

19 March 2012

**URGENT: Strengthen JOBS Act Investor Protections**

**Vote YES on Cloture for Reed-Landrieu-Levin Substitute Amendment  
If that Fails, Vote NO on Cloture for the House Bill**

The Honorable \_\_\_\_\_  
U.S. Senate  
Washington, DC 20510  
(via email)

Dear Senator \_\_\_\_\_,

We are writing on behalf of the members of state Public Interest Research Groups to urge your opposition to cloture on the so-called JOBS Act, HR 3606, unless cloture is first approved on the **Reed-Landrieu-Levin Substitute Amendment** to restore critical investor protections in current law that the underlying Jobs Act would strip away.

**Vote YES on cloture for the Reed-Landrieu-Levin Substitute Amendment (SA 1833) and if that fails, please vote NO on cloture for the House Bill (HR 3606).**

As you know, the state PIRGs are non-profit, non-partisan public interest advocacy organizations which take on powerful interests on behalf of their members and have had a longstanding concern for the protection of small investors. Unfortunately, under the guise of a “JOBS” bill, the House bill would remove investor protections and place retirement savings – only now recovering slightly from the devastation wreaked by previous deregulation – at grave risk.

As many others have also pointed out, the JOBS Act was rushed through the House without any attention to its potentially devastating impact on investors, market transparency, and the integrity of our capital markets. In recent weeks, a growing number of experts have voiced grave concerns about the bill, including: current and former federal and state securities regulators; groups representing seniors, workers, investors, consumers, economists, and Main Street businesses; and a number of leading securities law scholars and IPO experts. The issues they have raised are far too important to the health of our economy for you to allow them to continue to be ignored. This legislation will leave seniors and family retirement savings at greater risk of fraud and speculative losses, and will strip accountability and transparency requirements that make markets work better for investors and businesses alike. We are writing to urge you to seize this last opportunity to address the flaws that create these problems.

To do that, senators who care about investor protection should:

- **Vote YES for cloture on the Reed-Landrieu-Levin substitute amendment**, which takes a comprehensive approach to strengthening the bill’s investor protections.
- If the Reed-Landrieu-Levin amendment fails to gain the 60 votes needed to invoke cloture, we urge you to **vote NO on cloture on the House bill** to provide an opportunity for problems in the bill to be addressed through the normal amendment process.

## **Vote YES for Cloture on Reed-Landrieu-Levin's Substitute Amendment**

The simplest, most straightforward way to improve the JOBS Act is by voting for cloture on the Reed-Landrieu-Levin amendment. While it does not address every concern we have raised with the legislation, it does offer a vast improvement over the House bill. Among its most important improvements:

- It narrows the scope of the bill's IPO On-Ramp, which as drafted would give all but a handful of the very largest companies going public up to five years to come into compliance with regulations designed to prevent accounting fraud and errors, ensure financial statements of reporting companies are comparable, prevent the securities analyst excesses that led to the tech stock bubble and bust, and give shareholders a say in executive compensation practices at the companies they own. The amendment achieves this both by narrowing the definition of emerging company and by limiting the bill's exemptions for such companies.
- It takes steps to ensure that crowd-funding does not become a new Internet-fueled mechanism for classic small stock pump-and-dump schemes, by requiring offerings to be made through appropriately regulated Internet portals, requiring financial and other information about companies to be provided to potential investors, and ensuring that investors receive adequate warnings about risks.
- It balances the bill's dramatic hike in the ceiling for offerings sold to the general public under the Regulation A exemption with new requirements for audited financial statements, pre- and post-offering disclosures, and a negligence-based legal remedy. Importantly, it limits companies to using the Regulation A exemption only once every three years, thus limiting the potential for this exemption to be abused by companies seeking to evade the full registration and reporting requirements appropriate to public companies.
- It takes the more cautious approach recommended by experts to raising the shareholder threshold that triggers important registration and periodic reporting requirements, by raising the threshold slightly, eliminating employees from the count, and requiring beneficial owners to be included in the count. That action should dramatically reduce the potential for a severe reduction in market transparency posed by the House bill.
- In removing the ban on general solicitation in private offerings, the substitute amendment requires issuers and offerers to take reasonable steps to ensure that the offerings are only sold to accredited investors. While we continue to believe removing the general solicitation ban is dangerous and unwarranted, this approach should at least help to prevent the worst of the abuses that would be unleashed by the House bill.

## **If Reed-Landrieu-Levin Fails, Vote NO for Cloture on the House Bill**

If the Reed-Landrieu-Levin substitute fails to gain the 60 votes needed for cloture, senators who care about investor protection must not simply turn around approve a bill they know to be deeply and dangerously flawed. By voting against cloture on the House bill, senators can take the opportunity to restore essential investor and market protections individually, through the normal amendment process. Leading experts in this area – including the state and federal regulators directly responsible for enforcing these laws – have said the bill will harm investors, will undermine market transparency, will make it

more difficult to enforce the securities laws and will hurt precisely those small companies it is intended to benefit. While the White House and Senate leaders have said they welcome the opportunity to improve the bill in the Senate, there is simply no justification for making a vote on cloture for the substitute amendment the only opportunity to do so.

This bill was rushed through the House before its impact could be carefully assessed. But that has changed, and senators have been put on notice: A vote for cloture on the House bill is a vote to permit devastating harm to be unleashed on the investing public and our fragile economy. As *The New York Times* stated in its recent editorial, there is no excuse.

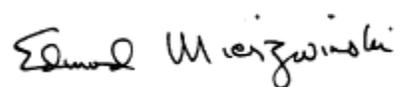
For many years, the state PIRGs have worked to guarantee that investors have confidence in the markets. We have opposed judicial decisions that eliminated private rights of action in securities fraud aiding and abetting violations and unsuccessfully supported legislation to reinstate them, opposed legislation to preempt state securities law protections, supported increased SEC funding and authority, and supported the landmark Sarbanes-Oxley Corporate Reform and Dodd-Frank Wall Street Reform and Consumer Protection Acts.

Unfortunately, the Jobs Act falls on the wrong side of the equation. It dramatically rolls back investor protections. Worse, it is proposed to be considered under an accelerated timetable outside the regular order with neither debate nor amendments allowed to correct its most egregious flaws. While we may or may not have a position on every single non-investor provision in the Reed-Landrieu-Levin substitute amendment (and would generally oppose the need for the Export-Import Bank) we strongly support the amendment both because of its critical investor protection provisions outlined above and because its approval under cloture will reopen the fatally-flawed, underlying House-passed Jobs Act to debate on the Senate floor. Any bill that puts small investors at such grave risk should be considered in a deliberative way, deserves open debate and requires an open amendment process.

For those reasons, we urge you to vote yes on cloture for the Reed-Landrieu-Levin Substitute Amendment (SA 1833) and if that fails, please vote no on cloture for the House Bill (HR 3606).

If you or your staff have any questions, please do not hesitate to contact me at [edm@pirg.org](mailto:edm@pirg.org) or my direct line, 202-451-3821. Thank you for your consideration of our views.

Sincerely yours,

A handwritten signature in black ink that reads "Edmund Mierzwinski". The signature is written in a cursive, slightly slanted style.

Edmund Mierzwinski  
Consumer Program Director