



Consumer Federation of America



March 5, 2012

JOBS Act Would Harm Investors and Hurt the Economy: Vote NO

Dear Representative:

We understand that the House expects to take up the Jumpstart Our Business Startups Act (JOBS Act) this week. We are writing on behalf of the Consumer Federation of America and Americans for Financial Reform (“AFR”) to express our strong opposition to this ill-conceived legislation, legislation that is more likely to drive up the cost of capital for small and emerging companies than it is to promote job creation. AFR is a coalition of over 250 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based and business groups along with prominent independent experts. As such, our organizations have a strong interest in ensuring that policy proposals to promote job growth don’t undermine the protections we rely on to keep our capital markets honest and transparent. The JOBS Act fails that test.

With millions of Americans still out of work in the wake of the recent financial crisis, we agree that an exploration of job creation strategies is timely. Moreover, given the central role that our capital markets play in the job creation process and the dramatic changes that have occurred in those markets over the past few decades, it is appropriate that any such review include a careful analysis of whether companies of all sizes and at all stages of development have access to the capital they need to grow and prosper. We are concerned, however, that the legislative proposals packaged together in the JOBS Act rely too heavily on anecdotal evidence of possible problems. These proposals represent an indiscriminate and ideologically driven dismantling of investor protections, not a genuine solution to the issues of capital access for small companies. As the bills have raced through the House, too little study has been devoted to determining the true underlying causes of the recent drop in small company IPOs to allow for appropriately targeted legislative solutions, and inadequate attention has been given to the implications of proposed regulatory changes for investors.

Because it misdiagnoses the problem and proposes a sweeping reduction in investor protections, the JOBS Act risks exposing investors to a new round of damaging fraud and abuse while undermining market transparency. Less reliable and transparent capital markets risk driving up the cost of capital for precisely those companies this legislation purports to benefit. This will harm, not help, our fragile economy. The following describes our specific concerns with each of the main components of the JOBS Act. In some cases, the flaws in the legislative proposals could be cured, or at least greatly ameliorated, through amendment. We urge you to take these concerns into account as you vote on this legislation.

IPO On-Ramp (H.R. 3606)

We strongly oppose this component of the bill, which legitimizes the idea that companies should be allowed to go public and raise money from average, retail investors without being able to meet basic standards designed to ensure that they provide those investors with accurate and reliable information on which to base their investment decisions. Moreover, because it ignores the real reasons that small companies have become less likely to opt for an early-stage IPO (changes in the profitability of small independent companies, the institutionalization of the markets, changes to Regulation D, and changes to the economics of the broker-dealer business model, to name a few), the IPO On-Ramp section of the JOBS Act exposes investors to increased risks without offering any realistic prospect of promoting sustainable job growth. It should not become law.

Among its many troubling provisions, this bill would give new companies, including all but the very largest such companies, up to five years to raise money from the public without complying with the SOX 404(b) requirement that a company's auditor include an assessment of the adequacy of the company's internal controls as part of the financial statement audit. Since the Sarbanes-Oxley Act was implemented, research has shown that requiring an independent audit of internal controls results in higher quality financial reporting, fewer restatements, and a lower cost of capital for companies that receive a clean opinion. Moreover, experience with implementation of SOX tells us that, absent an independent controls audit, all too many managers will attest to the adequacy of clearly deficient control systems. As a result, delaying implementation of the independent internal controls audit would significantly increase the risk that companies would face both a material weakness report and higher costs to fix inadequate controls once the independent audit requirement kicked in. For these reasons, companies as well as investors would be far better off building their systems to be SOX 404(b) compliant from the outset.

Like the provision to delay implementation of SOX 404(b), the proposal to weaken restrictions on research analysts ignores the widespread fraud and abuse that led to their adoption. Moreover, it ignores research suggesting the drop in analyst coverage has been exaggerated and other market changes – such as the disappearance of the boutique underwriting firms that used to specialize in small company IPOs – which have likely had a far greater impact. The legislation also includes a number of other special interest provisions that clearly have nothing to do with eliminating barriers to capital formation, such as delaying compliance with shareholder say-on-pay and golden parachute voting requirements as well as compensation disclosure requirements. And it includes an extremely poorly thought out proposal to delay implementation of accounting and auditing standards for new companies. The result of the latter proposal would be less transparent markets, with competing companies reporting financial data using different rules depending on whether they were an established or emerging company. Auditing would be less efficient as well, as audit firms would be required to train their auditors to comply with different auditing standards for different clients. Moreover, this represents an unwarranted attack on the independence of the standard-setting process with no evidence that compliance with either new accounting or new auditing standards undermines capital formation.

