

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS



815 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

RICHARD L. TRUMKA
PRESIDENT

ELIZABETH H. SHULER
SECRETARY-TREASURER

ARLENE HOLT BAKER
EXECUTIVE VICE-PRESIDENT

LEGISLATIVE ALERT!

(202) 637-5057

February 29, 2012

The Honorable Tim Johnson
Chairman, Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Richard Shelby
Ranking Member, Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Shelby:

On behalf of the AFL-CIO, I am writing to express our strong opposition to the so-called “capital formation” bills pending before the Committee, which would reduce regulatory protections for investors in many companies. These investor protections are critical to safeguarding the retirement savings of America’s workers from fraud and other risks. While the proponents of the “capital formation” bills claim they would promote jobs and economic growth, they would actually have the perverse effect of raising the cost of capital for all companies, by increasing the risk of fraud, and reducing the flow of information to investors.

The AFL-CIO opposes the following bills scheduled for consideration by the Committee:

The “Reopening American Capital Markets to Emerging Growth Companies Act” (S. 1933), which would let the vast majority of newly listed public companies delay compliance with a wide number of investor protections. S. 1933 would create dangerous new risks for investors by postponing the disclosure of audited financial statements, independent audits of internal controls, “say-on-pay” vote requirements, and restrictions on research analyst conflicts of interest.

The “Small Company Capital Formation Act” (S. 1544), which would increase the dollar limits on Regulation A offerings ten-fold and create a process for automatic increases every two years. Regulation A offerings allow companies to raise capital from the public without incurring the full reporting obligations of becoming a registered issuer. While S. 1544 includes enhanced investor protections for Regulation A offerings, a dollar limit on the amount that can be raised is needed to prevent abuses.

The “Access to Capital for Job Creators Act” (S. 1831), which would lift the Regulation D ban on public solicitation of accredited investors in unregistered securities. We are concerned that the existing definition of accredited investors includes many individuals who do not have the necessary financial expertise to properly evaluate the risks of Regulation D investments. Permitting the public solicitation of such investors through advertising and on the Internet will increase the risk of investor losses.

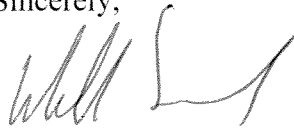
The “Democratizing Access to Capital Act” (S. 1791), which would let speculative start-up ventures raise money from small investors through so-called “crowdfunding” over the Internet. S. 1791 would increase the risk that small investors will be defrauded. While we question the need for legislation that enables crowdfunding, any such legislation must contain investor protections such as those included in the “Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act” (S. 1970).

The “Private Company Flexibility and Growth Act” (S. 1824), which would quadruple the permitted number of shareholders of record in private companies before such companies are required to register with the Securities and Exchange Commission (SEC). Because multiple beneficial shareholders can be counted as one “shareholder of record,” this bill will allow broadly-held companies to avoid going public. Instead, all beneficial shareholders should be counted to determine whether a company must register with the SEC.

Lowering regulatory standards will not promote capital formation or create jobs. Rather, experience shows that weakened securities regulations increase the danger of fraud and speculation. The U.S. should take heed of the experiments of other developed countries with lax regulatory standards that have created treacherous capital markets for investors, such as Canada’s now-defunct Vancouver Stock Exchange and the London Stock Exchange’s Alternative Investment Market.

In sum, these bills would weaken investor confidence in our capital markets by creating new and expanded loopholes in our securities laws. The U.S. capital markets are among the safest and most liquid in the world because they afford vigorous investor protections. These bills will create additional risks for investors and drive up capital costs, thereby offsetting any reduction in compliance costs for smaller companies. For these reasons, we urge you to side with investors and oppose these bills.

Sincerely,

A handwritten signature in black ink, appearing to read "William Samuel". The signature is fluid and cursive, with a large initial "W" and "S".

William Samuel, Director
GOVERNMENT AFFAIRS DEPARTMENT

cc: Members of the Senate Committee on Banking, Housing, and Urban Affairs