private equities was restrained at first by the capital gains tax in 1969; however, in 1978, the federal government made alterations to the Employee Retirement Income Security Act causing "pension funds to invest in venture funds and thereby dramatically increas[e] the supply of available capital."[122]

Several states followed suit in the social responsibility movement by passing laws that offered new forms of incorporation,[123] enabling companies to combine for-profit and socially beneficial goals without the risk of breaching its fiduciary duty to shareholders.[124] One of the most popular types of hybrid incorporation is the benefit corporation.[125] Each benefit corporation must annually prepare a public report assessing its "overall

120. MONITOR INST., *supra* note 8, at 27.

121. *Id.* (noting that between 1980 and 1984, venture capital investments skyrocketed from $600 million to $3 billion). With Apple Computer's large success in the mid-1980s, including a $1.3 billion initial public offering, venture capital not only gained broader exposure but also "helped attract more capital from previously unconvinced investors." *Id.*

122. *Id.* Congress later significantly decreased the capital gains tax rate, which increased the flow of venture capital and private equity. *Id.*

123. Nass, *supra* note 36, at 880. Examples include: (1) the Low-Profit Limited Liability Company (L3C) introduced by Vermont, which requires a charitable or educational purpose, but whose significant purpose cannot be the generation of income or appreciation of property; and (2) the Social Purpose Corporation (SPC) effective in California, which requires the corporation to affirm a social or environmental purpose in its charter. Oertel et al., *supra* note 35, at 703–04; Nass, *supra* note 36, at 880; Social Purpose Corporations Act, Cal. Corp. Code § 2602 (2015).

124. Nass, *supra* note 36, at 880.

125. *See id.*; *see also* Oertel et al., *supra* note 35, at 702. As of January 2017, a total of thirty-one states have passed benefit corporation statutes with seven states in the process of enacting legislation. *State by State Status of Legislation*, BENEFIT CORP., http://benefitcorp.net/policymakers/state-by-state-status (last visited Mar. 9, 2017). Benefit corporations vary in type from bakeries and coffee bean distributors to energy companies and venture capital firms. Nass, *supra* note 36, at 881.

One of the better-known benefit corporations is the clothing retailer, Patagonia, incorporated in 2012 in California. *Id.* In committing to environmental conservation, Patagonia's founder, Yvon Chouinard, believes benefit corporation legislation provides the legal framework for "mission-driven companies like Patagonia to stay mission-driven through succession, capital raises, and even changes in ownership." *B Lab*, PATAGONIA, http://www.patagonia.com/b-lab.html (last visited Mar. 9, 2017).

social and environmental performance against a third party standard."[126] This third party transparency obligation is one of the most important features of benefit corporations, but often is not complied with despite the help of B Lab's[127] B Corporation certification standard or the Global Impact Investing Rating System (GIIRS).[128] Some scholars argue greater government oversight is needed to bolster the transparency requirement and that legislation should require benefit corporations to provide a copy of their reports to a government agency.[129] The lack of legal and regulatory supervision is a common theme not only in benefit corporations, but also in the impact investing industry as a whole.[130]

126. Nass, *supra* note 36, at 880 (internal quotation marks omitted).

127. *Id.* at 880, 884. Most benefit corporations use B Lab as a third-party standard to fulfill the required oversight provision. *Id.* at 884. B Lab is a nonprofit organization serving companies "using business as a force for good" that desire to certify as a "B Corporation." *Id.*; *About B Lab*, B CORP., https://www.bcorporation.net/what-are-b-corps/about-b-lab (last visited Mar. 9, 2017).

128. Nass, *supra* note 36, at 884–85; Oertel et al., *supra* note 35, at 704. The GIIRS (pronounced "gears") is an analytic platform that assists investors in measuring the social impact of their investments. Oertel et al., *supra* note 35, at 705. In utilizing GIIRS, B Lab's certification process provides companies (1) accurate measurement of environmental or social impact, (2) with verified metrics and benchmarks, and (3) creates custom reports and analytics. Nass, *supra* note 36, at 884. Each B Lab Certified company is given an overall score, in addition to ratings in fifteen subcategories. *Id.* Thus, an entity receives a quantitative assessment of the company's success in achieving its social purpose. *Id.* The goal of GIIRS is "to ensure the highest levels of effectiveness, fairness, and credibility" in accordance with international best practices. *Id.* (quoting *How GIIRS Works*, GIIRS, http://giirs.nonprofitsoapbox.com/about-giirs/how-giirs-works (last visited Mar. 9, 2017)).

129. Nass, *supra* note 36, at 890 (adding that an audit or evaluation by a state agency should be implemented to increase the accountability of benefit corporations and third party organizations). *But see* NAB, *supra* note 35, at 23 (suggesting the U.S. Securities and Exchange Commission (SEC) should act to explicitly provide guidance on disclosure requirements rather than leaving it up to state legislation). Such improvements would eliminate the practice of "greenwashing," a marketing strategy companies take advantage of by "advertising green initiatives that may or may not accurately represent the company's actual goals and behavior." Nass, *supra* note 36, at 877.

130. Margaret Hartwell & Jeannie Linam, *A Common Language for Impact Investing*, TRIPLE PUNDIT (Apr. 13, 2011), http://www.triplepundit.com/2011/04/common-language-impact-investing/. For instance, there is currently no reporting standard required by the SEC for impact investing institutions, nor has the SEC stepped in to develop a standardized metric to measure the performance of investments. *See id.* A uniform metric would prevent greenwashing tactics and enable impact investing companies to embed "best practices" into their businesses. *Id.* Analogous to how Generally Accepted Accounting Principles (GAAP) created the infrastructure for financial reporting, a consistent metric system facilitating benchmarking is needed for the impact investing industry. *Id.* By implementing such a foundation, the "SEC engagement and oversight could drive an infusion of mainstream capital toward" impact investments. *Id.*

B. *Industry Challenges Preventing Impact Investing's Full Potential*

Along with a lack of oversight, impact investments generally lack the infrastructure—the standards, policies, models, and established language—necessary for investors to fully value and understand the implications of socially responsible investing.[131] Unlike areas such as microfinance or benefit corporations, there is not an official body in existence to govern impact investments, nor are there metrics agencies to measure the risk or actual impact of investments.[132] Without a uniform performance standard, many potential investors overlook impact investing, find it too risky, or believe the high administrative costs of monitoring the strategy are too time-consuming and daunting.[133]

The Global Impact Investing Network (GIIN), a nonprofit organization established in 2009, is possibly the only entity specifically dedicated toward building infrastructure and broadening the scale of impact investing.[134] Recently, in 2015, the GIIN introduced the first performance benchmark to effectively measure impact investments.[135] While the GIIN is making strides in developing principles and tangible analytics in the industry, it is only just beginning and cannot compare to well-established conventional investing standards or governing bodies, such as the SEC.[136] The fact is that the market environment and infrastructure, whether legal, regulatory, or tax, is presently structured on the for-profit sector and delays engagement in impact investing.[137]

According to the GIIN's 2016 report, the top challenges to market development are an absence of quality deals and deficiency of capital.[138]

---

131. MONITOR INST., *supra* note 8, at 21.

132. *Id.*

133. N. TR. CORP., *supra* note 16, at 27–28. For instance, adding a PRI, MRI, or SRI investment to an existing portfolio could potentially cause the investor to incur legal fees, transaction costs, or administrative costs to carry out the investment, without the promise of much profit in return. *Id.* Such considerable expenses are not worth the trouble when compared to the work and return of traditional investment strategies. *Id.*

134. *About GIIN*, GIIN, https://thegiin.org/about/ (last visited Mar. 7, 2017).

135. *See generally* GIIN, INTRODUCING THE IMPACT INVESTING BENCHMARK (2015), https://thegiin.org/assets/documents/pub/Introducing_the_Impact_Investing_Benchmark.pdf.

136. N. TR. CORP., *supra* note 16, at 28.

137. MONITOR INST., *supra* note 8, at 21 ("Trustees are extremely conservative and are more prepared to invest in a hedge fund they don't understand than to invest in a mission-driven fund they don't understand.").

138. ABHILASH MUDALIAR ET AL., GIIN, ANNUAL IMPACT INVESTOR SURVEY 9 (6th ed. 2016).

The larger issue causing these challenges is a lack of efficient intermediaries, or in other words, a lack of mechanisms linking capital with opportunities in impact investing.[139] Because different infrastructures are built around investing and philanthropy industries independently, many intermediaries are hesitant or incapable of connecting investors seeking impact with organizations capable of delivering it.[140] Similar to the successful development of venture capital and private equity industries, "a profession of impact investment managers and advisers needs to be created in order to deploy significant capital."[141] Even if the right products and clients exist, the investment professionals remain a bottleneck in pushing impact investing forward.[142]

However, stemming from a lack of intermediaries is the lack of incentives for investors to take the risk of incorporating impact investments into client portfolios.[143] Conservative investment managers are reluctant to alter their investment approach, especially when it may violate their fiduciary responsibility.[144] The Social Impact Investment Taskforce (SIIT) established by the G8[145] stated in a 2014 report that "various legal or regulatory impediments hold back the development of impact

---

The GIIN arrived at this conclusion after surveying 158 impact investors from financial institutions and foundations' investing organizations; the survey excluded individual investors. *Id.* at VIII. These two top challenges have remained in the same ranking for the past three surveys. *Id.* at 9.

139. SIIT, *supra* note 44, at 24; MONITOR INST., *supra* note 8, at 19 (finding that a lack of intermediaries creates underdeveloped networks, fragmented supply and demand, complexity in deals, and high search or transaction costs). Intermediaries include clearinghouses, independent third-party sources of information, investment consultants, and syndication facilities. MONITOR INST., *supra* note 8, at 19.

140. MONITOR INST., *supra* note 8, at 19.

141. SIIT, *supra* note 44, at 24. Specialist impact investment managers have emerged in several countries with many in the United States, such as Acumen, Sustainable Jobs Fund, and Bridges Ventures. *Id.*

142. MONITOR INST., *supra* note 8, at 19.

143. SIIT, *supra* note 44, at 22.

144. *Id.*; MONITOR INST., *supra* note 8, at 19. Investors are also reluctant because it is extremely difficult to find a quality investment sufficient to justify the cost of carrying it out. MONITOR INST., *supra* note 8, at 21.

145. SIIT, *supra* note 44, at 2. The G8, or "Group of Eight," is a group of "highly industrialized nations" that annually meets together to address global issues. Zachary Laub, *The Group of Eight (G8) Industrialized Nations*, COUNCIL ON FOREIGN REL. (Mar. 3, 2014), http://www.cfr.org/international-organizations-and-alliances/group-eight-g8-industrialized-nations/p10647. The G8 consists of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States. *Id.*

investment."[146] More specifically, the Taskforce believes duties of charitable foundation trustees and pension funds should be redefined in legislation to clarify that impact investing is not only allowed, but encouraged.[147] As a result, particularly in pension funds, a significantly larger amount of capital would likely flow into impact investing and would

146. SIIT, *supra* note 44, at 22. The Global Social Impact Investment Steering Group (GSG) succeeded the SIIT in August 2015. *Home*, GLOB. SOC. IMPACT INV. STEERING GRP., http://www.socialimpactinvestment.org (last visited Mar. 7, 2017). The GSG consists of members from thirteen different countries, plus the European Union, with the Ford Foundation representing the United States. *Id.* Leaders in business, finance, philanthropy, as well as government officials are brought together by the GSG to foster growth in the impact investment sector. *Id.*

147. SIIT, *supra* note 44, at 22. In modernizing the regulation of fiduciary duties, the government only recently made attempts to clarify the law. *See generally* NAB, 2015 ERISA GUIDANCE: REMOVING REGULATORY BARRIERS TO UNLOCK IMPACT INVESTMENTS (2015). For instance, pension-plan fiduciaries under the Employee Retirement Income Security Act (ERISA) of 1974 are required to act prudently, diversify investments, and make decisions for the exclusive benefit of plan beneficiaries. NAB, *supra* note 35, at 21; *see also* Interpretive Bulletin Relating to the Fiduciary Standard Under ERISA in Considering Economically Targeted Investments, 80 Fed. Reg. 65,135 (U.S. Dep't of Labor Oct. 26, 2015) (to be codified at 29 C.F.R. pt. 2509); 29 U.S.C. §§ 1103–04 (2012). The Department of Labor (DOL), the body that enforces this law, altered its guidance (its interpretation of the law) in 2008, stating that fiduciaries "may never subordinate the economic interests of the plan to unrelated objectives" and may not base any decisions on "any factor outside the economic interest of the plan." NAB, *supra* note 35, at 21. As a result, investors are reluctant to include impact investments in portfolios even when there would be no breach of fiduciary duty. *Id.* To rectify the misperceptions following the 2008 guidance, the DOL announced new guidance in October 2015 to clarify that social and economic factors can directly affect the value of a plan's investment and thus, the factors should be incorporated in a pension manager's analysis when making investments. *See generally* Interpretive Bulletin Relating to the Fiduciary Standard Under ERISA in Considering Economically Targeted Investments, 80 Fed. Reg. at 65,136.

Foundation trustees also face comparable legal impediments for which the Internal Revenue Service provided "long-awaited" guidance in September 2015 to address the application of I.R.C. § 4944. John Cochrane, *New Guidance on Mission-Related Investing*, COUNCIL ON FOUND. (Sept. 17, 2015), http://www.cof.org/blogs/washington-snapshot/2015-09-17/new-guidance-mission-related-investing. The statute imposes a tax on private foundations making investments that are "jeopardizing" to the organization's exempt purposes. I.R.C. § 4944(a)(1) (2006). Whether an investment is jeopardizing exempt purposes depends on the foundation manager's exercise of ordinary business care and prudence in meeting the financial needs of the entity. I.R.S. Notice 2015-62 I.R.B. 2015-39 (Sept. 28, 2015). While PRIs were expressly exempt under section 4944(c), it was unclear whether other investments made by private foundations were subject to tax. *Id*. Therefore, the Department of Treasury's guidance explained that "foundation managers may consider all relevant facts and circumstances, including the relationship between a particular investment and the foundation's charitable purposes" when deciding whether to make an investment. *Id*.

It is uncertain whether these latest legislative interpretations will motivate managers to feel comfortable in including impact investments in portfolios, but they are positive steps toward confirming the consistency between impact investing and the role of a responsible fiduciary.

enable the general public to allocate social impact investments into portfolios.[148]

Many challenges to impact investing need to be faced head-on for the financial platform to become more than a mere trend.[149] Although consumers and foundations may be in full support, maturing the industry of impact investing will need an overhaul of input, interest, and immersion by the U.S. federal government.[150]

IV. HOW THE GOVERNMENT CAN REMOVE BARRIERS AND PROMOTE IMPACT INVESTING

While impact investing's momentum has increased over recent decades, the movement is at an inflection point that requires government participation and policy change if further progress is to be made.[151] The government exerts significant influence on the market, whether as a co-investor, regulator, standard-setter, risk mitigator, or even as a market maker.[152] Additionally, in recent years, several governments across the globe showed active support in advancing the impact investing industry.[153] Similarly, the United States government has a vital role in promoting the industry and

148. SIIT, *supra* note 44, at 22.

149. *See supra* Section III.B.

150. *See infra* Part IV.