Crowd-funding (H.R. 2930)

Crowd-funding is a gimmick that offers little prospect of meaningful job creation and the significant risk that most individuals who invest in the highly speculative start-ups that rely on crowd-funding for capital will lose some or all of their money. That said, there is a very real

difference between the various crowd-funding bills that have been put forward in terms of their potential to protect investors from fraud and abuse. The version presented for consideration on the House floor represents the most dangerous and extreme of the three major crowd-funding bills currently being considered in Congress. The long history of ‘pump and dump’ and ‘boiler room’ schemes to defraud investors through manipulation of small company stocks shows the potential dangers here. As Columbia Law School Professor John Coffee said in testimony before the Senate Banking Committee, without added investor protections, the legislation should be renamed “The Boiler Room Legalization Act.”

If the House insists on moving forward with this risky experiment, it should at least adopt the more investor-friendly approach adopted in companion Senate legislation (S. 1970). Particularly important are S. 1970’s provisions to set an aggregate investment cap for crowd-funding investments, to require SEC registration and oversight of crowd-funding portals, to impose appropriate regulatory obligations on crowd-funding portals, and to preserve state authority. Making it easier for unsophisticated investors to risk their money in such highly speculative ventures is questionable policy at best. At the very least, we urge you to insist on inclusion of S. 1970’s provisions to ensure that crowd-funding doesn’t also become a mecca for fraud.

Regulation A Revisions (H.R. 1070)

This legislation dramatically increases the amount of capital that companies can raise from the public without triggering the full reporting and other obligations that go with registration. While we are open to legislative changes in this area, the approach adopted in the JOBS Act makes no effort to balance increased access to capital with appropriate investor protections. We prefer the approach adopted in the Senate companion (S. 1544), which includes improved up-front disclosures, periodic reporting, audited financial statements, SEC oversight, and a negligence-based litigation remedy. Even the Senate bill falls short of what we believe is needed to truly protect investors in these small offerings. As such, we believe the measure should be further amended by imposing a cumulative, multi-year cap on use of Regulation A exemption, reducing pressure on the SEC to raise the ceiling unless it finds that doing so is in the public interest, restricting the amount that the SEC could further increase the ceiling, and imposing a strict liability standard to better ensure accurate disclosures in this loosely regulated market. These changes would minimize the potential for investor harm while still significantly expanding access to Regulation A offerings.

Regulation D Revisions (H.R. 2940)

We strongly oppose this provision of the legislation, which would remove the prohibition on public solicitation of investors in the sale of unregistered offerings. We are sympathetic to the argument that the current media environment makes it all but impossible for companies in which there is significant media interest to abide by Regulation D restrictions. However, Regulation D offerings are an area that is already rife with abusive conduct. Any measure to address this issue must take both these problems into account. The provisions included in the JOBS Act do not reflect that balance.

Supporters of eliminating the general solicitation prohibition argue that, since sales are limited to sophisticated investors, it is unnecessary to also limit the means by which they can be sold. There are several fallacies embedded in that argument. First, the legislation as drafted is not limited to those Regulation D offerings that are sold strictly to accredited investors. Second, because of shortcomings in the definition of accredited investor, many accredited investors are not financially

sophisticated. Third, the North American Securities Administrators Association (NASAA), the association of state securities administrators, has documented extensive evidence of non-compliance with existing requirements. This problem would only get worse if current restrictions were loosened.

While this is an issue that deserves further attention, the current legislative proposal would create more problems than it would solve. It should be shelved while a more responsible and balanced approach to the issue can be developed.

Shareholder Thresholds (H.R. 2167, H.R. 1965, H.R. 4088)

We strongly oppose these provisions of the bill, which would make it easier for companies with a large number of highly dispersed investors to avoid providing the periodic disclosures on which transparent markets depend. The legislation does this by simultaneously raising the limit on the number of shareholders of record who can hold a stock without triggering reporting requirements and exempting employees who receive company stock through compensation plans from the count. In a particularly troubling provision, it would also allow banks to “go dark” if the number of shareholders of record dropped below 1,200. Moreover, the legislation would do all this without addressing the outdated and easily manipulated reliance on “shareholders of record” in making this determination.

As a general matter, we question the wisdom of reducing market transparency, as this legislation would do. Moreover, we’ve seen no clear explanation for why lifting these restrictions is necessary or justified. At most, eliminating employees from the shareholder count would seem to address the identified problem. At the very least, if you move forward with this questionable proposal, we would urge you to use a measure, such as beneficial owner, that is less subject to manipulation and less likely to permit even very large companies with large numbers of investors to evade basic reporting requirements. Ideally, we encourage you to give this issue further study before taking action.

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Investors have endured an unremitting stream of scandals, frauds, and financial crises over the past decade. The effect on investor confidence has been devastating. Equally devastating has been the effect on the economy, capital formation, and jobs. A policy that relies on rolling back investor protections and undermining market transparency will not produce sustainable job growth and will instead further undermine investors’ confidence in the integrity of our capital markets. The very least investors deserve is a legislative package that balances measures intended to increase access to capital with appropriate investor protections. The JOBS Act fails that test. In an ideal world, it would be defeated. At a minimum, it should be amended to restore a modicum of balance.

Respectfully submitted,

Consumer Federation of America
Americans for Financial Reform

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International

- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club

- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Signers

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina

- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG

- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET

