Boozman	Hoeven	Nelson (FL)
Boxer	Hutchison	Paul
Brown (MA)	Inhofe	Portman
Brown (OH)	Inouye	Pryor
Burr	Isakson	Reed
Cantwell	Johanns	Reid
Cardin	Johnson (SD)	Risch
Carper	Johnson (WI)	Roberts
Casey	Kerry	Rockefeller
Chambliss	Klobuchar	Rubio
Coats	Kohl	Sanders
Coburn	Kyl	Schumer
Cochran	Landrieu	Sessions
Collins	Lautenberg	Shaheen
Conrad	Leahy	Shelby
Coons	Levin	Snowe
Corker	Lieberman	Stabenow
Cornyn	Lugar	Tester
Crapo	Manchin	Thune
Durbin	McCain	Toomey
Enzi	McCaskill	Udall (CO)
Feinstein	McConnell	Udall (NM)
Franken	Menendez	Vitter
Gillibrand	Merkley	Warner
Graham	Mikulski	Webb
Grassley	Moran	Whitehouse
Hagan	Murkowski	Wicker
Harkin	Murray	Wyden
Heller	Nelson (NE)	

NAYS—2

DeMint	Lee

NOT VOTING—3

Alexander	Hatch	Kirk

The nomination was confirmed.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, first of all, we had a good week. We have worked together on issues and gotten a lot done. We have one more vote. That will be the last vote this week. The next vote will be Tuesday before the caucus.

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Michael Walter Fitzgerald, of California, to be U.S. District Judge for the Central District of California.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Utah (Mr. HATCH), and the Senator from Illinois (Mr. KIRK).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted ''yea.''

The result was announced—yeas 91, nays 6, as follows:

[Rollcall Vote No. 50 Ex.]

YEAS—91

Akaka	Coats	Heller
Ayotte	Coburn	Hoeven
Barrasso	Cochran	Hutchison
Baucus	Collins	Inouye
Begich	Conrad	Isakson
Bennet	Coons	Johanns
Bingaman	Corker	Johnson (SD)
Blumenthal	Cornyn	Johnson (WI)
Boozman	Crapo	Kerry
Boxer	Durbin	Klobuchar
Brown (MA)	Enzi	Kohl
Brown (OH)	Feinstein	Kyl
Burr	Franken	Landrieu
Cantwell	Gillibrand	Lautenberg
Cardin	Graham	Leahy
Carper	Grassley	Levin
Casey	Hagan	Lieberman
Chambliss	Harkin	Lugar
Manchin	Pryor	Stabenow
McCain	Reed	Tester
McCaskill	Reid	Thune
McConnell	Risch	Toomey
Menendez	Roberts	Udall (CO)
Merkley	Rockefeller	Udall (NM)
Mikulski	Rubio	Warner
Moran	Sanders	Webb
Murkowski	Schumer	Whitehouse
Murray	Sessions	Wicker
Nelson (NE)	Shaheen	Wyden
Nelson (FL)	Shelby	
Portman	Snowe	

NAYS—6

Blunt	Inhofe	Paul
DeMint	Lee	Vitter

NOT VOTING—3

Alexander	Hatch	Kirk

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table.

The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now resume legislative session.

JUMPSTART OUR BUSINESS STARTUPS ACT—Continued

The PRESIDING OFFICER. The junior Senator from West Virginia is recognized.

Mr. MANCHIN. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

GROH NOMINATION

Mr. MANCHIN. Mr. President, I rise to applaud the confirmation of Judge Gina Marie Groh to the U.S. District Court for the Northern District of West Virginia.

As then-Governor of West Virginia, I was honored to have the first female from the Eastern Panhandle, with the highest of credentials, Judge Groh, brought to my attention. I was so proud to appoint her to the 23rd Judicial District in 2006, and she has served with great distinction ever since.

I am also very pleased my colleague and friend Senator JAY ROCKEFELLER saw the same qualities in Judge Groh that I did and recommended her for this prestigious position on the Federal bench. I thank him for his steadfast support.

I wish to take this opportunity to reiterate some of Judge Gina Groh's fine qualities and the reasons I know she will be an exceptional judge on the U.S. District Court for the Northern District of West Virginia.

Judge Groh is a well-respected and recognized member of her community in the Eastern Panhandle of West Virginia, as I have known her for many years. In addition to being the first female circuit judge to serve in the Eastern Panhandle, Judge Groh is only the third female circuit judge to be selected in all of West Virginia.

Prior to her circuit court appointment, Judge Groh served as assistant prosecuting attorney at the prosecuting attorney's offices in Berkeley County and Jefferson County, WV. During her 8 years as prosecutor, she established a strong record of protecting her fellow West Virginians by tirelessly pursuing convictions for such crimes as murder, robbery, rape, child abuse, drunk driving, and drug-related offenses.

Judge Groh has not only excelled professionally but has also risen to become a true pillar of her community in the Eastern Panhandle of West Virginia. She dedicates her time to countless foundations and serves on a number of boards. For many years, she has worked for such programs as Robes to School and the Meals with Love Ministry and has been very involved with her alma mater, Shepherd University, serving both with the Wellness Center and as a member of the alumni board.

Judge Groh graduated summa cum laude from Shepherd University in 1986, with a bachelor of science degree. She earned the university's highest academic honor as a McMurran Scholar, in addition to serving as editor-in-chief of the newspaper and vice president of her graduating class. Judge Groh went on to earn her J.D. from West Virginia University's College of Law in Morgantown, WV.

I believe Judge Groh's experience, intellect, leadership, impartiality, and deep roots in the community make her a prudent choice for the vacancy in the Northern District of West Virginia. She exemplifies not only the qualities of a talented jurist but also the high moral character and sense of justice necessary to make a great judge.

I know it has been exasperating for Judge Groh and her family waiting for this confirmation, knowing that she came out of the Senate Judiciary Committee without any opposition. It has been very difficult that we as a body have gotten to the point of slowing down these nominations, and I believe very strongly our system needs to be changed so we can get quality judges such as Judge Gina Groh on the bench as quickly as possible so they can work to protect the people of the United States.

Again, I thank my colleagues for confirming an exemplary candidate for the U.S. District Court for the Northern District of West Virginia, Judge Gina Marie Groh.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, the House of Representatives has just passed H.R. 3606, which is styled as a capital formation bill, but it is fundamentally flawed. As more and more people have looked closely at the bill, they have found more and more problems with it—problems that could roll back key consumer protections and dramatically decrease the transparency of our capital markets.

One of the fundamental misconceptions in this bill is that we can have robust capital formation without good investor protections. My view is we can't have one without the other; that the strength of our market is the reliance investors have that they will have the right information and know enough about the entity they are investing in to make judicious, sound economic judgments. The Cantor bill would roll back many investor protections, would deny investors critical information that is essential to making sound judgments, and would ultimately not lead to the proposed goal of the bill—providing more access to capital, particularly for small, emerging companies.

Serious concerns have been raised about the Cantor bill by current and former regulators in the last 2 weeks: Mary Shapiro, Chairman of the Securities and Exchange Commission; the North American Securities Administrators Association; Arthur Levitt, former Chairman of the SEC and head of AMEX; and Lynn Turner, former chief economist of the SEC.

Some of the largest pension plans in the entire country have been weighing in through the Council of Institutional Investors, and these are the entities most people want to have invest in their companies as long-term investors. They have real concerns about the House action.

We have been getting phone calls and letters from a diverse array of consumer groups, such as the AARP, the Consumer Federation of America, the AFL–CIO, and SAFER, the Economists' Committee for Stable, Accountable, Fair, and Efficient Financial Reform.

Academic experts, such as Professor John Coffee of Columbia University School of Law, for one, have called the Cantor bill the ''Boiler Room Preservation Act'' because it will mean more pump-and-dump schemes, where people are pressured to invest in highly risky firms and products. Two other noted securities experts from Harvard University Law School and Business School, respectively, John Coates and Robert Pozen, have said the bill does more than, in their words, ''trim regulatory fat; parts of it cut into muscle.'' We need to slow down this process and get it right. H.R. 3606 can be improved and should be improved. That is why I—together with Senators MARY LANDRIEU, CARL LEVIN, SHERROD BROWN, JEFF MERKLEY, DANIEL AKAKA, SHELDON WHITEHOUSE, AL FRANKEN, TOM HARKIN, and DICK DURBIN—am introducing a substitute amendment to this bill today. We hope our legislation can serve as a base bill for the Senate to discuss and amend as we move forward.

What are some of the most serious flaws we are trying to address in the Cantor bill? First and foremost, this bill is unlikely to create jobs, despite the title the House has bestowed upon it. In fact, it may actually have the opposite effect. By weakening investor confidence, it could actually decrease the number of IPOs and lead to fewer investments in our capital markets.

Currently, our markets are considered the most transparent and liquid in the world, which has been one of its great strengths—the confidence that when an investor puts money into an American financial product and American market, he or she has detailed information about the current status and the prospects of that investment. Under the Cantor bill, our markets would become less transparent and more opaque. Fewer protections will be provided to investors. This could actually lead to fewer investors investing in the United States, since we are in a global economy or increasing competition with capital markets in London, Paris, Hong Kong, and Singapore—to name just a few.

Again, one of the great hallmarks of our markets, starting in 1933 with the securities legislation of the New Deal, was the feeling that investors would be protected, that there would be standards in place, information would be made available to them, and they could have confidence—as much confidence as they could get—in their investments. If we undermine that confidence, eventually we will undermine both our appetite and capacity to invest.

The Cantor bill has more problems. It tries to create a way that crowdfunding can be used to raise money for small enterprises, but it does this with very few protections for investors and would allow unregulated Web sites to peddle stock to ordinary investors without any meaningful oversight or liability.

Crowdfunding is a very interesting new approach to raising capital. Our colleagues, Senators MERKLEY and BENNET have spent a lot of time developing very positive legislation which balances improving small business access to capital, by tapping into social networks and small investors but, at the same time, gives those investors adequate protections. The House has not taken this approach. They have legislation that could, indeed, create a situation where crowdfunding is plagued by fraud, by manipulation, and by people who simply want to make a quick buck and move on, hoping they will just disappear into the Internet.

The Craigslist or eBay model may work to enable people to sell unwanted clothing, bikes, and other goods, but it certainly doesn't work for a financial security that requires a much more careful analysis than simply kicking the tires. People with more credit card debt than savings will be tempted to put their money into these mass-marketed, get rich schemes—money which they can't afford, in many cases. As the economy continues to grow, stocks will rise—we have seen some interesting and very positive developments on Wall Street over the last several weeks—but this ride up could be accompanied by bubbles with these types of crowdfunding schemes, where people are putting money in for a quick return based on, perhaps, the success of one or two companies but not having the information, not having the appropriate controls on the intermediaries so they can make a sound, valid investment.

There is another aspect of the House legislation, in addition to this crowdfunding approach, which is the House IPO on-ramp provisions. An IPO, of course, is an initial public offering. This approach, to try to streamline access to the public markets for emerging companies, has great merit. But once again, what has happened in the House bill is they have done this at the expense of necessary protections for investors.

Relaxing standards for very large, new public companies, when no evidence supports the idea those standards stand in the way of these IPOs and much evidence suggests the standards prevent serious accounting problems, is not the way to go. The basic essence of their approach—this on-ramp approach—is a very large company, with up to $1 billion in revenue, for a period of 5 years or so, can avoid some of the now standard requirements for public companies. This is not an targeted approach for small companies. Companies with $1 billion of revenue are substantial economic enterprises. The protections that have been put in place over the years not only protect the investors but also ensure appropriate audit procedures are in place. Ensuring appropriate managerial behavior for a company of that size should not be indefinitely waived or waived for a period of 5 years.

We could literally roll back the clock to pre-Enron, pre-WorldCom, where because of creative accounting, because of the lack of adequate audit procedures within the company, real abuses occurred. The result was Enron collapsed and their shareholders were left with virtually nothing. One of the more tragic ironies is that many of their shareholders were their employees who had their entire pensions invested in the company, particularly in the case of Enron. Ultimately, the pain to these people, caused by the lack of good standards—which have since been put in place—was significant. If we proceed on this, we might, once again, have a situation where we are repeating industry—and a history we have seen already.

Again, as the economy rebounds, as stocks rise, I think there will be a variable increase in new public offerings—IPOs. If we look at the data, the number of IPOs goes up and down. But the most significant factor is simply economic activity. As economic activity goes up, new companies have opportunities, IPOs go up. In this boom, there could be the temptation for these companies, given these new, very relaxed standards, to ignore the problem because they do not have to disclose them adequately or to deliberately mislead investors because there is no real check on what is being said. The relaxed standards in the House bill could allow companies to engage in deception, to raise and waste more investment money more quickly.

There is a way we can dial back this excessive legislation in a way that will provide capital formation but will also provide protections for investors, and I hope we can proceed in that manner. Increasing IPOs is a valuable goal, but it should be done much more cautiously, in my estimation, with reforms focused on much smaller companies than those with $1 billion in annual revenue, as is indicated in the Cantor bill.

During the course of three hearings in the Senate Banking Committee on these issues, it has become even more clear there are problems with the way shareholders are being counted. This is another aspect of the House bill that is problematic. They have indicated they would like to move beyond a number—500—which requires a company register under the 1934 Securities and Exchange Act with the SEC. This trigger is something that should be considered in terms of present-day standards. The House bill raises this trigger point to 2,000 very quickly, without dealing with the so-called beneficial owners problem. If the provision in the House bill was in force in the past, two-thirds of current public companies would not have been required to register under the 1934 Act. Let me say that again.

If you reach a certain number of shareholders, you are required to register and begin to give those shareholders required information on a quarterly basis. You are required to file other forms. You are required to be subject to other rules and regulations of the SEC.

If this new House standard of 2,000 shareholders was in place, two-thirds of current public companies would not have to register with the '34 Act. They would be operating in the dark. They would be operating with whatever minimal information they might be required to divulge to their shareholders under State corporate law or, in some cases, State securities law. That is an astounding number of companies.

Most investors take for granted that when you reach a critical size in the number of shareholders, et cetera, that you will begin to report. Again, these reports are the lifeblood of the investing community because they rely upon them for their information about what is going on in the company, and they rely upon them for the standards that company has to follow.

Over time, most investors as a result of registration under the '34 Act are entitled to receive regular disclosures. Again, these provisions raising up the level to 2,000 shareholders would undermine the other stated goal of the Cantor bill, to make it easier for companies to go public and easier to disclose information. In fact, some would describe this as sort of a bipolar piece of legislation.

On the one hand, they want to relax the standards for going public, and on the other hand they want to relax the standards and allow more companies to go private. I think we have to be careful in each instance to ensure that investors are protected, as well as capital formation is enhanced.

The House bill will eliminate an SEC rule on general solicitation, allowing companies to advertise risky, less regulated, unregistered private offerings to the public using, for example, billboards along highways, cold calls to senior living centers, or other mass marketing methods. It also will tear down protections that were put in place after the late 1990s Internet stock bubble burst that prevented conflicts of interest from tainting the quality of research about companies.

What we found in the wake of the dot-com bubble—with many protections in place that would be taken out by this legislation—was there were analysts who were touting companies at the same time other parts of their business were trying to sell those companies' shares. This conflict of interest with someone you hope is giving an objective opinion would be encouraged, not discouraged, under the House bill.

The Cantor bill would allow extremely large corporations to avoid SEC oversight. It also would allow banks, with even hundreds of billions of dollars in assets, to deregister and stop being subject to SEC oversight and critical investor protections.

Finally, the Cantor bill actually doesn't include provisions that are more likely to create jobs for Americans. For example, the House bill does not include reauthorization of the Ex-Im Bank. Time is of the essence, by the way, to get this Ex-Im Bank reauthorized. The bank's temporary extension expires at the end of May and is close to exceeding its operating level of $100 million by the end of this month.

Renewing the Ex-Im Bank's charter with increased lending authority is practically the only way of countering the predatory financing practices of other trading nations. We spend a lot of time on this floor pointing the finger at companies that are using their sovereign institutions to undermine American jobs, to get them overseas. Yet one of the major institutions in our country that helps American products to be sold overseas is literally in danger of going out of business. That is something that will, in fact, enhance job creations, and it is not in the House bill. In fact, it has been suggested that Ex-Im Bank activities supports almost 300,000 jobs in the United States each year.

It also doesn't include two other programs that would result in the creation of more jobs, and these two programs are particularly the result of the hard and aggressive and thoughtful work of Senators LANDRIEU and SNOWE. One program expands the capacity of the Small Business Investment Company program, SBIC. They have proposed legislation that would allow another $1 billion in equity-like financing for smaller, fast-growing firms. The other program would extend for 1 year the SBA's 504 refi loan program to help firms refinance commercial real estate into long-term, fixed-rate loans.

These modifications have created and saved hundreds of thousands of American jobs at no cost to the taxpayers. These are tried and true ways to increase jobs in America without running the risk of undermining the information that investors need to make sound choices about where to invest their dollars.

It is very tempting to suggest we simply have to cut a couple of regulations and jobs will expand. That was the theme that was rampant here during the Bush administration and, for a while, frankly, it looked like it was working. But then, with the sudden and colossal collapse, we knew that was not the path to long-term sustained job creation. Sound investment based on adequate information in companies that produce jobs in the United States is the way to proceed.

We need to listen to those individuals charged with the supervision of our capital markets, the SEC, and now we have both the current chairman and a former chairman saying the legislation the House proposed is a threat to all investors in this country. The stakes are high if we get some of these things wrong. We have been trying to focus on these issues intensely for the last few months to bring legislation to the floor that will balance capital formation with investor protections. You can't get one at the expense of the other. You have to have both.

So I encourage all my colleagues to take a close look at the Reed-Landrieu-Levin substitute. I believe it is a substantial improvement to the House bill. My colleague from Louisiana will speak and, once again, I must commend her passion for protecting investors, particularly small investors, and her passion for creating jobs through the SBA and other organizations as remarkable, commendable, and indeed exceptional.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I thank Senator REED and Senator LEVIN who have helped to lead this effort to make a bill that is coming over from the House much better and much safer for investors, as well as to generate opportunities for more capital to flow to some of the good and solid ideas that are out there in our marketplace to create jobs.

I am pleased to join these two Senators and about a dozen to date and potentially dozens more of our colleagues as people learn the differences—and they are substantial—between the House version of what they call an IPO bill and the Senate version we have worked on very diligently and carefully over the last 48 hours.

The three of us are prepared to vote against the House bill as it stands now. The only hope of getting our support, and many others here, is to try to amend the House bill. That is what our efforts are.

We are not trying to say no to everything that is in the House bill because there are some excellent ideas. Even the President himself and the White House and some of the Democrats voted for that bill because there are some good ideas in the bill, and some ideas that have come from some of the brightest entrepreneurs in our country. We are not trying to say no to those ideas. We are trying to say yes to those ideas, but do it in a way that protects investors—older investors, younger investors, sophisticated investors, and your average sort of nonsophisticated investors because the Internet has opened a whole new opportunity.

When these security laws were written 40 years ago, 50 years ago, 60 years ago and amended, the Internet wasn't what it is today. So that is why this crowdfunding bill—which is, in essence, a way for the Internet to be used to raise capital that is illegal generally today, and there are very specific rules about how people can raise capital for their businesses. Some of those regulations are too onerous; some of them are right on. But this whole idea of, oh, my goodness, now the Internet is here—look what opportunities could be. We can get our ideas to the marketplace without having to go through middlemen. We have a great idea, a wonderful patent. We want to be able to raise money. We are very excited about this. But there is a right way to do this and there is a wrong way to do this.

With the House bill, we know that we are on a little bit of rocky ground when they don't really have a name for it. They have called it everything from an IPO bill to a jobs bill to a capital expansion bill. What I am calling it today—and I will have a poster made over the weekend—is an ill-advised political opportunity bill. That is what IPO stands for, in my mind.

It is ill-advised because the safeguards that are required to make sure these new ideas happen the way they should are absent from their legislation. That is why, when I found out, surprisingly, that the Senate of the United States was getting ready to take that bill and just adopt it whole hog, I said: Absolutely not. We have to slow this down, try to amend it—not kill it but amend it. The reason is because there are very respected groups out there that started sending letter after letter after letter to the Senate urging us to do just that.

This isn't about a conservative-liberal fight. This is about the right regulations that are necessary before we take a good idea and mess it up. Crowdfunding is a good idea. It is an exciting idea. There are great entrepreneurs out there. The Internet could be a very powerful tool. But everyone knows if you enter into new territory without caution and care, you can fall off a cliff that you didn't even know was there. That is exactly what the House bill is going to do.

If you don't want to take my word for it, let's talk about what AARP says about it. This is the first letter. I am going to put a dozen letters into the RECORD in the next 10 minutes to try to get the attention of the people on the other side of the aisle. This is all an attempt to get their attention over the weekend, and I hope the press will write about these letters so when they come back on Monday they can say: Oh, my gosh. We have a good bill that came from the House, but there are some real flaws and we should fix it before we create another Wall Street debacle or before we see people ripped off again like we just went through in the last 6 years.

How short is our memory about investors getting stripped, going bankrupt because of exactly the same thing: just not being careful, not having the right rules in place, not having the right enforcements in place. This was like yesterday. That is why when the leadership said we were just going to take up the House bill, I said: Wait a minute. No, no, no.

This is what the AARP said, Joyce Rogers:

> I am writing to reiterate our opposition to the lack of investor protections in H.R. 3606—

Again, the House-passed, ill-advised political opportunity bill. That is what I am calling it. That is what it is—

> that soon will be considered on the floor of the Senate floor. AARP's primary concern is that this legislation undermines vital investor protections and threatens market integrity.

So AARP doesn't urge the Senate to kill the bill.

> AARP urges the Senate to take a more balanced approach, recognizing both an interest in facilitating access to capital for new and small businesses and in preserving essential regulations. . . . We believe the amendment to be offered by Senators Reed, Landrieu and Levin, moves closer to achieving this balance and deserves your support.

It goes on to say that sometimes the people who are taken advantage of are the elderly. So wake up, Senators from Florida. Wake up, Senators from Michigan. Wake up, Senators who have big senior populations. The AARP is against the House bill, the ill-advised political opportunity bill.

North American Securities Administrators Association—they sent a letter yesterday, from Jack Herstein. It is seven pages long. They go into great detail:

> On behalf of the North American Securities Administrators Association—

I don't think this is a liberal think tank. I think this is a very well respected, not a leftwing, regulate-everything-that-moves kind of group. I think that is correct. He says:

> I am writing to express concerns regarding several provisions, most notably our strong concern with the extraordinary step of preempting state law for "crowdfunding", contained in [the ill-advised political opportunity bill which was passed by the House.]
>
> State securities regulators support efforts by Congress to ensure that laws facilitating the raising of capital are modern and efficient, and that Americans are encouraged to raise money to invest in the economy. However, it is critical that in doing so, Congress not discard basic investor protections.

I am going to submit this letter, without objection, I hope, to the RECORD.

This is from the Council of Institutional Investors, "a nonprofit, nonpartisan association of public, corporate and union pension plans." Let me repeat, not just union pension plans but public and corporate pension plans. They are writing with questions about the House ill-advised political opportunity bill, and it goes into great detail. I am putting this into the RECORD hoping people will actually read the CONGRESSIONAL RECORD.

Another letter to Speaker BOEHNER and NANCY PELOSI. This was delivered to the House. It may be a little different from the one to the Senate, so I would like to put that into the RECORD. These are very important letters received just recently. That is why I am asking people to wake up, pay attention.

Securities and Exchange Commission, March 13. This is to Chairman JOHNSON and Ranking Member SHELBY basically saying:

> Last week, the House of Representatives passed H.R. 3606. . . . As the Senate prepares to debate many of the capital formation initiatives addressed by H.R. 3606, I want to share with you some of my concerns on some important aspects of this significant legislation.

That is by Mary Schapiro, Chairman, outlining a dozen of her concerns because, of course, she thinks there is going to be a debate. She would expect a debate on a bill of this nature and magnitude and diversion from the ordinary. But we were not going to have a debate. We were just going to be told to take the House bill or leave it until a few of us said: No, slow this train down. This is no way to run a railroad.

We are not trying to kill the bill. We are not trying to delay. We are trying to have at least a 2- or 3-day debate on an important piece of legislation that, if it is not done right, is going to absolutely ruin the best chance we have had in decades to actually get capital into the hands of businesses.

Everyone here should now know me well enough as chair of the Small Business Committee to know I have spent literally nights, days, and weekends on the floor of this Senate trying to figure out ways to get capital into the hands of small businesses. Why would I stand here and try to stop that? I have spent my whole time as the Senate chairman of the Small Business Committee trying to do that. But, again, there is a right way to do that and a wrong way.

If we take the wrong path and fall off of a cliff, we are going to ruin the chance we have with this new Internet tool, this very exciting opportunity, and we are going to ruin our chance to get this done.

Who is going to suffer? The same people who suffer all the time, the small businesses and the exciting opportunities and entrepreneurs who need our help.

Any bill that is a major bill can stand the scrutiny of time before the public, and amendment. If it cannot stand that scrutiny, then I suggest there is something terribly flawed with it. That is what we are trying to provide, scrutiny.

This letter comes from the AFL–CIO, from Jeff Hauser, an e-mail:

America needs jobs. Yet Congress cannot enact such basic legislation as the reauthorization of the surface transportation bill—

Which we passed, but it has not been completed. He goes on to say:

Workers' retirement savings will be in greater risk of fraud and speculation if securities market deregulation once again is railroaded through Congress. Once again our economy will be at risk from the folly of policy makers promoting financial bubbles and ignoring the needs of the real economy. The AFL–CIO calls on Congress to set aside the politics of the 1 percent, the old game of special favors for Wall Street.

They are very strong in their language, probably a lot stronger than these other organizations. But I think they have reason to be. Many of their members were taken to the cleaners by scams on Wall Street. They have yet to recover. Their 401s have yet to recover. Even yesterday, or last week, in the paper I saw one of the big companies that failed. I think it was MF Global. Did you all see that in the newspaper? They failed. Of course, it was a terrible debacle. Lots of people lost money. But the CEO is walking away with a $7 million bonus.

People who work hard all day have a very hard time understanding how we in the Congress can allow the CEO to walk away with a bonus of $7 million when he bankrupted thousands of people. That is a good question. Are we going to do that again with this House bill? I hope not.

Let's put the AFL–CIO on record saying slow down.

This is the next message I want to put in from the secretaries of state—and I want to read off who they are: the secretary from Missouri, Robin Carnahan; the secretary from Massachusetts, William Falvin; the secretary from New Hampshire, William Gardner; the secretary from Mississippi—I believe is a Republican—Delbert Hosemann; the secretary from North Carolina, secretary of state Elaine Marshall; the secretary from Nevada, Ross Miller; the secretary of state from Indiana, Charles White; and the secretary of state from Illinois, Jesse White.

Jesse White says the same thing: Beware of the House bill. It is flawed. It has some good ideas in it, but those flaws need to be corrected.

That is what the Reed-Landrieu-Levin et al amendment does. We are not trying to kill these wonderful, exciting ideas. We are trying to fix it so it is better. I hope our Members on the other side will join us in doing that, and I would like to submit this to the RECORD.

There are two more. Actually, I am sorry, four more—we have so many. The next one is from my office of financial institutions from Baton Rouge, my commissioner, banking commissioner, who wrote me. He is generally in favor of some of the things in the House bill. But he said:

I am writing to urge you to oppose the preemption of Louisiana law to protect investors.

I would like to put that into the RECORD.

The American Sustainable Business Council. It is signed by David Levine. Again, I don't believe this is a left-leaning group. I think it is a pretty centrist organization. They urge us to take a hard look at the House bill.

Finally, Madam President, I want to have printed in the RECORD—this is when I got nervous: when I started receiving letters in my office from crowdfunders themselves against the House bill. The people who gave the idea to start up crowdfunding have now said the House bill is flawed. Here is what they say:

I write in favor of the bipartisan compromise CROWDFUNDING Act proposed recently by Senators Merkley, S. Brown, Bennet and Landrieu.

That is the crowdfunding act that is in this substitute.

Yesterday evening's introduction—

This was last week—

of the first bi-partisan Senate crowdfunding bill is a big step forward in our fight to get equity crowdfunding passed through Congress. I have been to Washington, DC 7 times since mid-November, discussing [this legislation]. The offices of the Senators on the Banking Committee have been very receptive to input from the entrepreneurial community and have adopted many of our suggestions.

But they go on to say:

This latest bill . . . is important because, unlike previous bills, for the first time we have a Senate bill with bipartisan sponsorship, a balance of state oversight and federal uniformity, industry standard investor protections, and workable funding caps. This bill has a legitimate chance at quieting those who were previously trumping up fears of fraud [and] bad actors. . . . To date the main issues the opposition raised were regarding fraud and state oversight.

What they are saying is we are the ones who helped invent this concept. We don't think the House bill is where it should be. We are supporting the Merkley-Bennet approach, which is in this bill.

Launcht, we hear you, and we are trying to respond.

Finally, Motaavi—again, a crowdfunder advocate. People, very entrepreneurial, coming up with these ideas saying the same thing.

I ask unanimous consent to have those letters printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AARP,
March 15, 2012.

Re Investor Protection, Market Integrity and the JOBS Act.

DEAR SENATOR LANDRIEU: On behalf of AARP, I am writing to reiterate our opposition to the lack of investor protections in H.R. 3606, the House-passed JOBS bill that soon will be considered on the Senate floor. AARP's primary concern is that this legislation undermines vital investor protections and threatens market integrity. The goal of facilitating access to capital for new and small businesses is a worthy one. However, we do not believe that the best way to create jobs is to weaken essential regulatory protections that were put in place to address specific marketplace problems that otherwise would still exist.

This debate is critical to older Americans, who with a lifetime of savings and investments are disproportionately represented among the victims of investment fraud. We share the concerns—raised by SEC Chair Mary Schapiro, the North American Securities Administrators Association (NASAA), law professors, investor advocates, and others—that absent safeguards ensuring proper oversight and investor protection, the various provisions in H.R. 3606 may well open the floodgates to a repeat of the kind of penny stock and other frauds that ensnared financially unsophisticated and other vulnerable investors in the past. The absence of adequate regulation in the past has undermined the integrity of the markets and damaged investor confidence while having no positive impact on job creation.

AARP urges the Senate to take a more balanced approach, recognizing both an interest in facilitating access to capital for new and small businesses and in preserving essential regulations that protect investors from fraud and abuse, promote the transparency on which well-functioning markets depend, and ensure a fair and efficient marketplace. We believe the amendment to be offered by Senators Reed, Landrieu and Levin, moves closer to achieving this balance and deserves your support.

We urge you to vote yes on the Reed-Landrieu-Levin amendment.

If you have any further questions, please feel free to contact me, or have your staff contact Mary Wallace of our Government Affairs staff.

Sincerely,

JOYCE A. ROGERS,
Senior Vice President,
Government Affairs.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, March 12, 2012.

Re Senate Companion to H.R. 3606

Hon. HARRY M. REID,
Majority Leader, U.S. Senate,
Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: On behalf of the North American Securities Administrators Association (NASAA), I am writing to express concerns regarding several provisions, most notably our strong concern with the extraordinary step of pre-empting state law for "crowdfunding", contained in H.R. 3606, the Jumpstart Our Business Startups Act, which was passed by the House of Representatives on March 8, 2011. While NASAA applauds Congress' desire to facilitate access to capital for new and small businesses, the version of the bill that passed the House is deeply flawed. The Senate must now address these problems.

State securities regulators support efforts by Congress to ensure that laws facilitating the raising of capital are modern and efficient, and that Americans are encouraged to raise money to invest in the economy. However, it is critical that in doing so, Congress not discard basic investor protections. Investment fraud is real, and it can be particularly pervasive in small exempted offerings.

Expanded access to capital markets for startups and small businesses can be beneficial, but only insofar as investors can be confident that they are protected, that transparency in the marketplace is preserved, and that investment opportunities are legitimate. State securities regulators are acutely aware of today's difficult economic environment, and its effects on job growth. Small businesses are important to job growth, and to improving the economy. However, by weakening investor protections and placing unnecessary restrictions on the ability of state securities regulators to protect retail investors from the risks associated with smaller, speculative investments, Congress is on the verge of enacting policies that, although intended to strengthen the economy, will in fact only make it more difficult for small businesses to access investment capital.

The JOBS Act that was passed by the House is a repackaging of what were originally seven bills, reorganized into a single bill, with six distinct Titles and twenty-one sections. While NASAA believes virtually every Title of this bill would benefit from greater scrutiny, we will confine our comments today to those Titles and Sections of H.R. 3606 that pose the most urgent risk to average, ''Main Street'' investors that are NASAA's principal concern.

TITLE I: THE REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES ACT

Title I contains a number of troubling provisions. It creates a new category of issuer referred to as an ''emerging growth company'', defined as a company with annual gross revenues of less than $1 billion in its most recent fiscal year. This status continues until five years after an initial public offering or until the issuer has an annual gross revenue exceeding $1 billion or is designated a ''large accelerated filer.'' Particularly troublesome to NASAA are the exemptions applicable to such companies: for example, they are exempted from Section 404(b) of the Sarbanes-Oxley Act of 2002 (SOX) which requires an independent audit of an assessment of a company's internal controls as well as the requirement to provide three (instead of two) years of audited financials statement in a company's registration materials. S. 1933 also allows brokers and dealers to publish research about emerging growth companies prior to an initial public offering, even where they will participate in the offering itself.

Title I would give all but the very largest companies direct access to average, unsophisticated investors without being required to provide the normal types of financial and risk disclosures applicable to public reporting companies. The typical retail investor, unlike larger business financiers, does not have the ability to conduct an independent investigation of an emerging growth company and make fully informed investment decisions. Such investors rely on published financial and research data. Section 404(b) of SOX was enacted in response to major accounting scandals that cost investors billions of dollars; rolling back these requirements for companies with annual gross revenues of less than $1 billion could, once again, have devastating consequences.

Similarly, weakening the standards applicable to research analysts and tearing down the Chinese walls implemented in response to the ''Global Settlement'' scandal could create a conflict of interest resulting in devastating losses for Main Street investors. These barriers were put into place in response to enforcement actions brought by a number of state and federal regulators. Leading brokerage firms agreed to severely limit interactions between equity research analysts and investment bankers, due to conflicts of interest that tainted the investment process. Recent experience teaches us now is the time to strengthen the protection of investors, not weaken these standards.

TITLE II: THE ACCESS TO CAPITAL FOR JOB CREATORS ACT

SECTION 201: MODIFICATION OF EXEMPTION

Sec. 201 of the JOBS Act would repeal the SEC's ban on general solicitation under Regulation D Rule 506 to allow general solicitation in transactions ''not involving any public offering, whether or not such transaction involves general solicitation or general advertising.''

Current law requires securities offered to the general public to be registered with the SEC. Regulation D was built upon the premise that certain offerings should be given special treatment because they are non-public, or ''private.'' This means that the investment is marketed only to people with whom the company has a preexisting relationship. Given their knowledge of the company and its operations, these investors are in a better position than the general public to gauge the risks of the investment. They, therefore, have less need for the protections that flow from the securities registration process. This concept of giving preferential treatment to private offerings is embedded throughout state and federal securities law, and a reversal of this fundamental condition of Rule 506 would have far-reaching repercussions.

The removal of the ''general solicitation'' prohibition contemplated by Section 201 would represent a radical change that would dismantle important rules that govern the offering process for securities. NASAA has repeatedly expressed its concern to Congress about allowing general solicitation in rule 506 (Regulation D) offerings. Since the enactment of the National Securities Markets Improvement Act of 1996, Regulation D, Rule 506 offerings have received virtually no regulatory scrutiny, and have become a haven for investment fraud. Moreover, unlike other types of Regulation D offerings, where the size of the offering is capped, the amount of money that an issuer can raise under Rule 506 is unlimited, and hence the opportunity for fraud on a massive scale is especially acute in this area. Given state experience with Regulation D offerings, and the significant fraud and investor losses associated with them, NASAA opposes Section 201.

Because many states already allow issuers to use general advertisements to attract accredited investors, NASAA does not oppose outright the underlying goal of Title II. However, NASAA believes such an expansion should be accomplished by the establishment of a new exemption with provisions to protect investors and the markets.

SECTION 201: EXPLANATION OF EXEMPTION (MCHENRY AMENDMENT)

During consideration of H.R. 3606 the House adopted an amendment to Section 201, sponsored by Rep. Patrick McHenry (R–NC) that will exempt from registration as a broker or dealer any trading-platform that serves as intermediary in an exempted Rule 506 offering. The significance of the McHenry Amendment is to prevent ''intermediaries'' that facilitate the sale of securities through ''crowdfunding'' from requirements to register or be regulated as a broker.

NASAA appreciates that the question of how crowdfunding intermediaries may best be regulated is complex, however categorically exempting these sellers from broker registration requirements, in the absence of a sensible alternative for their licensing and regulation, is foolish and reckless. As amended, Section 201 will leave intermediaries open to conflicts, such inducements to list, de-list, or promote certain offerings. Moreover, as amended, Section 201 will deny any regulator effective means to examine or discipline these sellers.

TITLE III: THE ENTREPRENEUR ACCESS TO CAPITAL ACT

Title III of the JOBS Act is identical to H.R. 2930, the Entrepreneur Access to Capital Act, which was approved by the House last fall. Two separate ''crowdfunding'' bills have been sponsored in the Senate: S. 1791, sponsored by Sen. Scott Brown (R–MA), and S. 1970, sponsored by Sen. Jeff Merkley (D–OR).

While intending to promote an internet-based fundraising technique known as ''crowdfunding'' as a tool for investment, this legislation will needlessly preempt state securities laws and weaken important investor protections. NASAA appreciates that the concept of crowdfunding is appealing in many respects because it provides small, innovative enterprises access to capital that might not otherwise be available. Indeed, this is precisely the reason that states are now considering adopting a model rule that would establish a more modest exemption for crowdfunding as it is traditionally understood.

SECTION 301: INDIVIDUAL INVESTMENT LIMIT

Section 301 contemplates a hard-cap on individual crowdfunding investments that goes far beyond anything that is being contemplated by the states, or even by the overwhelming majority of advocates of crowdfunding. By setting an individual investment cap of 10 percent of annual income, or $10,000, Section 301 will create an exemption that will expose many more American families to potentially devastating financial harm.

NASAA recognizes that for certain very wealthy individuals, or seasoned investors, a cap of $10,000 may make sense. Unfortunately, Sec. 301 fails to distinguish between these few wealthy, sophisticated investors, and the general investing public, imposing a $10,000 cap on both groups. Given that most U.S. households have a relatively modest amount of savings, a loss of $10,000, in even a single case, can be financially crippling.

NASAA believes a superior method of limiting individual investment amounts would be a scaled approach that would cap most investments at a modest level, but allow experienced investors, Who can afford to sustain higher losses, to invest up to $10,000.

SECTION 301: AGGREGATE OFFERING LIMIT

Section 301 would also permit businesses to solicit investments of up to $2 million, in increments of $10,000 per investment. Such a high cap on aggregate investment makes the bill inconsistent with the expressed rationale for the crowdfunding exception.

Registration and filing requirements at both the state and federal level exist to protect investors. A company that is sufficiently large to warrant the raising of $2 million in investment capital is also a company that can afford to comply with the applicable registration and filing requirements at both the state and federal level.

SECTION 303: PREEMPTION OF STATE LAW

Section 303 would preempt state laws requiring disclosures, or reviewing exempted investment offerings, before they are sold to the public. The authority to require such filings is critical to the ability of states to get ''under the hood'' of an offering to make sure that it is what it says it is. Moreover, as a matter of principle and policy, NASAA ardently believes that the review of offerings of this size should remain primarily the responsibility of the states. State regulators are closer, more accessible, and more in touch with the local and regional economic issues that affect both the issuer and the investor in a small business offering.

Congress would be rash to preempt states from regulating crowdfunding. Preempting state authority is a very serious step and not something that should be undertaken lightly or without careful deliberation, including a thorough examination of all available alternatives. In this case, preemption for a very new and untested concept to raise capital, without a demonstrable history of reliability, is especially unwarranted, as the states have far more experience with crowdfunding than Congress or the SEC, and as the states have historically been the primary ''cops on the beat'' in the regulation of all areas of small business capital formation.

For a clear example of the dangers of preempting state securities look no further than the effect of the National Securities Markets Improvement Act (NSMIA). As a result of this Congressional action, private offerings receive virtually no regulatory scrutiny. State securities regulators are prohibited from reviewing these offerings prior to their sale to investors, and federal regulators lack the resources to conduct any meaningful review, so the offerings proceed unquestioned. Today, the exemption is being misused to steal millions of dollars from investors through false and misleading representations in offerings that provide the appearance of legitimacy without any meaningful scrutiny of regulators. In essence, the private offering provisions of Rule 506 are being used by unscrupulous promoters to evade review and fly under the radar of justice.

Instead of preempting states, Congress should allow the states to take a leading role in implementing an appropriate regulatory framework for crowdfunding. Based on the small size of the offering, the small size of the issuer, and the relatively small investment amounts, it is clear that the states are the only regulators in a position to police this new market and protect its participants. Moreover, and as has already been noted, the states are now in the midst of developing a Model Crowdfunding Exemption.

As the securities regulators closest to the investing public, and in light of their distinguished record of effective regulation, the States are the most appropriate regulator in this area. State securities regulators are not only capable of acting, but, indeed, are acting in this critical area, and Congress should continue to allow the states to do so.

TITLE IV: THE SMALL COMPANY CAPITAL FORMATION ACT

Title IV of the JOBS Act is identical to S. 1544, which has been sponsored in the Senate by Sens. Jon Tester (D–MT) and Pat Toomey (R–PA).

Given the risky nature of these offerings, NASAA believes that state oversight is critically important for investor protection. At the same time, NASAA recognizes the costs and difficulty of the typical registration process, and the particular burden it places upon small companies. Indeed, for this reason the states have adopted a streamlined process for an issuer to use in an offering under Regulation A.

NASAA had significant concerns regarding the original version of this legislation because it stripped away investor protection by preempting state review of Regulation A offerings that are sold through broker-dealers. However, Title IV of H.R. 3606 does not include the preemptive provisions that were in the original version of the bill. While NASAA remains concerned about the dollar amount of potential offerings under Title IV, as well as the bill's nonsensical requirement that the SEC automatically increase the ceiling in the future, every two years, in perpetuity, we believe that the states' ability to review these offerings, along with the SEC's proper exercise of discretion in creating reasonable reporting requirements for issuers, will prove to achieve a proper balance of the issuers' needs with investor protection.

TITLE V: THE PRIVATE COMPANY FLEXIBILITY AND GROWTH ACT

Title V of H.R. 3606 would raise the threshold for mandatory registration under the Securities Exchange Act of 1934 (the ''Exchange Act'') from 500 shareholders to 1,000 shareholders for all companies. This bill would also exclude accredited investors and securities held by shareholders who received such securities under employee compensation plans from the 1,000-shareholder threshold.

Section 12(g) of the Exchange Act requires issuers to register equity securities with the SEC if those securities are held by 500 or more record holders and the company has total assets of more than $10 million. After a company registers with the SEC under Section 12(g), it must comply with all of the Exchange Act's reporting requirements.

The states are primarily interested in the issues related to the regulation of small, non-public companies. We give considerable deference to the SEC in the regulation of public companies and secondary trading. However, we do have concerns about drastic changes in the thresholds for reporting companies or the information they must disclose.

The primary reason for requiring a company to be ''public'' is to facilitate secondary trading of the company's securities by providing easily-accessible information to potential purchasers. The principal concern for states is the facilitation of this secondary trading market with adequate and accurate information. It may be possible to achieve this without full-blown Exchange Act registration and periodic reporting, but the states are wary of changes that may lead to the creation of less informed markets.

No matter what threshold number is chosen before a company becomes ''public,'' it makes little sense to exclude any investor from the count of beneficial holders. Those that purchased from the issuer were protected by the requirements of the Securities Act. Both the seller and the purchaser benefit from the robust marketplace facilitated by the Exchange Act registration. Accordingly, NASAA believes the registration threshold should be based upon the need to provide for a legitimate secondary trading market. Regardless of where the threshold is set, everyone who is a potential seller in the market should be counted. This would include all beneficial owners, not just holders of record.

TITLE VI: CAPITAL EXPANSION

Title VI of H.R. 3606 would raise the threshold for mandatory registration under the Securities Exchange Act of 1934 from 500 shareholders to 2,000 shareholders for all banks and bank holding companies, and raises the shareholder deregistration threshold from 300 shareholders to 1,200 shareholders.

NASAA understands the purpose of Title VI is to remedy a specific problem that is today confronting certain community banks. Specifically, as a result of the increasing costs of public company registration, many community banks have determined that deregistration is in the best interests of their shareholders. But in order to deregister, community banks must have fewer than 300 shareholders. As a result, community banks must often buy back shares to deregister, which reduces the access of small banks to capital and deprives small communities of an opportunity to invest in local companies.

Given the narrow scope of this Title and its application to only banks and bank holding companies, NASAA has no position on Title VI.

Finally, in view of the significant changes that H.R. 3606 would make to our securities laws, and of the fundamentally experimental nature of many of this bill's provisions, NASAA urges that H.R. 3606 proceed through the Senate under regular order, and that the bill be subject to the scrutiny of the Senate Banking Committee and it Securities Subcommittee. Securities regulators, legal scholars, investor advocates, and others have cautioned the Senate about the impact H.R. 3606 could have on investors and on our capital markets. The Senate must answer these questions and concerns, thoroughly and to its satisfaction, before it votes on H.R. 3606 or similar legislation.

Thank you for your consideration of these important issues. If you have any questions, please feel free to contact Michael Canning, Director of Policy, or Anya Coverman, Assistant Director of Policy, at the NASAA Corporate Office.

Respectfully,

JACK E. HERSTEIN,
NASAA President; Assistant Director, Nebraska Department of Banking & Finance, Bureau of Securities.

COUNCIL OF INSTITUTIONAL INVESTORS,
Washington, DC, March 1, 2012.

Hon. TIM JOHNSON,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

Hon. RICHARD C. SHELBY,
Ranking Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSON AND RANKING MEMBER SHELBY: As a nonprofit, nonpartisan association of public corporate and union pension plans, and other employee benefit funds, foundations and endowments with combined assets that exceed $3 trillion, the Council of Institutional Investors (Council) is committed to protecting the retirement savings of millions of American workers. With that commitment in mind, and in anticipation of your upcoming March 6 hearing entitled ''Spurring Job Growth Through Capital Formation While Protecting Investors, Part II,'' we would like to share with you some of our concerns and questions about S. 1933, the ''Reopening American Capital Markets to Emerging Growth Companies Act of 2011.''

Our questions and concerns about S. 1933 are grounded in the Council's membership approved corporate governance best practices. Those policies explicitly reflect our members' view that all companies, including ''companies in the process of going public should practice good corporate governance.'' Thus, we respectfully request that the Committee consider changes to, or removal of, the following provisions of S. 1933:

DEFINITIONS

We question the appropriateness of the qualities defining the term ''emerging growth company'' (EGC) as set forth in Sec. 2(a) and 2(b).

As you are aware, under Sec. 2(a) and 2(b) a company would qualify for special status for up to five years, so long as it has less than $1 billion in annual revenues and not more than $700 million in public float following its initial public offering (IPO). The Council is concerned that those thresholds may be too high in establishing an appropriate balance between facilitating capital formation and protecting investors.

For example, we note that some of the most knowledgeable and active advocates for small business capital formation have in the past agreed that a company with more than $250 million of public float generally has the resources and infrastructure to comply with existing U.S. securities regulations. We, therefore, urge the Committee to reevaluate the basis for the proposed thresholds defining an EGC.

DISCLOSURE OBLIGATIONS

We have concerns about Sec. 3(a)(1) because it would effectively limit shareowners' ability to voice their concerns about executive compensation practices.

More specifically, Sec. 3(a)(1) would revoke the right of shareowners, as owners of an EGC, to express their opinion collectively on the appropriateness of executive pay packages and severance agreements.

The Council's longstanding policy on advisory shareowner votes on executive compensation calls on all companies to ''provide annually for advisory shareowner votes on the compensation of senior executives.'' The Investors Working Group echoed the Council's position in its July 2009 report entitled U.S. Financial Regulatory Reform: The Investors' Perspective.

Advisory shareowner votes on executive compensation and golden parachutes efficiently and effectively encourage dialogue between boards and shareowners about pay concerns and support a culture of performance, transparency and accountability in executive compensation. Moreover, compensation committees looking to actively rein in executive compensation can utilize the results of advisory shareowner votes to defend against excessively demanding officers or compensation consultants.

The 2011 proxy season has demonstrated the benefits of nonbinding shareowner votes on pay. As described in Say on Pay: Identifying Investors Concerns:

Compensation committees and boards have become much more thoughtful about their executive pay programs and pay decisions. Companies and boards in particular are articulating the rationale for these decisions much better than in the past. Some of the most egregious practices have already waned considerably, and may even disappear entirely.

As the Committee deliberates the appropriateness of disenfranchising certain shareowners from the right to express their views on a company's executive compensation package, we respectfully request that the following factors be considered:

1. Companies are not required to change their executive compensation programs in response to the outcome of a say on pay or golden parachutes vote. Securities and Exchange Commission (SEC) rules simply require that companies discuss how the vote results affected their executive compensation decisions.

2. The SEC approved a two-year deferral for the say on pay rule for smaller U.S. companies. As a result, companies with less than $75 million in market capitalization do not have to comply with the rule until 2013, thus the rule's impact on IPO activity is presumably unknown. We, therefore, question whether there is a basis for the claim by some that advisory votes on pay and golden parachutes are an impediment to capital formation or job creation.

We also have concerns about Sec. 3(a)(2) because it would potentially reduce the ability of investors to evaluate the appropriateness of executive compensation.

More specifically, Sec. 3(a)(2) would exempt an EGC from Sec. 14(i) of the Securities Exchange Act of 1934, which would require a company to include in its proxy statement information that shows the relationship between executive compensation actually paid and the financial performance of the issuer.

We note that the SEC has yet to issue proposed rules relating to the disclosure of pay versus performance required by Sec. 14(i). As a result, no public companies are currently required to provide the disclosure. We, therefore, again question whether a disclosure that has not yet even been proposed for public comment is impeding capital formation or job creation.

Our membership approved policies emphasize that executive compensation is one of the most critical and visible aspects of a company's governance. Executive pay decisions are one of the most direct ways for shareowners to assess the performance of the board and the compensation committee.

The Council endorses reasonable, appropriately structured pay-for-performance programs that reward executives for sustainable, superior performance over the long-term. It is the job of the board of directors and the compensation committee to ensure that executive compensation programs are effective, reasonable and rational with respect to critical factors such as company performance.

Transparency of executive compensation is a primary concern of Council members. All aspects of executive compensation, including all information necessary for shareowners to understand how and how much executives are paid should be clearly, comprehensively and promptly disclosed in plain English in the annual proxy statement.

Transparency of executive pay enables shareowners to evaluate the performance of the compensation committee and the board in setting executive pay, to assess pay-for-performance links and to optimize their role in overseeing executive compensation through such means as proxy voting. It is, after all, shareowners, not executives, whose money is at risk.

ACCOUNTING AND AUDITING STANDARDS

We have concerns about Sec. 3(c) and Sec. 5 because those provisions would effectively impair the independence of private sector accounting and auditing standard setting, respectively.

More specifically, Sec. 3(c) would prohibit the independent private sector Financial Accounting Standards Board from exercising their own expert judgment, after a thorough public due process in which the views of investors and other interested parties are solicited and carefully considered, in determining the appropriate effective date for new or revised accounting standards applicable to EGCs.

Similarly, Sec. 5 would prohibit the independent private sector Public Company Accounting Oversight Board from exercising their own expert judgment, after a thorough public due process in which the view of investors and other interested parties are solicited and carefully considered, in determining improvements to certain standards applicable to the audits of EGCs.

The Council's membership ''has consistently supported the view that the responsibility to promulgate accounting and auditing standards should reside with independent private sector organizations.'' Thus, the Council opposes legislative provisions like Sec. 3(a) and Sec. 5 that override or unduly interfere with the technical decisions and judgments (including the timing of the implementation of standards) of private sector standard setters.

A 2010 joint letter by the Council, the American Institute of Certified Public Accountants, the Center for Audit Quality, the CFA Institute, the Financial Executives International, the Investment Company Institute, and the U.S. Chamber of Commerce explains, in part, the basis for the Council's strong support for the independence of private sector standard setters:

We believe that interim and annual audited financial statements provide investors and companies with information that is vital to making investment and business decisions. The accounting standards underlying such financial statements derive their legitimacy from the confidence that they are established, interpreted and, when necessary, modified based on independent, objective considerations that focus on the needs and demands of investors—the primary users of financial statements. We believe that in order for investors, businesses and other users to maintain this confidence, the process by which accounting standards are developed must be free—both in fact and appearance—of outside influences that inappropriately benefit any particular participant or group of participants in the financial reporting system to the detriment of investors, business and the capital markets. We believe political influences that dictate one particular outcome for an accounting standard without the benefit of public due process that considers the views of investors and other stakeholders would have adverse impacts on investor confidence and the quality of financial reporting, which are of critical importance to the successful operation of the U.S. capital markets.

INTERNAL CONTROLS AUDIT

We have concerns about Sec. 4 because that provision would, in our view, unwisely expand the existing exemption for most public companies from the requirement to have effective internal controls.

More specifically, Sec. 4 would exempt an EGC from the requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002 (SOX). That section requires an independent audit of a company's assessment of its internal controls as a component of its financial statement audit.