151. NAB, *supra* note 35, at 4–5 (clarifying that most policy changes will not require additional government spending); *see also* SIIT, *supra* note 44, at 26 (concluding that the government can remove most barriers in impact investing through "enlightened policymaking"). According to the GIIN's 2016 survey, 52% of impact investors saw some progress in government support for the market in the past year, while 29% saw no progress at all. MUDALIAR ET AL., *supra* note 138, at 8.

152. NAB, *supra* note 35, at 16.

153. J.P. MORGAN, *supra* note 109, at 20. The United Kingdom, for example, repeatedly prioritized social investments in its agenda by launching the Early Intervention Foundation (whose purpose is to advise local and national policymakers, charities, and investors of effective impact investments), and Big Society Capital (the United Kingdom's first social bank), as well as including the issue of impact investing at the G8 meeting in 2013 (which initiated the creation of the SIIT). Iain Duncan Smith, U.K. Sec'y of State for Work & Pensions, The Role of Government in Social Impact Investing, Address at the Social Impact Investment Taskforce Conference (Oct. 29, 2014), *in* CONSERVATIVE & LIBERAL DEMOCRAT COAL. GOV'T, 2014, https://www.gov.uk/government/speeches/the-role-of-government-in-social-impact-investing. Additionally, the United Kingdom implemented seventeen social impact bonds by 2014, whereas the United States only had four. *See* Smith, *supra*; *see also* Brinda Ganguly, *The Success of the Peterborough Social Impact Bond*, ROCKEFELLER FOUND. (Aug. 8, 2014), https://www.rockefellerfoundation.org/blog/success-peterborough-social-impact.

"tackl[ing] core social and environmental challenges at scale."[154] But, "[f]or impact investing to reach massive scale—bringing private capital to bear on our greatest problems—it will require a more intentional and proactive partnership between government and the private sector."[155]

A. *Build an Ecosystem of Regulatory Framework and Oversight to Develop Infrastructure*

One of the steps the government can take to greatly improve impact investing is strengthening the industry infrastructure through changes in regulation, as well as establishing sufficient leadership to monitor the market.[156] Although impact investing has gained traction, many professional investing managers at financial intermediaries are wary of the risks and unknowns.[157] If intermediaries were more aware and accustomed to the process and results of impact investments—fusing the goals of for-impact *and* for-profit—managers would be more inclined toward social investments.[158] Encouraging and developing specialist impact investment managers and impact investment intermediaries would attract investment, provide data and analysis, and implement the necessary cultural changes in mainstream finance.[159] Thus, by focusing on intermediaries, the government can make a large difference in widening the net of impact investing.[160]

154. NAB, *supra* note 35, at 5; *see also* SOC. IMPACT INV. TASKFORCE, POLICY LEVERS AND OBJECTIVES 3 (2014), http://www.socialimpactinvestment.org/reports/Policy%20Levers%20and%20Objective%20report%20FINAL.pdf [hereinafter SIIT POLICY LEVERS & OBJECTIVES] (asserting not only the government's "important role," but also its duty and responsibility "to remove barriers and safeguard the positive intentions of social impact investment over time").

155. NAB, *supra* note 35, at 4.

156. SIIT POLICY LEVERS & OBJECTIVES, *supra* note 154, at 4.

157. *See supra* notes 143–148 and accompanying text. While intermediaries are deficient, that is not to say they do not exist at all. SIIT, *supra* note 44, at 24. New impact-finance intermediaries within the United States have quickly developed in recent years, including Social Finance, Imprint Capital (acquired by Goldman Sachs in 2015), Third Sector, and BlackRock Impact. *Id.*; MUDALIAR ET AL., *supra* note 138, at 4.

158. *See supra* note 140 and accompanying text (pointing out that the independent industries of philanthropy and traditional investing cause managers to be hesitant toward the unfamiliar form of impact investing); *see also* MONITOR INST., *supra* note 8, at 21 (emphasis added) (adding "[t]he bifurcation of financial return and impact inhibits the integration *inherent* to impact investing").

159. SIIT, *supra* note 44, at 24.

160. *Id.*

1. Create a Champion Wholesaler of Capital to Construct Impact Intermediaries

First, the government can build up impact intermediaries by creating a "wholesaler of capital and a champion of the sector" whose purpose is to invest in social investment intermediaries while increasing the knowledge of, and confidence in, impact investing.[161] Because many charities and social enterprises find it challenging to access the funding to carry out their services, intermediaries are ideal in bridging the gap and connecting for-impact entities with proper funding.[162] To obtain this funding, intermediaries and wholesalers would work together in finding quality investments, and the wholesaler would provide the capital to be invested through the intermediary.[163] Thus, the intermediary directly processes the impact investment, rather than the wholesaler.[164] Collectively working with a wholesaler would develop the intermediary's network, foster a positive attitude toward impact investing, and help managers become more

161. *Id.* Big Society Capital is currently the first successful wholesaler of capital and has two roles: (1) as an investor; and (2) as a champion. *What We Do Making Social Investment Available to Charities & Social Enterprises*, BIG SOC'Y CAPITAL, http://www.bigsocietycapital.com/what-we-do (last visited Mar. 7, 2017). As an investor, Big Society Capital invests in intermediaries who, in turn, invest in social enterprises. *Our Role as an Investor*, BIG SOC'Y CAP., http://www.bigsocietycapital.com/what-we-do/investor (last visited Mar. 7 2017). As a champion, Big Society Capital acts "to help increase awareness" in impact investment. *Our Role as a Champion*, BIG SOC'Y CAPITAL, http://www.bigsocietycapital.com/what-we-do/champion (last visited Mar. 7, 2017).

162. *Our Approach to Social Investment*, BIG SOC'Y CAPITAL, http://www.bigsocietycapital.com/social-investment-approach (last visited Mar. 7, 2017).

163. *Who We Invest in*, BIG SOC'Y CAPITAL, http://www.bigsocietycapital.com/what-we-do/investor/our-approach/who-we-invest (last visited Mar. 7, 2017). Perhaps the larger struggle in initiating a wholesaler of capital is funding the capital to the wholesaler in the first place. For Big Society Capital, the government enacted The Bank and Building Society Accounts Act of 2008, which authorizes the release of money from dormant accounts held by English banks and building societies. Dormant Bank and Building Society Accounts Act 2008, c. 31 (Eng.), http://www.legislation.gov.uk/ukpga/2008/31/contents. The Reclaim Fund receives the funding but keeps enough to meet reclaims from any account holders. *Id.* The surplus funds go toward the Big Lottery Fund, which in turn releases the English portion of the funds to the Big Society Trust to invest in Big Society Capital. *Id.*

While this law significantly influenced Big Society Capital and impact investing in the United Kingdom, the United States may not have the same option available. Additionally, reputable banks could contribute to the wholesaler, but this mirrors more of a charity than an innovative way to utilize dormant capital. *See infra* note 166 and accompanying text.

164. *Who We Invest in*, *supra* note 163. Wholesalers should aim to invest with a co-investor to achieve the greatest impact. *Id.*

comfortable with "unconventional" investments.[165]

One leading example of a wholesaler is Big Society Capital, a social investment financial institution initiated by the United Kingdom in 2012 to develop a range of impact intermediaries and ensure new sources of income in the market.[166] Big Society Capital largely increased the understanding of impact investing among the major organizations and actors in the United Kingdom.[167] Within its first two years, Big Society Capital committed £150 million to a total of thirty-one various social impact investment managers (and one social bank) to deploy secured debt and equity or unsecured debt.[168] Additionally, it attracted third parties willing to equally match investments.[169] Mainstream investment managers also received help from Big Society Capital in setting up joint ventures involved with impact venture funds or the United Kingdom Social Bond Fund.[170] In supporting Retail Charity Bonds and the U.K.'s first retail social investment offering, Big Society Capital even enabled charity bonds to be listed on the London Stock Exchange.[171]

Big Society Capital's role in the United Kingdom is instructive for the United States.[172] By creating a wholesaler focused on exploring new types of capital and emerging investment opportunities, as well as facilitating deals and exit opportunities, it would spur attention and demand by larger investors toward impact investing.[173] With the help of existing banks, such as J.P. Morgan, which launched a unit specifically on social sector finance, a "champion" wholesaler would be able to offer services to investors and link

165. MONITOR INST., *supra* note 8, at 19, 21; *see also* SIIT, *supra* note 44, at 24.

166. MONITOR INST., *supra* note 8, at 24–25; SIIT, *supra* note 44, at 21; *see also* N. TR. CORP., *supra* note 16, at 28. To fund Big Society Capital, £400 million of dormant bank assets were collected through an independent Reclaim Fund, in addition to £200 million in contributions by the United Kingdom's top banks: Barclays, Lloyds, HSBC, and RBS. SIIT, *supra* note 44, at 25.

