March 15, 2012

To Members of the U.S. Senate:

As the Senate begins consideration of the JOBS Act, we are writing on behalf of the Consumer Federation of America[1] and Americans for Financial Reform[2] to express our support for the Reed-Landrieu-Levin amendment and our opposition to the legislation unless that amendment is adopted. Our organizations strongly oppose the House JOBS Act (H.R. 3606) because, as a growing number of independent experts all agree, it would weaken important investor protections, undermine market transparency, and erode market integrity, all without offering the prospect of meaningful job growth. We were therefore deeply disappointed that the Senate chose to take up the House JOBS Act rather respond to the pleas from groups such as ours, AARP, AFL-CIO, NASAA, Council of Institutional Investors, and the current SEC Chairman to craft a more balanced and thoughtful jobs package that preserves vital investor protections.

Fortunately, the Reed-Landrieu-Levin amendment responds to those pleas. While it does not address every concern we have raised with the legislation, it does offer a vast improvement over the House bill. The following are among the most important of those improvements:

- **IPO On-Ramp:** While the House bill would have weakened investor protections, financial reporting regulations, and corporate governance requirements for all but the very largest IPOs, the Senate Democratic alternative takes a more targeted approach. It both limits the companies that would qualify as "emerging companies" to those with less than $250 million in gross revenue and by eliminating the House bill's exemptions from accounting rules, say-on-pay and golden parachute vote requirements, and executive compensation disclosures. And it provides somewhat greater protection than the House bill against a

[1] The Consumer Federation of America (CFA) is a nonprofit association of some 280 state, local and national organizations founded in 1968 to represent the consumer interest through research, education and advocacy.

[2] Americans for Financial Reform (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.

resurgence in the kind of abusive securities analyst practices that fueled the tech stock bubble and bust. In addition, it allows companies that wish to do so to opt out of the "emerging company" designation and fully comply with all public company regulatory requirements. While we do not, as a general matter, support allowing companies to go public without complying with requirements for an independent audit of internal controls over financial reporting, the Reed-Landrieu-Levin amendment nonetheless represents a major improvement over the House bill's IPO On-Ramp provisions.

- **Regulation A Reform:** In contrast to the House bill, which would dramatically hike the ceiling for offerings under Regulation A without offering any significant additional protections for investors, the Senate bill takes a much more balanced approach. It includes stronger pro-investor provisions from the Senate Reg A bill, including requirements for audited financial statements, SEC authority to require up-front disclosure and periodic reporting, and a negligence-based litigation remedy. Importantly, it improves on that bill by limiting companies to raising $50 million through Regulation A offerings over three years, rather than once every 12 months, thus significantly reducing the risk that this provision will be used to evade public reporting requirements for larger companies.

- **Crowd-funding:** Whether crowd-funding emerges as an innovative new way for very small companies to raise seed money or a new Internet-fueled mechanism for investment fraud depends heavily on how crowd-funding is regulated. Allowing direct issuer to investor solicitation over the Internet, and preventing appropriate regulation of crowd-funding portals, as the House bill would do, is a recipe for disaster. The Reed-Landrieu-Levin amendment takes important steps to minimize the potential for harm, in particular by requiring that crowd-funding be conducted through an appropriately regulated Internet portal and requiring offerings of all sizes to provide financial information to investors subject to regulatory requirements appropriate to the size of the offering. While we remain concerned over the potential for investor harm, this approach appropriately balances significant regulatory relief for very small issuers with preservation of important investor protections.

- **Shareholder Threshold:** While a major goal of the JOBS Act is to encourage more small companies to go public, the House bill would make it far easier for even very large companies to stay private by radically increasing the shareholder threshold that triggers SEC registration and public reporting requirements. The Senate bill offers a narrowly targeted and balanced approach that provides a more modest increase in the threshold, eliminates employees from the shareholder count, and includes beneficial owners in that count. By helping to ensure that companies with large numbers of highly dispersed investors are not able to evade registration and reporting requirements, this approach helps to preserve the market transparency upon which the efficient functioning of our markets depends.

- **Regulation D General Solicitation:** The House bill would remove the ban on general, public solicitation of investors in private offerings. This would not only make a mockery of the concept of a private offering, it would dramatically increase the risk of fraud and abusive sales practices in this market. The Senate bill, while it goes farther than we would like in lifting this ban, includes an important requirement that the issuer and offeror have reasonable protections in place to ensure that the offering is sold only accredited investors and it calls on the SEC to adopt rules governing such solicitations. While we remain concerned that many accredited investors lack the sophistication to analyze such offerings, this approach should help to rein in the most problematic practices. While imperfect, it is far preferable to the House language.

Our organizations greatly appreciate the attention that the sponsors have given to our concerns in crafting their amendment. A decade that started with the bursting of the tech stock bubble, that included massive and pervasive accounting and analyst scandals, and that ended with the worst financial crisis since the Great Depression has dealt a devastating series of blows to the U.S. economy, to small companies, and to the investors who provide the capital American enterprises need to grow and prosper. Rolling back investor protections and undermining market transparency, as the House JOBS Act would do, will only make the problem worse. This amendment, while imperfect, takes important steps to preserve investor protections. We and urge you to vote yes on the Reed-Landrieu-Levin amendment and to oppose the JOBS Act if this amendment is not adopted.