The Council has long been a proponent of Section 404 of SOX. We believe that effective internal controls are critical to ensuring investors receive reliable financial information from public companies.

We note that Section 989G(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) already exempts most public companies, including all smaller companies, from the requirements of Section 404(b). We also note that Section 989G(b) of Dodd-Frank required the SEC to conduct a study on ''how the Commission could reduce the burden of complying with section 404(b) . . . while maintaining investor protections. . . .''

The SEC study, issued April 2011, revealed that (1) there is strong evidence that the provisions of Section 404(b) ''improves the reliability of internal control disclosures and financial reporting overall and is useful to investors,'' and (2) that the ''evidence does not suggest that granting an exemption [from Section 404(b)] . . . would, by itself, encourage companies in the United States or abroad to list their IPOs in the United States.'' Finally, and importantly, the study recommends explicitly against—what Sec. 4 attempts to achieve—a further expansion of the Section 404(b) exemption.

AVAILABILITY OF INFORMATION ABOUT EMERGING GROWTH COMPANIES

Finally, we have concerns about Sec. 6 of S. 1933 because it appears to potentially create conflicts of interest for financial analysts.

More specifically, we agree with the U.S. Chamber of Commerce that the provisions of Sec. 6 as drafted ''may be a blurring of boundaries that could create potential conflicts of interests between the research and investment components of broker-dealers.'' The Council membership supports the provisions of Section 501 of SOX and the Global

Research Analyst Settlement. Those provisions bolstered the transparency, independence, oversight and accountability of research analysts.

While the Council welcomes further examination of issues, including potential new rules, relating to research analysts as gatekeepers, it generally does not support legislative provisions like Sec. 6 that would appear to weaken the aforementioned investor protections.

The Council respectfully requests that the Committee carefully consider our questions and concerns about the provisions of S. 1933. If you should have any questions or require any additional information about the Council or the contents of this letter, please feel free to contact me at 202.261.7081 or Jeff@cii.org, or Senior Analyst Laurel Leitner at 202.658.9431 or Laurel@cii.org.

Sincerely,

JEFF MAHONEY,
General Counsel.

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, March 13, 2012.

Hon. TIM JOHNSON,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

Hon. RICHARD C. SHELBY,
Ranking Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSON AND RANKING MEMBER SHELBY: Last week, the House of Representatives passed H.R. 3606, the ''Jumpstart Our Business Startups Act.'' As the Senate prepares to debate many of the capital formation initiatives addressed by H.R. 3606, I wanted to share with you my concerns on some important aspects of this significant legislation.

The mission of the Securities and Exchange Commission is three-fold: protecting investors; maintaining fair, orderly and efficient markets; and facilitating capital formation. Cost-effective access to capital for companies of all sizes plays a critical role in our national economy, and companies seeking access to capital should not be hindered by unnecessary or overly burdensome regulations. At the same time, we must balance our responsibility to facilitate capital formation with our obligation to protect investors and our markets. Too often, investors are the target of fraudulent schemes disguised as investment opportunities. As you know, if the balance is tipped to the point where investors are not confident that there are appropriate protections, investors will lose confidence in our markets, and capital formation will ultimately be made more difficult and expensive.

While I recognize that H.R. 3606 is the product of a bipartisan effort designed to facilitate capital formation and includes certain promising approaches, I believe that there are provisions that should be added or modified to improve investor protections that are worthy of the Senate's consideration.

DEFINITION OF EMERGING GROWTH COMPANY

The ''IPO On-Ramp'' provisions of H.R. 3606 provide a number of significant regulatory changes for what are defined as ''emerging growth companies.'' While I share the view that it is important to reduce the impediments to smaller businesses conducting initial public offerings in the United States, the definition of ''emerging growth company'' is so broad that it would eliminate important protections for investors in even very large companies, including those with up to $1 billion in annual revenue. I am concerned that we lack a clear understanding of the impact that the legislation's exemptions would have on investor protection. A lower annual revenue threshold would pose less risk to investors and would more appropriately focus benefits provided by the new provisions on those smaller businesses that are the engine of growth for our economy and whose IPOs the bill is seeking to encourage.

CHANGES TO RESEARCH AND RESEARCH ANALYST RULES

H.R. 3606 also would weaken important protections related to (1) the relationship between research analysts and investment bankers within the same financial institution by eliminating a number of safeguards established after the research scandals of the dot-com era and (2) the treatment of research reports prepared by underwriters of IPOs.

H.R. 3606 would remove certain important measures put in place to enforce a separation between research analysts and investment bankers who work in the same firm. The rules requiring this separation were designed to address inappropriate conflicts of interest and other objectionable practices—for example, investment bankers promising potential clients favorable research in return for lucrative underwriting assignments—which ultimately severely harmed investor confidence. In addition, H.R. 3606 would overturn SRO rules that establish mandatory quiet periods designed to prevent banks from using conflicted research to reward insiders for selecting the bank as the underwriter. I am concerned that the changes contained in H.R. 3606 could foster a return to those practices and cause real and significant damage to investors.

In addition, the legislation would allow, for the first time, research reports in connection with an emerging growth company IPO to be published before, during, and after the IPO by the underwriter of that IPO without any such reports being subject to the protections or accountability that currently apply to offering prospectuses. In essence, research reports prepared by underwriters in emerging growth company IPOs would compete with prospectuses for investors' attention, and investors would not have the full protections of the securities laws if misled by the research reports.

DISCLOSURE, ACCOUNTING AND AUDITING MATTERS

H.R. 3606 would allow emerging growth companies to make scaled disclosures, in an approach similar to that currently permitted under our rules for smaller reporting companies, and would provide other relief from specific disclosure requirements, during the 5-year on-ramp period. While there is room for reasonable debate about particular exemptions included in the disclosure on-ramp, on balance I believe allowing some scaled disclosure for emerging growth companies could be a reasonable approach.

H.R. 3606, however, also would restrict the independence of accounting and auditing standard-setting by the Financial Accounting Standards Board (''FASB'') and the Public Company Accounting Oversight Board (''PCAOB''). These provisions undermine independent standard-setting by these expert boards, and both the FASB and the PCAOB already have the authority to consider different approaches for different classes of issuers, if appropriate.

Moreover, H.R. 3606 would exempt emerging growth companies from an audit of internal controls set forth in Section 404(b) of the Sarbanes Oxley Act during the five-year on-ramp period. IPO companies already have a two-year on-ramp period under current SEC rules before such an audit is required. In addition, the Dodd-Frank Act permanently exempted smaller public companies (generally those with less than $75 million in public float) from the audit requirement, which already covers approximately 60 percent of reporting companies. I continue to believe that the internal controls audit requirement put in place after the Enron and other accounting scandals of the early 2000's has significantly improved the quality and reliability of financial reporting and provides important investor protections, and therefore believe this change is unwarranted.

''TEST THE WATERS'' MATERIALS

H.R. 3606 would allow emerging growth companies to ''test the waters'' to determine whether investors would be interested in an offering before filing IPO documents with the Commission. This would allow offering and other materials to be provided to accredited investors and qualified institutional buyers before a prospectus—the key disclosure document in an offering—is available.

There could be real value to permitting these types of pre-filing communications: it could save companies time and money, and make it more likely that companies that file for IPOs can complete them. Indeed, there are some SEC rules that permit ''test the waters'' activities already. However, unlike the existing ''test the waters'' provisions, the provisions of H.R. 3606 would not require companies to file with the SEC and take responsibility for the materials they use to solicit investor interest, even after they file for their IPOs. This would result in uneven information for investors who see both the ''test the waters'' materials and the prospectus compared to those who only see the prospectus. In addition, as with the provisions relating to research reports, it could result in investors focusing their attention on the ''test the waters'' materials instead of the prospectuses, without important investor protections being applied to those materials.

CONFIDENTIAL FILING OF IPO REGISTRATION STATEMENTS

H.R. 3606 would permit emerging growth companies to submit their registration statements confidentially in draft form for SEC staff review. This reduction in transparency would hamper the staff's ability to provide effective reviews, since the staff benefits in its reviews from the perspectives and insights that the public provides on IPO filings. It also could require significant resources for staff review of offerings that companies are not willing to make public and then abandon before making a public filing. SEC staff recently limited the general practice of permitting foreign issuers to submit IPO registrations in nonpublic draft form because of these concerns, and expanding that program to all IPOs could adversely impact the IPO review program.

CROWDFUNDING

H.R. 3606 also provides an exemption from Securities Act registration for ''crowdfunding,'' which would permit companies to offer and sell, in some cases, up to $2 million of securities in publicly advertised offerings without preparing a registration statement. For the past several months, the staff has been analyzing crowdfunding, among other capital formation strategies, and also has discussed these strategies with the Commission's newly created Advisory Committee on Small and Emerging Companies.

I recognize that proponents of crowdfunding believe this method of raising money could help small businesses harness the power of the internet and social media to raise small amounts of very early stage capital from a large number of investors. That said, I believe that the crowdfunding exemption included as part of H.R. 3606 needs additional safeguards to protect investors from those who may seek to engage in fraudulent activities. Without adequate protections, investor confidence in crowdfunding could be significantly undermined and would not achieve its goal of helping small businesses.

For example, an important safeguard that could be considered to better protect investors in crowdfunding offerings would be to provide for oversight of the industry professionals that intermediate and facilitate these offerings. With Commission oversight, these intermediaries could serve a critical gatekeeper function, running background checks, facilitating small businesses' provision of complete and adequate disclosures to investors, and providing the necessary support for these small businesses. Commission oversight would further enhance customer protections by requiring intermediaries to protect investors' and issuers' funds and securities, for example by requiring funds and securities to be held at an independent bank or broker-dealer.

Investors also would benefit from a requirement to provide certain basic information about companies seeking crowdfunding investors. H.R. 3606 requires only limited disclosures about the business investors are funding. Additional information that would benefit investors should include a description of the business or the business plan, financial information, a summary of the risks facing the business, a description of the voting rights and other rights of the stock being offered, and ongoing updates on the status of the business.

CHANGES TO SECTION 12(G) REGISTRATION THRESHOLDS

H.R. 3606 also would change the rules relating to the thresholds that trigger public reporting by, among other things, increasing the holder of record threshold that triggers public reporting for companies and bank holding companies. The current rules have been in place since 1964, and since that time there have been profound changes in the way shareholders hold their securities and in the capital markets.

Last spring, I asked our staff to comprehensively study a variety of capital formation-related issues, including the current thresholds for public reporting. At this point, I do not have sufficient data or information to assess whether the thresholds proposed in H.R. 3606 are appropriate. I do recognize that a different treatment may be appropriate for community banks that are already subject to an extensive reporting and regulatory regime.

RULEMAKING

H.R. 3606 requires a series of new, significant Commission rulemakings with time limits that are not achievable. For example, the rulemaking for the crowdfunding section has a deadline of 180 days, and it specifically requires the Commission to consider the costs and benefits of the rules. Given (1) that much of the data that would be used to perform such analyses is not readily available and (2) the complexity of such analyses, this time frame is too short to develop proposed rules, perform the required analyses, solicit public comments, review and analyze the public comments, and adopt final rules. I believe a deadline of 18 months would be more appropriate for rules of this magnitude.

I stand ready to assist Congress as it addresses these important issues. Please call me, at (202) 551–2100, or have your staff call Eric Spitler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551–2010, should you have any questions or comments.

Sincerely,

MARY L. SCHAPIRO,
Chairman.

[From the AFL–CIO Executive Council, Mar. 14, 2012]

THE JOBS ACT—A CYNICAL AND DANGEROUS RETURN TO THE POLITICS OF FINANCIAL DEREGULATION

America needs jobs. Yet Congress cannot enact such basic legislation as the reauthorization of the Surface Transportation Bill that would create hundreds of thousands of jobs. Instead, this week Congress once again is looking to deregulate Wall Street—this time in the form of the cynically named JOBS Act, which would weaken the ability of the Securities and Exchange Commission to regulate our capital markets and allow companies to sell stock to the public without providing three years of audited financial statements, without having adequate internal controls and without complying with key corporate governance reforms in the recently passed Dodd-Frank Act.

We still have millions of unemployed workers as a direct result of decades of financial deregulation. Workers' pension funds have yet to recover from the effects of the last time we created a bubble in IPOs during the late 1990s. And yet members of both parties in Congress seem bent on repeating these experiences, even as congressional Republicans block any initiative that might really create jobs and set our economy toward the path of long-term prosperity.

In case our own ugly history with stock bubbles and financial fraud is not enough, Congress should heed the warnings from other developed countries that recently have experimented with deregulated securities markets. In the 1990s, Canadian regulators condemned the ''continuing occurrence of shams, swindles and market manipulations'' on the Vancouver Stock Exchange of loosely regulated small company stocks. More recently, the London Stock Exchange's Alternative Investment Market has been described as a ''casino'' for its highly speculative small company stock listings.

Workers' retirement savings will be in greater risk of fraud and speculation if securities market deregulation once again is railroaded through Congress. Once again our economy will be at risk from the folly of policymakers promoting financial bubbles and ignoring the needs of the real economy. The AFL–CIO calls on Congress to set aside the politics of the 1%, the old game of special favors for Wall Street, and turn to the business of real job creation. The labor movement strongly opposes the JOBS Act and any other effort to weaken the Dodd-Frank Act.

We support the efforts of Senate Democrats such as Jack Reed, Carl Levin, and Mary Landrieu to amend the ''JOBS Act'' to lessen the harm it does to investors, pension funds, and the U.S. economy.

We want jobs, not cynical Wall Street scams.

A MESSAGE FROM SECRETARIES OF STATE ON CROWDFUNDING REGULATION

MARCH 14, 2012

Re Crowdfunding and H.R. 3606, the Jumpstarting Our Business Startups Act.

Hon. TIM JOHNSON,
Chairman, U.S. Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

Hon. RICHARD C. SHELBY,
Ranking Member, U.S. Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN JOHNSON, RANKING MEMBER SHELBY AND MEMBERS OF THE COMMITTEE: As Secretaries of State with primary securities regulatory jurisdiction, we welcome this opportunity to discuss the developments in ''crowdfunding'' as a useful tool in small business capital formation, and the work of the U.S. Senate to ensure that such a mechanism remains viable for small businesses and safe for investors.

Crowdfunding is an online, typically grassroots, money-raising strategy that allows the public to use websites to contribute small amounts of money to help artists, musicians, filmmakers and other creative people finance their projects. Recently, crowdfunding financing has been applied to small businesses and start-ups, facilitating their attempts to get their ventures off the ground.

We applaud the work of Congress, via H.R. 3606, aimed at allowing small businesses greater access to crowdfunding financing through the Internet. We are keenly aware of how critical small businesses are to job growth and to improving the economy.

However, Congress' attempt to enact laws meant to reinvigorate the economy could, in fact, have a detrimental effect. If passed as currently drafted, Title III of H.R. 3606, would prohibit the States from working proactively to enforce laws designed to protect investors.

State securities regulators are proud of their 100-year history of effectively regulating smaller businesses seeking to raise capital. States securities laws protect investors by requiring registration of securities offerings and preventing the exploitation of investors through unjust or incomplete offerings. State securities regulators are uniquely able to protect investors in that they are not only present in the state, but they are also attuned to the particular state's economic conditions. It would therefore be impractical and a disservice to investors to remove state regulators entirely from this important role. To that end, we recommend the following adjustments to current legislation concerning crowdfunding.

Currently-proposed Federal legislation would limit state authority to protect their investing citizenry. Specifically, Title III of H.R. 3606—which is identical to H.R. 2930, the crowdfunding bill passed by the House last November—leaves enormous gaps in investor protection. Small businesses and investors alike have suffered from the fraudulent activities of unregistered brokers and unqualified business advisers who, escaping regulatory oversight, seek only to profit by exploiting the legitimate capital formation community and ultimately harm its investors through unchecked and improper practices. Website operators functioning as intermediaries, among others, should complete at least minimal filings with regulators and demonstrate minimum competencies. Congress should preserve the States' ability to address this issue.

We commend Congress's efforts to be responsive to small business owners' capital formation needs, but we are concerned that Title III of H.R. 3606, by preventing states from acting proactively to deter fraud in this new market, would have precisely the opposite effect.

The states are currently developing a framework for encouraging and facilitating the formation of small business capital. Last fall, NASAA voted to establish a special committee to propose steps that state securities regulators can take collectively to facilitate small business capital formation. In January, this special committee completed work on an initial draft of a model rule which state securities regulators may adopt to responsibly encourage small business capital formation through a crowdfunding exemption. The NASAA model crowdfunding rule completed the first phase of the rulemaking process, an internal comment period, on February 7, and NASAA expects to publish a revised version of the rule for public comment as early as latter this month. We believe that federal legislation should be crafted in a fashion that complements these efforts, and that it can best do so by ensuring that the role of state regulators in this area is addressed in broad parameters.

State securities regulators understand that technology has vastly improved the methods by which entrepreneurs can communicate with potential investors. We also understand, however, that securities offerings made through the Internet—which Title III of H.R. 3606 is based on—are fraught with risk. In such cases, the need for the state securities laws becomes even more urgent for the protection of investors and legitimate, worthwhile small business offerings. We urge Congress to resist preemption and preserve state securities regulators' authority to protect their investors.

STATE OF LOUISIANA,
OFFICE OF FINANCIAL INSTITUTIONS,
Baton Rouge, LA, March 14, 2012.

Senator MARY LANDRIEU,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LANDRIEU: I am writing to urge you to oppose the preemption of Louisiana law to protect investors in any ''crowdfunding'' legislation that comes before the Senate. By preempting state law for a new crowdfunding exemption, Congress would be creating a massive hole in the investor protection safety net by needlessly prohibiting the Office of Financial Institutions from working proactively to enforce laws designed to protect Louisiana investors.

I want to echo the concerns expressed in the March 12, 2012 letter sent by North American Securities Administrators Association (NASAA) President Jack Herstein on this important investor protection issue to the Senate leadership. I agree with NASAA that ''preempting state authority is a very serious step and not something that should be undertaken lightly or without careful deliberation, including a thorough examination of all available alternatives.''

Crowdfunding would give unproven start-up companies, offering risky speculative investments, direct access to small unsophisticated investors, potentially creating a haven for fraud. If state regulatory authority is preempted, states would not be able to review crowdfunding investment opportunities before they are offered to investors. Post-sale anti-fraud remedies provide little comfort to an investor who has lost a significant sum of money that is unrecoverable.

Expanded access to capital markets is beneficial only when investors remain confident that they are protected, when transparency in the marketplace is preserved, and when investment opportunities are legitimate. As Columbia Law School Professor John Coffee stated, in testimony to the Senate Banking Committee, ''one of these bills (S. 1791) could well be titled 'The Boiler Room Legalization Act of 2011.'' Such legislation, according to Professor Coffee, ''is likely to be used by early stage issuers that do not yet have an operating history or, possibly, even financial statements. Such issuers are flying on a 'wing and prayer,' selling hope more than substance.''

I appreciate that the concept of crowdfunding is appealing because it provides small, innovative enterprises access to capital that might not otherwise be available. Indeed, this is precisely why states are now considering adopting a model rule that would establish a more modest exemption for crowdfunding as it is traditionally understood, with individual investments capped at several hundred dollars per investor.

Instead of preempting states, Congress should allow the states to take a leading role in implementing an appropriate regulatory framework for crowdfunding. States are the most appropriate regulator in this area and Congress should allow states the opportunity to continue to protect retail investors from the risks associated with smaller, speculative investments.

I welcome the opportunity to discuss this matter further and to work together to craft legislation that is beneficial to small business as well as the investing public in Louisiana and throughout the United States.

Sincerely,

JOHN DUCREST,
Commissioner of Securities.

AMERICAN SUSTAINABLE
BUSINESS COUNCIL,
Washington, DC, March 14, 2012.

Hon. HARRY REID,
Office of the Majority Leader, U.S. Capitol, Washington, DC.
Hon. MITCH MCCONNELL,
Office of the Minority Leader, U.S. Capitol, Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: The American Sustainable Business Council (ASBC) supports the CROWDFUND Act, S. 2190, authored by Senators Merkley, Bennet, Brown and Landrieu and encourage the Senate to use this bill as the vehicle to move forward on crowdfunding.

The American Sustainable Business Council is a growing coalition of business organizations and businesses committed to advancing a framework and policies that support a just and sustainable economy. The organizations that have joined in this partnership represent over 100,000 businesses and more than 200,000 business professionals covering the gamut of local and state chambers of commerce, microenterprise, social enterprise, green and sustainable, local living economy, women business leaders, economic development and investor organizations.

In 2010 ASBC was one of the very few organizations supporting crowdfunding as a vehicle for small businesses to access capital investment without the prohibitive cost and time presently required by the Securities and Exchange Commission (SEC) regulations. That original proposal was to have small individual investments from a large number of people with a relatively low aggregate investment cap. This would minimize individual investor loss and systemic fraud. While the current legislation allows for larger individual and aggregate investments than the original proposal, our initial crowdfunding goals have been addressed.

While we support appropriate SEC oversight over significant investments, we recognize there will always be risks in the marketplace. This legislation strikes an appropriate balance between those risks and regulatory protection.

The winners with S. 2190 will not only be individual businesses that will have new avenues to access to capital, but also the national economy by enabling small and medium sized businesses to grow and create jobs. Small businesses are responsible for creating the majority of net new jobs in the country and deserve our support to rebuild the U.S. economy.

We applaud the leadership of Senators Merkley, Bennet, Brown and Landrieu on this critical issue for small and medium sized businesses. We look forward to working with the U.S. Senate to successfully pass S. 2190 and see its enactment into law.

Sincerely,

DAVID LEVINE,
Co-Founder and CEO.

Re Crowdfunding Intermediary in favor of the CROWDFUND Act (S. 1970).

Senator HARRY REID,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR REID, I write in favor of the bipartisan compromise CROWDFUND Act proposed recently by Senators Merkley, S. Brown, Bennet, and Landrieu.

Yesterday evening's introduction of the first bi-partisan Senate crowdfunding bill is a big step forward in our fight to get equity crowdfunding passed through Congress. I have been to Washington DC seven times since mid November discussing equity crowdfunding legislation directly with key Senate offices. The offices of the Senators on the Banking Committee have been very receptive to input from the entrepreneurial community and have adopted many of our suggestions in the latest bill.

This latest bill, the CrowdFund Act, is important because, unlike previous bills, for the first time we have a Senate bill with bipartisan sponsorship, a balance of state oversight and federal uniformity, industry standard investor protections, and workable funding caps. This bill has a legitimate chance at quieting those who were previously trumping up fears of fraud/bad actors as well as the various state oversight concerns. To date the main issues the opposition raised were regarding fraud and state oversight of our new industry. While the opposition is mainly from those protecting the interests of large banks, the earlier House Bill and two partisan Senate bills did little to address the legitimate concerns raised by the opposition. As a compromise, this bill has a real chance at becoming law.

I hope to see your support of this bipartisan effort in the Senate to pass a functional and balanced CROWDFUND Act.

Sincerely,

FREEMAN WHITE,
CEO, Launcht.com

MOTAAVI,
Durham, NC, March 14, 2012.

Hon. HARRY REID,
Hart Senate Office Building,
Washington, DC.
Hon. MITCH MCCONNELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATORS REID AND MCCONNELL: We are a crowdfunding intermediary based in Durham, NC. We understand the Senate will take up the JOBS Act shortly. We are very concerned about language in Title III of While we appreciate the broad exemption written by the House, the language does not protect investors and puts the crowdfunding industry at risk of significant fraud. However, more responsible language does exist. The CROWDFUND Act, cosponsored by Senators Jeff Merkley (OR), Michael Bennet (CO), Scott Brown (MA), and Mary Landrieu (LA), represents an ideal crowdfunding statutory framework.

The crowdfunding language in the JOBS Act lacks critical investor protection features. It does not require offerings to be conducting through an intermediary, which opens the door for fraudulent activity similar to what was experienced when Rule 504 was changed to allow offer and solicitation in the mid-1990s. It also does not require appropriate disclosures or inspections. The bill does not require the issuer to inform investors of dilution risk or capital structure. There are no provisions for misstatements or omissions that relate specifically to this exemption. Crowdfunding is premised on openness. Without disclosure, investors cannot protect themselves or accurately price the securities they are buying. If issuers are not willing to provide information over and above what is required, the JOBS Act language does not provide investors with other alternatives short of giving up on crowdfunding altogether.

The CROWDFUND Act addresses our concerns. This bill strikes the right balance between disclosure and flexibility. The language is tightly integrated with existing securities laws to provide investor protection. It places easily met obligations on the issuer and the intermediary to ensure that investors have the information they need to make sound decisions. This bill has many provisions for appropriate rulemaking, and is written in a way that reflects how crowdfunding actually works. We think crowdfunding can be valuable and integral part of the capital formation process. The CROWDFUND Act is the right bill to make this happen.

We understand that introducing a significant amendment to the JOBS Act may slow down the reconciliation process, but we think the benefits are worth the effort. We urge you to adopt the CROWDFUND Act as the Senate language on crowdfunding and believe the House will also see the value in this well written, investor focused bill.

Sincerely,

NICK BHARGAVA, J.D.
Motaavi, LLC.

Ms. LANDRIEU. Again to recap so people can see on this chart, AARP has written us against the House bill. Consumer Federation of America—against the House bill. The AFL–CIO—against the House bill. Yes, those are some of the left leaning organizations.

But we also have centrist and right leaning organizations. I am talking about the former Securities and Exchange Commissioners' Chief Accountant, this is what they say

There are always paths to improvement for any complex system, the American Stock Exchange included. But how quickly these Congressmen seem to have forgotten why many such regulations were enacted in the first place. Last month marked the 10-year anniversary of the collapse of Enron.

It has not been 10 years and we are going back to where we were when Enron took money out of the pockets of thousands of people in America. Why are we doing that

Regulations that prevent capital multiplying companies that want to go public from doing so are bad. Ones that prevent capital destroying ones from becoming public nuisances are good. No job creation will be generated through the process of socializing capital destruction to the general public.

But he is saying that the House bill goes too far.

Again, Eric Schureunberg, editor of Inc.com—they are a very well respected voice in the small business community in America today. They are saying the House bill is flawed.

I know we are going to be criticized on the other side by saying it is just the same old left wing groups that want more regulation and more regulation. But that is not true. That is why I am putting all of this in the record today so people can carefully consider it tomorrow, and over the weekend on Monday, before we come back here; to look and read what is being said about the House bill and to be open and honest in our efforts to try to reform it. Again, for the record, Mary Shapiro, Chairman of the Securities and Exchange Commission, said: While I recognize that H.R. 3606—the ill-advised political opportunity bill, those are my words—is the product of a bipartisan effort designed to facilitate capital formation and include certain promising approaches, I believe there are provisions that should be added or modified to improve investor protections that are worthy of the Senate's consideration.