167. SIIT, *supra* note 44, at 25 (elaborating on Big Society Capital's work in "unlock[ing] innovation and entrepreneurship in a new generation of organisations and individuals tackling social issues across the [U.K.]").

168. *Id.*

169. *Id.*

170. *Id.* LGT Venture Philanthropy and Threadneedle are examples of managers Big Society Capital joined forces with to advance impact investing. *Id.*

171. *Id.* Retail Charity Bonds allows charities to access unsecured loans and retail eligible bonds. RETAIL CHARITY BONDS, http://www.retailcharitybonds.co.uk/ (last visited Mar. 7, 2017). It also provides an opportunity for ethical investments in projects with social benefit. *Id.*

172. SIIT, *supra* note 44, at 25.

173. MONITOR INST., *supra* note 8, at 63.

them with effective intermediaries.[174] With so few in existence, building trustworthy intermediaries would "reduce risk and transaction costs and provide verification, monitoring, and other infrastructure" to investors.[175] Therefore, the U.S. government should designate a specialized wholesaler that in turn would increase the number of resourceful social impact intermediaries.[176]

2. Establish a Public Social Stock Exchange

Second, the government can strengthen the ecosystem of impact investing by constructing a public social stock exchange (SSE)—a trading platform that exclusively lists companies with a social or environmental purpose.[177] Although social businesses[178] have existed for some time, countries have only recently experimented with the emerging trend of SSEs.[179] Like the traditional stock market, SSEs permit investors to purchase shares in socially responsible corporations that align with their own personal missions and values.[180] SSEs are beneficial to all players in the impact industry, including governments.[181] The global SSEs receiving the most attention are: (1) the United Kingdom's Social Stock Exchange; (2) Singapore's Impact Exchange (the only *public* social exchange in the market); (3) Canada's Social Venture Connexion; and (4) South Africa's Social Investment Exchange.[182] Each SSE has its unique characteristics, but

174. SIIT, *supra* note 44, at 25; MONITOR INST., *supra* note 8, at 63 ("Trusted intermediaries that can aggregate and vet projects would enable investors to participate in a more scalable manner.").

175. MONITOR INST., *supra* note 8, at 63.

176. *See supra* note 165 and accompanying text. Big Society Capital worked alongside the government in extending the same tax incentive in venture capital trusts that attracts several hundred million pounds per year to social impact funds. SIIT, *supra* note 44, at 25. The United States National Advisory Board also advises designating a third party, similar to Big Society Capital, to regularly review policy, regulations, capital programs, and tax credits to identify key bureaucratic barriers to impact investing. NAB, *supra* note 35, at 25. This would construct an "ongoing action plan" and could potentially be merged with government processes. *Id.*

177. SIIT, *supra* note 44, at 21.

178. *See supra* notes 123–25 and accompanying text.

179. Bandini Chhichhia, *The Rise of Social Stock Exchanges*, STAN. SOC. INNOVATION REV. (Jan. 8, 2015), http://ssir.org/articles/entry/the_rise_of_social_stock_exchanges.

180. *Id.*

181. *Id.*

182. *Id.* Singapore's Impact Exchange was strategically launched as a joint initiative with the African Stock Exchange of Mauritius. Nicole Motter, *Stock Exchanges for Social Enterprises? Here's Where You Can Find Them*, FORBES (Mar. 27, 2014), http://www.forbes.com/sites/

the commonality is the prerequisite of either demonstrating a core aim of social or environmental impact or passing a social impact test before a company can be listed on the exchange.[183]

In the United States, Mission Markets was launched in 2010 as an online private capital marketplace for impact investments.[184] While Mission Markets enables registered investors to connect with socially minded companies, it is distinguishable from the rest of the SSEs because it does not attempt to overcome the regulatory hurdles to become an independent public social exchange.[185] Further, Mission Markets is less of a "true" social enterprise because it allows any company that incorporates social responsibility into the business model to be listed on the exchange, rather than only permitting those that place it as a top priority.[186]

Because a public SSE does not currently exist in the United States, the impact investing industry would immensely progress if the government initiated one.[187] In addition, a public SSE would provide an opportunity for policy and legislative change.[188] For example, given the minimal guidance in benefit corporations, a public SSE would place stricter requirements and accountability on social businesses before they could be listed on the exchange.[189] Additionally, impact investors face the collective problem of a lack of exit opportunities in impact investments.[190] By enacting a public

ashoka/2014/03/27/stock-exchanges-for-social-enterprises-heres-where-you-can-find-them/#2fda05b5d5c7. The reason why so many other nations have not developed an official public SSE is mainly due to the lack of accreditation metrics to ensure all companies truly have the purpose of reaching a social or environmental outcome. Chhichhia, *supra* note 179. Social companies in Singapore and South Africa are required to have an explicit social purpose, and thus, accreditation is simpler to monitor. *Id.* In comparison, the only current U.S. version of an SSE, Mission Markets, does not require that the company be *primarily* focused on a social purpose. *See infra* note 186 and accompanying text.

To improve accreditation and valuation standards, the United States should adopt France's Finansol labeling system or utilize the same B Corporation standard that Canada requires on its SSE. *See infra* note 246; *see also* Motter, *supra*.

183. Chhichhia, *supra* note 179.

184. Motter, *supra* note 182.

185. *Id.*

186. *Id.*

187. *See* SIIT, *supra* note 44, at 21–22.

188. Chhichhia, *supra* note 179.

189. *Id.*

190. SIIT, *supra* note 44, at 21. "Suitable exit options" was one of the top three challenges in the GIIN's 2016 survey of impact investors. MUDALIAR ET AL., *supra* note 138, at 9. Likewise, the U.S. National Advisory Board suggests the government clarify standards for exiting PRIs because

SSE, the prospects of exits and routes to liquidity would be easier and more reassuring to interested investors.[191] While additional measures would need to be implemented in the long run to structure an independent public SSE, it is the government's "responsibility to create positive ecosystems for SSEs so that they become not just another fad, but [instead,] a normal way of living and thinking on par with traditional markets."[192]

As the demand for impact investing grows, the government should respond by providing oversight and implementing industry standards.[193] The government needs to evaluate its crucial role in supporting the constituent parts of the impact investing ecosystem to push the industry to the next level.[194]

B. Become an Impact-Seeking Purchaser and Market Participant to Raise Capital

Not only does the government have a duty to develop the infrastructure of social investing, but it also should become an "impact-seeking purchaser" to leverage capital and support social entrepreneurs.[195] Beyond providing oversight, the government can actively participate in impact investing by working with social enterprises through social impact bonds—similar to the United Kingdom's government's role in the Peterborough Social Impact Bond—agreeing in advance to "purchase" specific social outcomes.[196] In seeking out pay for success contracts to collectively tackle social or environmental problems with other for-impact organizations, the government would allow investors to contribute capital and potentially make a return on investment.[197] This, in effect, would benefit society and ultimately bring more attention to the success of social impact bonds and

the perception is that they lack flexibility and investors are concerned about violating expenditure responsibility. NAB, *supra* note 35, at 25.

191. SIIT, *supra* note 44, at 21.

192. Chhichhia, *supra* note 179.

193. SIIT, *supra* note 44, at 4.

194. *Id.*

195. *Id.*; *see also* Smith, *supra* note 153 (arguing it is the government's responsibility to help the market flourish).

196. *See infra* note 203 and accompanying text (explaining how the government teamed with Social Finance to reduce prison reconviction through investments in the Peterborough Social Impact Bond); *see also* NAB, *supra* note 35, at 10.

197. SIIT, *supra* note 44, at 3–5.

impact investing overall.[198]

1. Engage the Market as an Outcomes Commissioner by Entering into Pay for Success Contracts

If the government is going to take impact investing seriously, it has a job as a market participant to "start unleashing some of that latent potential," which ultimately relies on how the government contracts and commissions services.[199] As a key actor and large purchaser of social services, the government can increase its effectiveness in this area by becoming a "commissioner[] of outcomes."[200] This occurs when a purchaser—whether a government, corporation, or philanthropic foundation—of a certain social outcome enters into an agreement with an impact-driven organization that is financed by its own investors or possibly aided through a professional intermediary.[201] These contracts are known as pay for success contracts and are often financed by social impact bonds.[202]

For instance, the Peterborough Social Impact Bond—the first ever social

198. *Id.* at 36 ("[Social Impact Bonds] are a new model for public private partnership that attract private investment and align incentives towards achieving social outcomes.").

199. Smith, *supra* note 153.

200. SIIT, *supra* note 44, at 2–3 (finding that the government as an impact-seeking purchaser could provide a source of revenue not readily available in impact-driven organizations). In recent years there has been a shift of focus in the public policy arena, placing greater emphasis on paying for services through outcome payments and measuring the social outcome of those services. *Id.* at 10. As a result, the government will reduce future dependency on government-funded services and can even reduce taxpayer costs. *Id.* To demonstrate this concept, consider the following average costs per year the U.K. government pays: £60,000 to support child care; £20,000 to keep a first-time young offender in jail; £10,000 toward someone on unemployment benefits. Smith, *supra* note 153. Computing to American dollars, this totals to approximately $130,000 in government spending, but if the government instead funded impact investment organizations dedicated to reaching a particular social outcome, adopting a preventative approach would greatly limit expenditures on ineffective programs. SIIT POLICY LEVERS & OBJECTIVES, *supra* note 154, at 10.

201. SIIT POLICY LEVERS & OBJECTIVES, *supra* note 154, at 10.

202. *Id.*; *see also supra* notes 78–85 and accompanying text. Pay for success contracts can be extremely beneficial to the government and economy overall, particularly because the government is only required to pay if the social outcome is achieved. SIIT, *supra* note 44, at 11–12; *see also supra* note 85 and accompanying text; Smith, *supra* note 153 (noting investors bear the risk by paying upfront to deliver services, thus taking burdens off taxpayers). Social impact bonds are not traditional bonds. N. TR. CORP., *supra* note 16, at 25. Although they have a fixed period of time, they do not provide a fixed rate of return to investors and are contingent upon achievement of a particular social outcome. *Id.*

impact bond project—is a pioneering example with positive results.[203] Social Finance launched the project in 2010 to reduce prisoner recidivism in Peterborough prison.[204] Within four years, the Peterborough bond project reduced reoffending by 8.4%, providing tangible evidence that social impact bonds are successful tools of impact investing.[205] Not only was Peterborough's rehabilitation program effective for ex-offenders in Peterborough, but it also caused the Ministry of Justice to launch the Transforming Rehabilitation program to extend similar services to all prisoners in the United Kingdom.[206] More importantly, the achievements of

---

203. SIIT, *supra* note 44, at 14. Social impact bonds present a new model for governments to improve social outcomes. SOCIAL FINANCE LTD., SOCIAL IMPACT BONDS ARE AN INNOVATIVE WAY OF ATTRACTING NEW INVESTMENT THAT BENEFITS INDIVIDUALS AND COMMUNITIES 1, http://www.socialfinance.org.uk/wp-content/uploads/2015/05/Introduction-to-Social-Impact-Bonds.pdf (last visited Mar. 8, 2017). For the Peterborough Social Impact Bond, Social Finance and its partners calculated the financial value to the government in preventing prisoner reoffending in the United Kingdom, assessed how much investment was needed to deliver a social intervention, and identified the risks to investors in the case that the intervention was not successful. *Id.* Once Social Finance created the bond and agreed with the government on an outcome goal of a 7.5% reduction rate after six years, those interested in supporting the cause could invest as if investing in a conventional bond. *Id.* at 2. If the rate is met, the government commissioner will repay the initial investment back to the investors, *plus* an additional return for taking the financial risk. *Id.* On the other hand, if the threshold goal is not met, the investors will lose their entire investment. *Id.*

After social services were provided to the released prisoners through the Peterborough Bond, outcomes were measured from a control group of 1000 individuals, monitoring their reconviction history for two years after being released. SOCIAL FINANCE, DESIGNING OUTCOMES METRICS FOR AN OUTCOMES-BASED CONTRACT 2, http://www.socialfinance.org.uk/wp-content/uploads/2015/06/Case-Studies.pdf (last visited Mar. 8, 2017). Four years into the bond term, the results demonstrated an 8.4% reduction rate, meaning the project was on course to meet the 7.5% outcome goal that would provide investors a positive return on their investment. *Id.*; MINISTRY OF JUSTICE, PETERBOROUGH SOCIAL IMPACT BOND HMP DONCASTER 2, (2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341682/pbr-pilots-cohort-1-results.pdf.

204. SIIT, *supra* note 44, at 14; *see also* N. TR. CORP., *supra* note 16, at 26. Short-sentenced prisoners in the United Kingdom became an ongoing challenge for the state because they were more likely to be reconvicted than any other group. *Criminal Justice*, SOC. FIN., http://www.socialfinance.org.uk/impact/criminal-justice/ (last visited Mar. 8, 2017). Whether caused by homelessness, mental health issues, or substance abuse, the ex-prisoners would soon find themselves back in jail. *Id.* Unfortunately, U.K. government support was not enough to "break the cycle of crime." *Id.* In response, Social Finance (and six other organizations) used the funds from the bond to provide rehabilitation services to released prisoners, including medical services, accommodation, employment and training, benefits, family support, and financial advice. *Id.* So far, the program has helped 3,000 males at Peterborough prison find stability and a life away from crime. *Id.*

205. N. TR. CORP., *supra* note 16, at 26 (explaining that the Ministry of Justice would pay investors a share of the savings if the rate reduced by 7.5% after six years); *see also* Ganguly, *supra* note 153. Social Finance provided the data in a press release in August 2014. *Id.*

206. Ganguly, *supra* note 153 (stating the Peterborough pilot made enormous impact on wider

the Peterborough pilot sparked global excitement contributing to the seventy-four social impact bonds currently in place around the world—addressing areas such as adoption, homelessness, and child protection.[207]

2. Approve Social Impact Bond Strategies in the United States

In the United States, several states and cities have introduced or are in the process of introducing social impact bonds.[208] In light of this progress, the Obama administration repeatedly proposed a $300 million fund in the White House Fiscal Year Budget to incentivize state and local governments to develop additional pay for success projects.[209] This funding was included in the Social Impact Bond Act introduced to the House of Representatives in June 2014, but was ultimately not enacted.[210] Simultaneously, in July 2014, a similar proposal, called the Pay for Performance Act, was introduced to the

---

policy decisions).

207. SIIT POLICY LEVERS & OBJECTIVES, *supra* note 154, at 14; *see also Impact Bond Global Database*, SOC. FIN., http://www.socialfinance.org.uk/database/ (last visited Mar. 25, 2017) (showing that over seventy impact bond projects are also in the development stage in several countries).

208. Kristina Costa, *Fact Sheet: Social Impact Bonds in the United States*, CTR. FOR AM. PROGRESS (Feb. 12, 2014), https://www.americanprogress.org/issues/economy/report/2014/02/12/84003/fact-sheet-social-impact-bonds-in-the-united-states/. In 2012, New York City initiated the first social impact bond in the United States to reduce reoffending juvenile prisoners. *Id.* Following suit, the State of New York launched its own comparable social impact bond. *See supra* note 84 and accompanying text. Utah and Massachusetts also started pay for success programs to fund early childhood education and address chronic homelessness. *See* Costa, *supra*.

Many well-known supporters of social impact programs include Goldman Sachs, the Rockefeller Foundation, and Michael Bloomberg. N. TR. CORP., *supra* note 16, at 26. In fact, the Kennedy School of Government, with the support of the Rockefeller Foundation, established the Social Impact Bond Technical Assistance Lab (now called the Government Performance Lab) in 2011 and helped New York and Massachusetts become the first states to employ the pay for success model. *Id.*; *see also The Government Performance Lab*, HARV. KENNEDY SCH. GOV'T, http://govlab.hks.harvard.edu/gov-lab (last visited Mar. 8, 2017). Since then, the Government Performance Lab has worked with several other states and cities, including Chicago, Colorado, Connecticut, Denver, Illinois, Michigan, Ohio, and South Carolina. *Id.*

209. NAB, *supra* note 35, at 29; Oertel et al., *supra* note 35, at 705–06. The fund was partially modeled on the Social Outcomes Fund in the United Kingdom and would be administered by the Treasury Department. Oertel et al., *supra* note 35, at 706. The White House proposed the same concepts in the 2012–2016 proposal budgets, but never included them in the final budgets. *Id.* at 705 ("[N]or did the proposals garner significant public focus."); *see also* OFFICE OF MGMT. & BUDGET, FISCAL YEAR 2016 BUDGET OF THE U.S. GOVERNMENT 80 (2015), https://www.gpo.gov/fdsys/pkg/BUDGET-2016-BUD/pdf/BUDGET-2016-BUD.pdf.

210. Social Impact Bond Act, H.R. 4885, 113th Cong. (2d Sess. 2014).

Senate, but was not enacted either.[211]

These budgets should be proposed again to the new Congress, and Congress should capitalize the funding for these pay for success strategies.[212] If approved, state and local governments would be more motivated to implement social impact bonds that address an array of social problems—from education to job training to criminal justice.[213] Additionally, pay for success contracts would encourage collaboration between nonprofits, private investors, and governmental agencies to better leverage capital and form innovative investment products in the social sector.[214] The government would thus move from merely being a market enabler to being a market participant, engaging in the purchasing of social outcomes and impact investments.[215] Not only does this opportunity stream wealth back into disadvantaged areas, but it could also create "a human interface between [two] polari[z]ed worlds . . . bringing the city to the inner city, and Wall Street to poorer streets."[216]

C. Implement National Incentives to Attract Private Investors

Lastly, to encourage new impact investors, the government should utilize tax incentives to increase the flow of regulation-advantaged and tax-advantaged capital.[217] Alterations in government policy and taxation in the

211. Pay for Performance Act, S. 2691, 113th Cong. (2d Sess. 2014).

212. NAB, *supra* note 35, at 29.

213. Oertel et al., *supra* note 35, at 706.

214. N. TR. CORP., *supra* note 16, at 27. *But see id.* (arguing opponents of social impact bonds believe only the safer programs would actually receive funding and that the more innovative, riskier programs would not attract capital from investment-first investors). Judith Rodin, President of the Rockefeller Foundation, stated, "social impact bonds offer a win-win-win proposition for governments that can provide well-proven interventions without using tax dollars, for local organizations that can take their programs to scale, and for investors that can get both a social and financial return." *Id.* at 25.

215. SIIT POLICY LEVERS & OBJECTIVES, *supra* note 154, at 4.

216. Smith, *supra* note 153.

217. SIIT POLICY LEVERS & OBJECTIVES, *supra* note 154, at 25. In a 2011 report by Ipsos MORI, the research concluded that commitments to social investments by "actively interested" high net worth individuals were influenced by tax incentives. WORTHSTONE & WRAGGE & CO LLP, THE ROLE OF TAX INCENTIVES IN ENCOURAGING SOCIAL INVESTMENT vii (Mar. 2013), https://www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Documents/research-2013/the-role-of-tax-incentives-in-encouraging-social-investment-WebPDF.pdf. Further, "passively interested" wealthy individuals identified six motivations that would cause them to make a social investment; creating a reasonable tax incentive was the primary motivation. *Id.* at

past have been crucial in driving supply for impact investing.[218] The NMTC, for example, puts approximately $3.5 billion worth of investments into underserved communities each year.[219] Likewise, the CRA "has proved [to be] a powerful regulation-advantaged" device, channeling a total of $55 billion through CDFIs within 2013 alone.[220] Tax incentives are the most broadly used government instrument to promote investments in desired sectors.[221] Thus, the lack of incentives is a barrier to bringing new investors into impact investing and, if removed, would boost an appetite for social investment from wealthy individuals.[222]

1. Fund Government Agency Programs to Encourage Private Capital

Because impact investments are slightly riskier than commercial investments, moderately small public funding is one way the government can mitigate this risk and incentivize private investors.[223] For example, since 2002, the Department of Education has assisted charter schools—which could not otherwise access local tax base revenue or municipal bonds—receive grants through the Charter School Credit Enhancement Program "for the purpose of obtaining, constructing, and renovating facilities."[224] Within the first decade, the program gave approximately $243 million in credit guarantees, helping "approximately 8 percent of charter schools nationwide" leverage a total of $3.19 billion in total financing.[225] Contrary to private lenders' perceptions, less than 1% of funds awarded went into default,

---

vii, 18.

218. MONITOR INST., *supra* note 8, at 27. In the United Kingdom, tax incentives were offered through the Enterprise Investment Scheme and the Venture Capital Trust to raise approximately £800 million (over $1 billion) of venture capital from high net worth individuals. WORTHSTONE & WRAGGE & CO LLP, *supra* note 217, at viii.

219. SIIT, *supra* note 44, at 25; *see also supra* notes 101–04 and accompanying text.

220. SIIT, *supra* note 44, at 25; *see also supra* notes 96–100 and accompanying text.

221. Baily, *supra* note 25, at 475 (asserting the countries consistently rated with the best "enabling environments" are those that offer tax breaks).

222. WORTHSTONE & WRAGGE & CO LLP, *supra* note 217, at vii; *see also* Katie Gilbert, *How to Help the U.S. Government Help Impact Investing*, INSTITUTIONAL INV. (July 1, 2014), http://www.institutionalinvestor.com/Article/3356882/Asset-Management-Macro/How-to-Help-the-US-Government-Help-Impact-Investing.html#/.Vq--UzYrLdQ (finding tax incentives could sway interest of high-net worth individuals—currently an untapped area of possible financiers).

223. NAB, *supra* note 35, at 31.

224. 34 C.F.R. § 225.1 (2005).

225. *Performance*, U.S. DEP'T EDUC. (Feb. 3, 2014), http://www2.ed.gov/programs/charterfacilities/performance.html.

proving that charter schools are not necessarily risky borrowers.[226] Consequently, private lenders will become more inclined to provide loans to charter schools without using government credit enhancements.[227]

Several other government agency programs provide excellent models the government should replicate to stimulate private investment.[228] Launched in 2011, the Impact Investment Fund seeks "to support the growth and development of America's impact investing industry."[229] The SBIC Initiative is committed to providing $1 billion to Impact SBICs willing to deploy 50% or more of their own invested capital toward impact investments.[230] Importantly, this is at *no cost* to taxpayers.[231] The OPIC—the largest impact investor in the U.S. government—approved financing $875 million into impact investing, with $285 million funded by the government, and the remaining $590 million co-invested by private sources.[232]

Continuing to support these programs will help fill gaps and mature the impact investing industry until the government's funding can be fully replaced by the private sector.[233] The development of many other industries, from microfinance to private equity, required government funding at an early period before attracting a wave of investors.[234] While crucial for initial market growth, government participation "is likely to pay off as private investors . . . gradually fill the shoes of the government as projects

226. *Id.*; *see also* EWING MARION KAUFFMAN FOUNDATION, DEBUNKING THE REAL ESTATE RISK OF CHARTER SCHOOLS 1 (2005), http://sites.kauffman.org/pdf/CharterSchools071805E.pdf (finding that "landlords and real estate lenders . . . may perceive the schools as much riskier clients than they actually are").

227. *Performance*, *supra* note 225.

228. NAB, *supra* note 35, at 31.

229. *Impact Investment Fund Overview*, U.S. SMALL BUS. ADMIN., https://www.sba.gov/content/impact-investment-fund-overview (last visited Mar. 8, 2017). The purpose of the fund is to "(i) maximize financial return for their investors, and (ii) generate measurable social, environmental or economic impact." *Id.*

230. NAB, *supra* note 35, at 31.

231. *Id.*

232. OPIC 2014 ANNUAL REPORT 17 (2014), https://www.opic.gov/sites/default/files/files/opic-fy14-annual-report.pdf; *In Historic Commitment to Impact Investing, OPIC Board Approves $285 Million for Six Funds Catalyzing $875 Million in Investments*, OPIC (Oct. 27, 2011), https://www.opic.gov/press-releases/2011/historic-commitment-impact-investing-opic-board-approves-285-million-six-funds-c [hereinafter *OPIC Commitment to Impact Investing*].

233. *OPIC Commitment to Impact Investing*, *supra* note 232.

234. Baily, *supra* note 25, at 469.

mature."[235] Thus, the government's time-limited incentives and small investments—utilized to shift the risk–return balance—should remain intact until there is a substantial influx of private capital.[236]

2. Review the Tax Code and Implement Deductions to Encourage Larger Participation

A second approach the government should take to incentivize private investors is to reshape the federal tax code.[237] Although politically challenging, tax reform would allow the government to seize opportunities in impact investing and spur larger intrigue in the movement.[238] Historically, many federal tax credit programs, such as the Low-Income Housing Tax Credit (LIHTC) or New Markets Tax Credit (NMTC), have buoyed large amounts of private income into impact investments.[239] As "the most successful affordable rental housing production program in U.S. history," the LIHTC not only produced over 2.5 million affordable apartments, but also raised close to $100 billion in private investment capital in the process.[240] Likewise, NMTC, "a cornerstone of support for impact investing . . . leverag[ed] $8 in private capital for every $1 invested and created over 500,000 jobs."[241]

Mirroring these programs, Congress should review the tax code and implement deductions to influence larger participation in the field of impact

235. *Id.* (discussing the use of government subsidies and guarantees to encourage investment in green initiatives and climate finance).

236. NAB, *supra* note 35, at 31.

237. NAB, *supra* note 35, at 35.

238. *Id.*; *see also* WORTHSTONE & WRAGGE & CO LLP, *supra* note 217, at 17. Explaining why "tax incentive[s] may be a motivation for actively interested [high net worth individuals]." The Ipsos MORI report gave four reasons: (1) as a "[j]ump start" to effectively nudge investors; (2) to create public awareness and signal the worth of social investments; (3) to share "not just the cost with the government but also some of the benefit;" and (4) as a financial offset to broadly "appeal to those that want to pay less tax." WORTHSTONE & WRAGGE & CO LLP, *supra* note 217, at 17.

239. NAB, *supra* note 35, at 35.

240. *Id.*; *see also Low Income Housing Tax Credit*, NAT'L ASS'N HOME BUILDERS, https://www.nahb.org/en/research/nahb-priorities/low-income-housing-tax-credit.aspx (last visited Mar. 8, 2017).

241. NAB, *supra* note 35, at 35 (remarking that the CDFI fund raised over $36.5 billion between 2000 and 2014 because of the NMTC). The United States National Advisory Board strongly recommends continual government support for the LIHTC and NMTC initiatives and requests the government to permanently enact the NMTC. *Id.*; *see also supra* note 102.

investing.[242] For instance, Congress could provide a tax reduction in capital gains rates on impact investing products to the benefit of private investors.[243] Additionally, a charitable tax deduction would enable impact investors to write off losses, thereby decreasing risk and ultimately encouraging investing.[244] For impact-driven social enterprises, Congress could offer tax relief by modestly lowering corporate tax rates (as provided to other social-sector organizations and charities).[245] While these policy levers involve further research and higher accreditation standards of social impact organizations, tax deductions would benefit the social investment sector in securing a wider market share and "compet[ing] at scale with mainstream counterparts."[246]

---

242. NAB, *supra* note 35, at 35; *see also* MONITOR INST., *supra* note 8, at 47 ("Policy change has been a common ingredient in the evolution of many other industries, including venture capital and private equity, and will be an important way to create incentives to draw an even broader range of investors to engage in investing for impact."). The underlying issue is *where* the provision of capital will come from. WORTHSTONE & WRAGGE & CO LLP, *supra* note 217, at 8. In the past, the government, foundations, or trusts traditionally provided funding, but the industry is in need of new investors to increase demand. *Id.* The "sweet spot" is to motivate passively interested high-net-worth individuals who find tax incentives as the trigger that would encourage them to engage in social investing. *Id.* at 18. In the United Kingdom, Ipsos MORI's survey estimated a 25% increase in private investment if tax relief barriers were removed. *Id.* at 22.

243. NAB, *supra* note 35, at 35.

244. *Id.*

245. SIIT POLICY LEVERS & OBJECTIVES, *supra* note 154, at 18; NAB, *supra* note 35, at 35.

246. WORTHSTONE & WRAGGE & CO LLP, *supra* note 217, at 19 (adding "access to capital is critical to [the industry's] survival."). If tax relief is offered to social impact enterprises, it should be restricted to *qualifying* organizations with an explicit social purpose. *Id.* at 38. The tax incentive should appropriately target these organizations by containing a flexible yet specific definition to prevent non-impact investing companies from accessing the tax deduction. *Id.* To effectively apply this standard, the government should support the establishment of a labeling system, which would identify social impact products. SIIT POLICY LEVERS & OBJECTIVES, *supra* note 154, at 22.

In France, the Finansol label is assigned by a committee of experts and reassures the public that investments in certain impact products do actually produce social and environmental benefit. *Id.* The main accreditation standards to qualify for Finansol are "solidarity"—that the investment is made through a life insurance policy or mutual fund with 5%–10% of the fund's assets to be invested in for-impact businesses and the remaining 90%–95% to respect ESG criteria—and "transparency" with Finansol of all necessary information. *A Label, What for?*, FINANSOL, http://www.finansol.org/en/a-label-what-for.php (last visited Mar. 8, 2017).

Moreover, a labeling system like Finansol would also place accountability on organizations and products being offered in a public social stock exchange. *See supra* notes 183, 189, and accompanying text.