So that is what we have done. We took the bill from the House and looked at it very carefully and on Monday I am going to hand this out to everyone and we are sending it to everyone's offices now. It has kind of become a famous small business blue line that is very easy for everyone to understand. It shows the differences between the Senate bill and the House bill. As we can see, both bills raise the cap on regulation A offerings from $5 million to $50 million. We are happy to do that. We improve the transparency of regulation A by requiring an audited financial statement.

You don't need to have graduated from a master's program at Stanford or Harvard to understand that if you are getting ready to invest—whether it is $1,000, $10,000 or $100,000—having an audited financial statement about the company you are getting ready to invest in would be a basic thing to do. I think we learned about this when we were in seventh or eighth grade. You don't have to go to Harvard to know this.

The audited financial statement requirement is absent from the House bill. There is no requirement in the House bill for an audited financial statement, so we put an audited financial statement in our bill. I don't think that is a radical amendment. It is a simple one; it is an important one. In the House version of this IPO on-ramp, they exempt companies up to $1 billion in annual revenue. Madam President, $1 billion is a lot of money, so everybody wake up. The House bill says if you are less than $1 billion, you basically don't have to adhere to most of the rules and regulations; you can just go on your merry way.

That sign is great—''ill-advised political opportunity.'' That is what I am calling the House bill. Let me check to see how many companies went public that were over $1 billion last year. Only 22 percent of companies that went public last year were over $1 billion. So if my math is correct, the House bill is going to eliminate 78 percent of the companies from regulation that raise money in the public. That is going too far. It is unnecessary. We bring that number down to $350 million in our bill, and the author of this provision in the Senate has signed on as a supporter, CHUCK SCHUMER. The reason he did that is because he realizes—even as the sponsor of this on-ramp provision—that the House bill went too far. I am not going to go into all the rules and regulations, but it is not that complicated because—1, 2, 3, 4, 5, 6, 7, 8—there are only about eight big differences, but they are important differences.

I am going to wrap up by saying: Please study the record. Please look at it. In our Senate bill, which the Chair has been very supportive of, as has Senator CANTWELL, and I wish to thank both of them publicly, as well as Senator KLOBUCHAR—we have the Export-Import Bank in our bill, which is not in the House bill. The Chamber of Commerce has written us asking us to please support the Export-Import Bank. We also expand the SBIC, which is the small business investment program, which the President included in his State of the Union Address to authorize that program to move from $3 billion to $4 billion. Why? Because we are having such success, through the SBIC programs that exist in all our States, getting money out to Main Street, to small businesses. So that is included in our bill—and one the Chair has particularly been a lead on, and that is at no cost to the taxpayer. These things do not cost any additional money. There is the SBA 504 refinancing that is going to allow to extend for 1 year the ability of the small business loan program that has thousands of outstanding loans to extend for another year the opportunity to refinance their commercial loans.

So we have added three provisions to the House bill that make it more balanced and better for small business, and we have put a couple oversight measures into their provisions that I think—in the words of many of even the advocates of this bill—''make the bill better.''

I don't know if we will be successful, but this is worth a try because the damage that could be done in venturing out so far into a new way of financing without the proper safeguards could set us back decades. We don't want to go backward; we want to go forward. We don't want to go back to the days of Enron and Bernie Madoff. Why would Republicans, in the face of these scandals, come up with—and some Democrats voted for it. I am not quite sure how that happened, but we are going to find out. Why would they want to go back to those days? We want to go forward with the right protections.

I see my friend Senator LEVIN on the floor. He most certainly understands this issue in many ways better than I do on the technical side of it. He has helped write this bill. I am hoping he will give an even better explanation than I have been able to give, but I think I have covered it pretty broadly, and he can go into a lot more detail about the possibility of fraud in here if it is not locked down.

I am going to end with a word to my community banks because I have tried to become a champion for them. I think they can appreciate it. I am not

100 percent sure. I believe in community banks. The Independent Community Bankers of America sent a letter supporting the House bill. I am going to call them over the weekend and talk with them specifically about my concerns and ask them to reconsider their position. I think our compromise is very good for our community bankers. I don't know whether they will. I know they want to get rid of some of the onerous requirements that were placed on them in the Sarbanes-Oxley legislation, and I appreciate it. I helped sponsor some of the amendments on their behalf.

But I think this House bill is going too far. I am going to reach out to them. We will see what their view is. I do respect the views of my community bankers. We are going to have a lot more to talk about next week.

Again, I thank Senator LEVIN and Senator REED for joining with me and Senator JACK REED for leading this effort to help put a bill before the Senate that is quite balanced and provides the investor protections and also opens some exciting opportunities for capital to create new businesses in America that are the backbone of our extraordinary—and not to be matched—entrepreneurship spirit in the world. We honor that, but we want to do it in the right way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, before the Senator from Louisiana leaves the floor, let me thank her for her leadership in this area and the passion she has brought to it. This is a train which has moved with great speed from the House of Representatives—much too great a speed—and her ability, just by the expression of her will and her determination to bring this to a point where we can debate it at least over a few days and the weekend, is critically important, I believe, to future of investors in this country.

There is no State that has suffered more from the job losses of the great recession than my State of Michigan. We don't have to ask a Michigander twice if he or she believes Congress should take action to increase the speed of the jobs recovery. So I am ready to consider any legislation that promises more opportunity for the workers of this country, but unfortunately the legislation the House has sent to us, which is promoted as a job creation bill, is no such thing. In the name of job creation, the House bill would severely weaken investor and taxpayer protections in our securities laws.

In the name of putting Americans to work, the House bill would hand a series of special favors to influential special interest groups. It also reflects a disturbing failure to learn the lessons of the recent and all-too-painful past. It defies belief that after the worst financial crisis in generations, a crisis brought on by the failure to effectively police our financial markets, Congress would consider removing vital obstacles to fraud and abuse. The House bill would take a series of steps that would undermine the integrity of our financial markets. We should not go down that road. We need not go down that road. In working with Senator JACK REED, Senator LANDRIEU and Senator SHERROD BROWN and others, I participated in an effort to make some changes in that bill that would give small, innovative companies more tools to access the capital they need. We want to do that. We all want to do that. But we do that in our bill without putting the stability of our economy and the interest of American investors and taxpayers at risk.

I wish to lay out some of the problems with the House bill and how our Reed-Landrieu-Levin amendment would address those problems. The House bill would lower barriers to fraud that are now present in the so-called regulation A stock offerings. These are offerings that are exempt from the SEC registration requirements. The House bill would expose retail investors—those with no expertise and no resources—to assess the risks of participating in the unregulated market to massive potential fraud and abuse.

The bill does not even require that companies making offerings under regulation A provide audited financial statements. The regulation A process is appropriate for very small companies, but the House bill provides few meaningful limits to its use. Instead, it would allow larger companies to avoid meaningful oversight year after year.

I have worked with colleagues to fix this problem by ensuring that these offerings are limited, so they are only used once every 3 years—that is one of the changes we would make—and that investors in the offerings get an accurate picture of the company's finances by requiring audited financial statements.

In the name of giving smaller companies greater access to the initial public offering market, the House bill would create a new class of corporation called an emerging growth company and would strip from investors in such companies more than a dozen important investor protections. Some of the protections involve transparency. The House bill would weaken corporate governance provisions we enacted less than 2 years ago in the Dodd-Frank Act, including disclosures on executive pay. The House bill would exempt these companies from having to comply with changes to accounting standards. It would repeal the protections we put in place after the dot-com bubble burst. These protections require financial firms to separate research analysts who advise clients on whether to invest in initial public offerings from the sales teams of those same companies.

There is supposed to be a wall between those two parts of any company so the sales teams don't take advantage of what the research teams are telling their customers. There are too many opportunities for conflicts of interest and front-running and other things if we allow that wall to be breached.

The House bill provides that companies with up to $1 billion in annual revenue would not have to get an outside auditor to check their internal controls. So what happens if one of these companies is cooking the books? Who is going to catch it? We learned with Enron and WorldCom why we need meaningful checks on how companies prepare their financial statements. The vast majority of financial restatements, which are corrections to bad information given to the investing public, are made by medium and small companies. Investors in these companies should have the confidence that the financial statements on which they base their decisions are accurate.

Now, those provisions in the House bill are bad enough given the chronic problem in financial markets with poor and misleading financial disclosure but, to make matters worse, the bill would open this collection of loopholes with companies of up to $1 billion in annual revenues. That is a level which would include well over 80 percent of all IPOs. So over 80 percent of all the IPOs that will be issued would then be exempt from the protections under the House bill.

Financial regulators, associations of individual investors, many of the largest pension funds in this country, securities experts, and the chamber of commerce have raised alarm bells about that $1 billion threshold as well as the many problems that would follow from the House bill.

Just this week, the SEC took a series of enforcement actions against fraudsters seeking to victimize investors in pre-IPO offerings. One SEC official noted, ''The newly emerging secondary market for pre-IPO stock presents risks for even savvy investors.'' The House bill threatens to bring the same level of risk and instability that plagues pre-IPO trading to the IPO market itself—changes that, rather than building support for IPOs, might actually make the IPO market so risky that it ends up dampening investor interest.

The amendment some of us have been working on, which is the Reed-Landrieu-Levin, et al., amendment, accepts the premise that some small, newly public companies could benefit from somewhat relaxed requirements as they adjust to the public marketplace. But our amendment would limit these benefits to smaller companies—those with under $350 million in annual revenue—and our amendment would not exempt these companies from many of the critical investor protections. For example, we would not remove protections designed to protect the integrity of the research that is available to investors, nor would we exempt them from any new accounting rules, nor would we exempt them from requirements regarding important executive pay disclosures and shareholder input on executive pay packages. Our amendment would provide flexibility for smaller, newly public companies to adjust to the public markets, but we would leave in place the investor protections that ensure our public markets remain the best in the world.

The House bill would also allow companies or fraudsters posing as legitimate companies to solicit investors directly through the Internet. This is one of the really big issues we are going to address next week. As written, the House bill would offer investors almost no protection from fraudulent schemes and fake investment opportunities. Although these Web sites that are often called intermediaries or funding portals are the only entities capable of making sure that a company seeking to sell its stock on its site is real, the House exempts them—exempts the intermediaries and the funding portals—from any real regulation or liability. The same is true with the issuing company. That is why labor groups, seniors organizations, regulators, and security experts all warn us that this measure is an open invitation to fraud. One group calls it the ''boiler room legalization act.''

So we have many problems with these provisions in the House bill, but we also believe the so-called crowdfunding, in which small startups can access pools of capital from small investors, usually over the Internet, has the potential to provide opportunity for truly small businesses to get additional capital they need to grow. This can be done legitimately. That is why we build on the work of Senators MERKLEY and BENNET to create a platform for raising money through the Internet. But we make sure, as they do, that it has the necessary investor and consumer protections. In fact, legitimate crowdfunding sites have made it clear to us that they, like us, are concerned about the House bill. So we have legitimate crowdfunding interest groups that want to make sure the protections are there for the investors, speaking out against some of the excessive provisions in the House bill. They want the additional protections we provide. So our amendment makes sure that funding portals are subject to meaningful regulation and that the companies that use them to raise capital are also subject to meaningful regulation.

Our amendment would, unlike the House bill, require comprehensive disclosures to investors about the company and the risks of such investments. If this new way of investing in small companies is to succeed, then investor protections such as the ones embodied in the Merkley-Bennet provisions, which we have included in our amendment, are vital to giving investors the confidence to participate.

The House bill also attempts to remove regulations on so-called private offerings. By allowing issuers of private offerings to market their stock to the general public—whether it is on billboards and the Internet, in visits to retirement homes or late-night television ads—that provision in the House bill would dangerously lower our defenses against frauds. We have seen this movie before. In the 1990s regulators lowered the barriers to general solicitation for private offerings and within years reversed their error because of widespread fraud and abuse.

Some have complained that the existing restrictions on solicitation for private offerings are too narrow and impede businesses' access to capital. That seems unlikely given the nearly $1 trillion a year in private offering activity. But if there are yet more worthy investments that are going unfunded because of unneeded investor protections, the SEC regulations should be updated for the Internet age.

The Reed-Landrieu-Levin amendment would direct the SEC to revise its rules to allow companies to offer and sell shares to a credited investor, but it then directs the SEC to make sure those who offer or sell these securities take reasonable steps to verify that the purchasers are actually accredited investors. It requires the SEC to revise its rules to make sure these sales tactics are appropriate. There are not going to be, under our language, billboards or cold calls to senior living centers. I wish I could say the same about the House bill.

There is little evidence that the reduced investor protections and invitations to fraud in the House bill will make any meaningful contribution to job growth. We do not have one study on any one of the provisions in the House bill establishing that even one job would be created. If such a study existed, I am sure we would have seen it. The simple reality is that repealing Federal securities laws—and that is clearly the intent of the House bill—does not create jobs. In fact, the former Chief Accountant to the SEC was quoted recently as saying that this JOBS bill was no jobs bill at all. He said: ''This would be better known as the bucket-shop and penny-stock fraud reauthorization act of 2012.''

Taken together, these and other provisions in the House bill send a false message: that in order to grow the economy, we must subject our citizens to more fraud, we must put pension funds and church endowments at greater risk of fleecing, we must create more threats to the financial stability of American families.

The America that I know and that I believe in is capable of growing our economy without these unnecessary risks. Indeed, it is fraud and financial abuse that have repeatedly brought our economy to its knees. We opened the door to fraud and abuse in the savings and loan industry and precipitated a crisis that destroyed 750 financial institutions when we did that. We cut the number of new homes built in this country by nearly half and devastated entire communities. We dropped the barriers to fraud through financial statements and in swaps markets, opening the door to the predations of the so-called ''smartest guys in the room''—those are the criminal executives of Enron. We lowered the barriers to heedless risk and conflicts of interest in the financial system, thereby paving the road to the greatest financial crisis since the 1930s.

Over the last 10 years, on a bipartisan basis, my Permanent Subcommittee on Investigations has held hearing after hearing and issued report after report on the Enron crisis, on accounting and securities frauds, and on the more recent subprime mortgage crisis. Our investigation has exposed how some American corporations, and their accountants and banks, were willing to dupe investors and, even after their wrongdoing came to light, walk away with huge paychecks while workers, investors, and the American economy at large paid the price.

Enron was the seventh largest U.S. corporation before its crash bankrupted employees, pensions, and investors. It lied about its earnings and did so with the help of accountants and banks. Goldman Sachs sold securities through public and private offerings that did not fully inform investors about what they were buying. The wrongdoing our subcommittee has uncovered over the years is as powerful a reminder as we can get that investors deserve protection against abuses when they invest their hard-earned dollars in U.S. capital markets.

There is a rising wave of concern among market experts that the effect of the House legislation might be precisely the opposite of its supporters' stated intent and that instead of boosting the ability of companies to find capital so they can grow, these changes would hurt the market for investing in new companies by making that market too risky. If we remove meaningful transparency and safeguards against fraud, SEC Chairman Schapiro wrote just a few days ago that ''investors will lose confidence in our markets and capital formation will ultimately be made more difficult and expensive.''

The question for the champions of lower regulatory barriers is this: Did those rollbacks of regulatory protections help our economy grow? Did those rollbacks which we saw so many of and which I have just outlined create jobs? Ask a family who was wiped out in the financial crisis. Ask an investor who lost everything to Enron. Ask one of the many 8.6 million American workers who lost their jobs in a financial crisis created on Wall Street, one we have yet to fully overcome.

In November of 1999 this body debated another piece of financial legislation, one that supporters claimed would lead to boundless new economic opportunities for our country. The bill we were debating repealed the Glass-Steagall Act. It lowered barriers to concentration in the financial industry. It removed the wall that had separated investment banking from commercial banking since the aftermath of the Great Depression.

Senator Byron Dorgan came to this floor and he issued a warning: ''It may be that I am hopelessly old-fashioned, but I just do not think we should ignore the lessons learned in the 1930s . . . I also think that we will, in 10 year's time, look back and say: We should not have done that because we forgot the lessons of the past.''

Well, that was 1999. Ten years after Senator Dorgan's remarks, almost to the day that he predicted, America's economy hit rock bottom, with the lowest mark of employment during the great recession. Well, old-fashioned sounds pretty good these days. I hope to be as old-fashioned as Senator Dorgan, who warned us that lowering the barriers that protect us from financial catastrophe can only destroy jobs—not create jobs, destroy jobs.

I hope the Senate will turn away from the House bill that threatens more fraud, more abuse, and renewed crisis. I hope the Senate will embrace reforms that are present in our substitute amendment that give our innovative companies the chance to compete without endangering investor confidence or the stability of our economy.

Madam President, I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. SHAHEEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MANCHIN). Without objection, it is so ordered.

Mrs. SHAHEEN. Mr. President, when I talk to owners, operators, and employees of small businesses in New Hampshire, one thing I hear consistently is that access to capital is a real challenge. While our community banks have increased their lending, capital access from large banks and other entities has been very hard to come by. As a result, small businesses fighting to grow and create jobs continue to be constrained in their efforts.

I am glad the Senate is planning to move forward with this legislation that will address capital formation and will take some additional steps to help those small companies get the financing they need to grow, but as we take that step forward, it is equally important that we do not also take a step back. That is why I believe it is critical for the Senate to extend two venues of small business financing as part of this debate: the Export-Import Bank and the Small Business Administration's 504 refinancing program. These programs, which bring no cost to the taxpayers—let me say that again: these programs bring no cost to taxpayers—provide financing options for so many small businesses in New Hampshire, in West Virginia, and across our country.

We have an important opportunity to ensure that such important avenues to capital remain available in the coming years by extending these programs as part of the small business capital package we are currently debating. So first let me begin with the Export-Import Bank, which is a vital agency that helps many small businesses secure the financing they need for export deals. This is critical because exports are such an important part of the markets that are available to businesses today. Mr. President, 95 percent of markets exist outside of the United States, but only 1 percent of small and medium-sized businesses are doing business outside of the United States. So businesses need access to these international markets.

Last August, Senator AYOTTE and I held a Small Business Committee field hearing in New Hampshire, and it was on small business exporting. We heard how difficult it can be for a small company to sell its products overseas. It is particularly challenging for a small business to get financing for its foreign deals. That is where the Export-Import Bank makes such a significant impact. Mr. President, 87 percent of the Export-Import Bank's transactions support small businesses. So I think there is a misconception about whom the Ex-Im Bank really helps. Eighty-seven percent of their transactions support small businesses.

Last year alone, the bank helped finance more than $6 billion in export sales from small companies in the United States. It has set a goal of increasing this volume by an additional $3 billion in the coming years, and it has created a new Global Access for Small Business Initiative which is designed to dramatically increase the number of small companies taking advantage of its programs. In fact, I think this new initiative is terrific. The Ex-Im Bank came to New Hampshire and unveiled this initiative. Again, this bank assists small businesses at no cost to the taxpayer.

Unfortunately, right now this no-cost small business program is in jeopardy. Unless we act soon to reauthorize the Export-Import Bank, it will hit its lending cap and it will be forced to cut off its support for small businesses. We just cannot afford to let that happen. Without the bank small businesses will lose a significant amount of foreign sales and the jobs they maintain. Last year the bank supported over 288,000 American jobs. As more small companies become aware of the bank's programs, more businesses will be able to access new markets and create new jobs.

So I want to give an example because, as I said, last year we had the Chair of the Export-Import Bank in Portsmouth, NH. They unveiled their new small business initiative, and they met with a number of small businesses that were interested in exporting.

One of those small businesses was a company called Skelley Medical, which is a medical equipment company that is based in Hollis, NH. Before our event, Skelley Medical was unaware of the programs the Export-Import Bank offered. Two weeks later, just 2 weeks after this event, Skelley took out a policy with the bank. That put Skelley in a position to expand its sales overseas. Right now, Skelley Medical is looking to finance deals in as many as five international markets. That is all thanks to the help of the Export-Import Bank. Without the Export-Import Bank, that kind of small business success story will not happen. It would be a real mistake for this Senate to pass a capital access bill without this critical reauthorization.

The second program I would like to talk about is another no-cost program that deserves to be extended. That is the Small Business Administration's section 504 refinancing program.

With bipartisan support, the Senate passed the Small Business Jobs Act 2 years ago—well, about a year and a half ago. That Small Business Jobs Act created this 504 program to help small businesses refinance existing loans under the SBA's 504 lending program.

Again, what we are hearing, as my colleagues know, as I am sure the Presiding Officer knows, is that this difficult real estate market we are in has made it challenging for many successful businesses to refinance their real estate deals. They cannot get access to capital right now, particularly in the real estate industry, which has been so hard hit during this recession. What this SBA program allows is for small businesses to lock in long-term, stable financing so they can free up capital to invest in their companies and hire new workers.

Although this program got off to a slow start, the Small Business Administration has made important changes to ensure that it is working better now for small businesses and for banks. As a result, we are starting to see a significant increase in volume.

In New Hampshire, lenders see this program becoming a real success in the near future. Alan Abraham, who is the president of the Granite State Development Corporation in New Hampshire, has said that ''banks and borrowers are now understanding the significant benefits of the program.'' He told me:

> We are starting to field many [more] phone calls requesting information on the policies, and we anticipate dozens of New Hampshire small businesses could benefit from extending this program.

We should not cut this program off at the knees just as we are beginning to see substantial returns—again, without costs to taxpayers.

This program is scheduled to sunset in September. I believe it is important for the lending community to know as soon as possible that the program will continue into 2013 so that they can devote the resources necessary to continue this initiative's budding success and also so that we can provide the certainty so many companies tell us they need.

We should extend this program. We should address the Export-Import Bank's reauthorization. That is why, as we look at the Landrieu-Reed-Levin substitute amendment, it includes these provisions. It includes reauthorization of the Export-Import Bank, and it includes the extension of the SBA 504 program. It also includes a number of other provisions that address some of the concerns that have been expressed by the House-passed capital formation bill.

Senators LANDRIEU, REED, and LEVIN were on the floor earlier and very eloquently elaborated on those changes. I urge my colleagues to support that substitute amendment to reauthorize the Export-Import Bank and to extend SBA's 504 Loan Program.

I ask unanimous consent that I be added as a cosponsor to that Landrieu-Reed-Levin amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. SHAHEEN. Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

SCHOOL GUN VIOLENCE PROTECTION

Mr. LEVIN. Mr. President, as news reports focus on yet another horrific shooting in an American school, we must again confront the simple and sad truth: tragedies like this are often preventable. On February 27, 17-year-old T.J. Lane opened fire in his high school cafeteria in Chardon, OH, killing three of his classmates and wounding two other students.

This is a narrative we have heard over and over again. Lane is believed to have taken the gun from his grandfather's barn. Similar to what happened 5 days earlier in Port Orchard, WA, when a 9-year-old boy accidentally shot his classmate with a .45-caliber handgun he took from his mother's house. Or in 2009, when a 15-year-old boy was institutionalized after stealing three guns and hundreds of rounds of ammunition from his father as part of a plan to shoot other students at Pottstown High School in Philadelphia. Sadly, these are not rare circumstances. A 2000 study by the U.S. Secret Service found that in more than 65 percent of school shootings, the attacker got the gun from his or her own home or from a relative.

The guardians of these children never intended for their firearms to be used for harm. But they left their loaded guns without any measures to prevent their children—or anyone else—from using them irresponsibly. According to reports by the Legal Community Against Violence, in a nation where approximately one-third of households with minors have a firearm, studies have shown that 55 percent of these households store one or more of their guns unlocked. Another study showed that 22 percent of the parents who claimed their children had never handled their firearms were contradicted by their children. When it comes to gun safety, a young person's curiosity and recklessness can be a dangerous thing.

It is imperative that gun owners across the country safely store their weapons out of the reach of young people. But despite these troubling statistics, there are no Federal laws that prevent adults from leaving firearms easily accessible to children and minors. Some State and local governments around the Nation have adopted child firearm access prevention measures, and these laws work. From 1990 to 1994, in the 12 States where child access prevention laws had been in effect for at least 1 year, unintentional firearm deaths fell by 23 percent among children under the age of 15. Laws that encourage parents to keep their firearms locked and unloaded, to store their ammunition in a locked location separate from their firearms, and to educate their children on proper gun use and safety, would help prevent shootings involving children and teenagers.

We must not wait for the next Chardon High School or the next Virginia Tech or the next Columbine. Commonsense gun safety legislation protects our schools, our universities, our religious institutions, and our homes from gun violence. But despite this evidence, legislation has been introduced in this Congress to dismantle the few Federal gun safety provisions that protect the American people. I urge our colleagues to support sensible gun safety measures that could prevent tragedies like the one unfolding in Ohio.

MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT

Mr. CORNYN. Mr. President, today I come to floor to express concerns about the transportation bill recently voted on by the Senate.

My State of Texas is the fastest-growing State in America, and our economic success has made us a national model and a magnet for talent. But rapid population and economic growth means an ever-increasing strain on our infrastructure.

This legislation takes several positive steps such as consolidating programs, improving project delivery, and expanding the Transportation Infrastructure Finance and Innovation Act, also known as TIFIA, which has been successful in addressing various infrastructure needs in Texas and across our Nation.

Unfortunately, the bill is also deeply flawed. First, it is a 2-year proposal. Changing policy for such a short period of time does not give States like Texas the certainty they need to undertake meaningful long-term transportation projects.

In addition, the Senate bill uses 10 years' worth of revenue to pay for 2 years of spending. This is the type of budget gimmickry that makes Americans suspicious of Washington.

So we have legislation that is shortsighted and relies on accounting tricks. But the problems don't end there. The bill also moves us away from the user-pay principle. While this might work in the short term, closing a large funding gap with non-user tax revenues would ultimately destroy the Highway Trust Fund's protected budget status.

The legislation also does not address the Trust Fund's long-term insolvency problem. Instead, it spends down the balance in the Trust Fund leaving a substantial deficit starting in fiscal year 2014.

Finally, Texas receives significantly less from the Highway Trust Fund than it pays in. In 2009, Texas had the lowest Trust Fund return ratio in the country, according to a Heritage Foundation study. Congress simply must address the equity issue rather than rewarding a few States based on their previous share of highway funding.

I know there are those in my State who favor this legislation, and I share their commitment to finding solutions to our transportation challenges. But I believe the people of Texas and the people of America deserve a better approach. I hope that we can improve the bill during the conference process. Our challenges are difficult, but they are not insurmountable, and there is no reason we can't make 21st-century American infrastructure the very best in the world.

Mr. PRYOR. Mr. President, I would like to commend my colleagues for passing the highway bill yesterday, which included language from Mariah's Act, a bill I introduced last year. This bill reauthorizes the National Highway Traffic Safety Administration, NHTSA, and will improve safety programs on our roadways and safety standards in our vehicles.

Mariah's Act was named after Mariah West, a teen from Rogers, AR. A day before her high school graduation in 2010, Mariah was killed as a result of texting while driving. Mariah's mother, Merry, has since become an advocate against texting and driving and continues to promote safe driving habits across the country.

In part, Mariah's Act will prevent others from a similar tragedy by concentrating resources to prevent distracted driving. In 2010, more than 3,000