V. IMPACT OR NO IMPACT IN IMPACT INVESTING

Several philanthropy experts consider the emergence of impact investing as one of the most promising methods of utilizing private resources to produce social benefits.[247] Because societal needs tend to surpass the capacity of governmental resources and traditional philanthropy, the impact investing industry is a vital component in filling the gaps, even in America's own backyard.[248] With coordinated effort by individual investors, for-impact organizations, and the government, impact investing may finally transition from "uncoordinated innovation" to "broad impact," perhaps over the next five to ten years.[249] In this amount of time, the GIIN projects managed global assets to total $212 trillion, with impact investing consisting of an estimated $2 trillion (or 1% of the world's financial assets) and $600 billion coming from U.S. philanthropy.[250]

However, for as many advocates who are confident in impact investing, there is an equal number of critics who hold doubts that the industry will achieve the social and financial returns investors expect.[251] For example, many fear that the risk of investing for impact will be too difficult to fully evolve.[252] Barriers to investing may become persistent obstacles, and "insufficient compensation for risk" could ultimately cause a lack of interest in the industry.[253] Also, there is the potential that impact investing may be too easy—that the definition would become so diluted that socially responsible investing would become a "'feel good' rather than a 'do good'

247. N. TR. CORP., *supra* note 16, at 1.

248. *Id.*

249. MONITOR INST., *supra* note 8, at 13. Although the government may not be the sole actor, it has a fundamental purpose in the impact investing market to create an "enabling environment for private sector-led social impact investment." SIIT POLICY LEVERS & OBJECTIVES, *supra* note 154, at 9.

250. *What You Need to Know About Impact Investing: How Big Is the Impact Investing Market?*, GIIN, https://thegiin.org/impact-investing/need-to-know/#s8 (last visited Mar. 8, 2017). Sir Ronald Cohen, chairman of the SIIT, who is considered the "father of social investment," has faith that the global impact investing market could grow as large as $3 trillion. NAB, *supra* note 35, at 13; Ana LaRue, *Investing with a Purpose*, MAXIMPACT ECOSYSTEMS, http://maximpactblog.com/investing-with-a-purpose-a-detailed-look-at-the-san-francisco-bay-area-impact-investing-landscape/ (last visited Mar. 8, 2017).

251. N. TR. CORP., *supra* note 16, at 34.

252. MONITOR INST., *supra* note 8, at 35.

253. *Id.* at 6, 35 (stating that "sloppy execution" and "hype" may cause disappointment and insufficient funding if investors give up too soon).

exercise."[254] Additionally, the "hype" for "do good" investments could create a bubble, especially if there is large enthusiasm for the field before proof of social impact, or if there is a false expectation of financial return.[255]

Yet, with the help of major players in the impact investing industry, most of these potential failures can be mitigated or overcome completely.[256] Engaging the issues head on, the results of the government's active participation would entice high-net-worth individuals to choose impact investing over pure philanthropy or conventional investing.[257] New policies would incentivize additional capital into impact investing, and social considerations would become primary components of financial valuation.[258] The increase of investor interest would spur new, innovative products offered by wealth advisors and private banks, which in turn would develop intermediaries to manage a broader source of impact investing opportunities.[259]

Although in the past, mere philanthropy was the main tool used to address economic, social, and environmental challenges, going forward, impact investing is the pioneering solution to address these same challenges.[260] Developing the industry may be a long-term project, but it requires immediate action to improve legislation, build support, and help communities within the United States and around the world "harness the power of private capital and entrepreneurial ingenuity to make lives

254. *Id.* at 35. Temptations toward greenwashing are appealing to cut corners and still appear "green" at the surface, however, if the fraud is exposed to the public eye it could lead to substantial backlash in impact investments. *Id.* at 35–36; *see also supra* note 130 and accompanying text. *But see supra* note 189 and accompanying text.

255. MONITOR INST., *supra* note 8, at 35.

256. *Id.* at 36 ("Just as there are multiple ways to fail, there are many ways to succeed too.").

257. *Id.* at 37.

258. *Id.* at 38. Ideally, even financial first investors would find opportunities in investments that provide financial return and generate social impact. *Id.* at 59.

259. *Id.* at 36–37. Calvert Foundation's Community Investment Notes is an example of an innovative product created as a result of the increasing awareness of impact investing. *Id.* at 37. Investors place money into brokerage accounts, and every dollar invested goes to a professionally managed portfolio for for-impact enterprises aiming at various social causes. *Community Investment Note*, CALVERT FOUND., http://www.calvertfoundation.org/invest (last visited Mar. 9, 2017). Unique to these Notes is the ability for investors to target the investment toward a particular impact area Calvert Foundation focuses on. *Id.* Doing so does not make any difference to the amount of risk to the investor because credit risk is dispersed over the whole portfolio and shared by all investors. *Id.* In addition, foundations would become more savvy in utilizing endowment and program capital toward fulfilling their missions. MONITOR INST., *supra* note 8, at 59.

260. N. TR. CORP., *supra* note 16, at 34.

better."[261] While the actors in impact investing come from various backgrounds, they "are united behind a clear vision of the future, one in which the federal government supports a bold vision of impact investing as an important tool for promoting the public benefit."[262]

VI. CONCLUSION

Habitat for Humanity, in providing shelter for the poor, has improved living conditions for over 9.8 million Americans.[263] Because the government's solution for affordable housing falls short, impact investing is an effective alternative not only to address poverty, but to further improve social, environmental, and economic conditions in the United States.[264] With Habitat for Humanity and similar organizations leading the way for impact-oriented foundations and companies, one can only imagine the potential if the government plays a larger role in the future of impact investing.[265] Many groups in the United States, including the GIIN, the Monitor Institute, and the U.S. National Advisory Board, are making a difference by advocating for the federal government to get involved.[266] While these groups have made strides in the impact investing industry, there are still several areas of untapped opportunities for investors to participate in the movement.[267]

These opportunities, however, are blocked by barriers to investment and must be addressed by the federal government to maximize impact investing's potential.[268] To strengthen impact investing, the industry is in urgent need of additional framework, oversight, and infrastructure.[269] The

261. NAB, *supra* note 35, at 18. Social investment is a force for social change around the world "to build a better future for ourselves, for our children and for generations to come." N. TR. CORP., *supra* note 16, at 34.

262. NAB, *supra* note 35, at 17 (finding that to help the market thrive, strong partnerships must exist between entrepreneurs, private investors, foundations, intermediaries, and the government). The U.S. government can greatly advance the impact investing industry's market by removing barriers and enacting policy changes to serve a higher purpose, but it is important to note that "[n]either government nor philanthropy alone can solve our nation's biggest problems." *Id.* at 41.

263. *See supra* note 13.

264. *See supra* notes 1–5, 260, and accompanying text.

265. *See supra* notes 6–13 and accompanying text.

266. *See supra* notes 108, 134, 176, 190, 241, and accompanying text.

267. *See supra* Part IV.

268. *See supra* Section III.B.

269. *See supra* Section IV.A.

government should create a champion wholesaler of impact investments and establish an official public social stock exchange.[270] Additionally, it is essential for the government to engage in impact investing not merely as an observer or regulator, but also as a market participant.[271] In doing so, it should enter pay for success contracts and support social impact bond strategies in the United States.[272] Lastly, to incentivize additional investors toward impact investing, government agency programs should continue to be funded, and tax deductions should be implemented.[273]

Once the government realizes the positive social effects impact investing could have in America, it must pursue two main objectives to unlock the industry's full potential: reduce risk and incentivize investment.[274] Although the task sounds simple, it will take patience and diligence to revolutionize impact investing and bring it up to par with the resources, analytics, and reputation of conventional investments.[275] It is up to the American government to take on this task and encourage the concept of doing well while doing good.

Chelsea McGrath*

270. *See supra* Sections IV.A.1–2.
271. *See supra* Section IV.B.
272. *See supra* Sections IV.B.1–2.
273. *See supra* Section IV.C.
274. *See supra* note 25 and accompanying text.
275. *See supra* note 261 and accompanying text.

* J.D., 2017, Pepperdine University School of Law; Associate Editor, *Pepperdine Law Review*, Volume XLIV; B.S. Business Management, 2011, Biola University. Hats off to the *Pepperdine Law Review* staff who diligently worked on publishing this article. I also dedicate this article to my parents for all their love and support during this process, despite not knowing what Law Review means.

***