The JOBS Act at Five:
Examining Its Impact and Ensuring the Competitiveness of the U.S. Capital Markets

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Thank you, Chairman Huizenga and Ranking Member Maloney, for the opportunity to testify on this important topic. I am the Managing Director of Economic Policy at the Center for American Progress, where I help lead our research on financial markets. Today, I aim to offer an evaluation of the JOBS Act at five years, as well as some constructive suggestions on how to improve and expand entrepreneurial opportunity.

The Impact of the JOBS Act Has Been Mixed At Best, Although Many Results Are Not Yet In

Five years out from enactment, it is worth taking a moment to recall the context of its passage. On April 5, 2012, House Majority Leader Eric Cantor joined President Barack Obama for a Rose Garden signing ceremony to celebrate the passage of the Jumpstart Our Business Startups (JOBS) Act of 2012.[1] Championed by its advocates as releasing start-ups and small businesses from certain constraints of the federal securities laws, it pulled together a collection of ideas that made it easier for companies to raise money. Some ideas, such as Title I's "IPO On-Ramp" and Title IV's "Regulation A+" focused on loosening the rules, respectively, for large and small initial public offerings (IPO). Other ideas, such as Title II's elimination of the ban on general solicitation (i.e., public advertising) in private offerings and Title V's dramatic raising of

[1] 112th Congress, H.R. 3606, now codified as Public Law 112-106, 126 Stat. 306, available at https://www.gpo.gov/fdsys/pkg/PLAW-112publ106/content-detail.html.

the cap on the number of shareholders of record for companies that remained private, focused on making it easier for a company to stay private longer, and not go public. Title III is an innovative new hybrid approach that seeks to "democratize" access to capital, deploying the transparency of the Internet to enable ordinary retail investors to put small amounts of money in higher risk start-ups and small businesses. Ultimately, what tied the JOBS Act together was a desire to increase the amount of capital flowing to small business and start-ups, and thus boost U.S. employment and growth prospects, which in 2012 were still suffering from the lingering effects of the financial crisis and Great Recession. That is a worthy goal, and many of the ideas in the JOBS Act reflect some attempt to address certain on-going issues in the capital markets.

However, the JOBS Act had its critics. They saw it as an exercise in deregulation that would not yield many of its desired results – especially the goal of more initial public offerings – while exposing senior citizens and ordinary mom-and-pop investors to an array of fraud, conflicted research, and high-risk investments they would be ill-prepared to manage effectively.[2] These critics contended that simply loosening the securities laws would not lead to more successful small business creation and growth, and that other tools were better equipped to address those needs. Notably, this legislative debate play out only two years after the passage of the largest effort to re-regulate Wall Street in 80 years, which as of today still has not been fully implemented by the Securities and Exchange Commission (SEC).

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[2] The Editorial Board, "They Have Very Short Memories," *The New York Times*, March 10, 2012, available at http://www.nytimes.com/2012/03/11/opinion/sunday/washington-has-a-very-short-memory.html; Consumer Federation of America, "Statement of CFA Director of Investor Protection Barbara Roper in Response to House Passage of Anti-Investor, Anti-Jobs JOBS Act," March 8, 2012, available at http://consumerfed.org/press_release/statement-of-cfa-director-of-investor-protection-barbara-roper-in-response-to-house-passage-of-anti-investor-anti-jobs-jobs-act/; Shepherd Smith Edwards and Kantas LTD LLP, "Will the JOBS ACT Expand Private Offerings But Hurt Public Markets?", July 6, 2012, available at https://www.institutionalinvestorsecuritiesblog.com/2012/07/will_the_jobs_act_will_expand.html

So who was right? To date, the record appears mixed. And while the preliminary data suggests that the critics are in the lead, with so many rules only operational for a year or so it is still too early to draw an overall conclusion.

Regulation is Not the Problem: To Improve the Public Markets, Focus on Structural Issues Such as Competition

One of the principal goals of the JOBS Act was to increase IPOs. Advocates for IPOs argue that they bring outsized benefits, including greater job creation for the economy and benefits to investors such as better oversight and accountability and greater secondary market liquidity. On the IPO front, the record of the JOBS Act is mixed at best.

For better or worse, the IPO market is now dominated by companies going public under the lighter "emerging growth company" (EGC) standards of Title I of the JOBS Act. A full 87 percent of all IPOs since the JOBS Act was enacted occurred under these lighter EGC standards.[3] Being an "Emerging Growth Company" has nothing to do with being exciting or innovative; it is just a regulatory label. As of mid-2016, there were 2,259 EGC filers, of which 312 were inactive, and a full 8 percent of filers are simply blank check companies.[4] 47 percent of EGC filers by assets, as of mid-2016, were real estate investment trusts, state and federally-chartered commercial and savings banks, and pharmaceutical preparations.[5] These percentages are smaller when listed by revenue or number of filers, but the point is still the same: EGC is a regulatory

[3] EY, "Update on Emerging Growth Companies and the JOBS Act," November 2016, available at http://www.ey.com/Publication/vwLUAssets/ey-update-on-emerging-growth-companies-and-the-jobs-act-november-2016/$FILE/ey-update-on-emerging-growth-companies-and-the-jobs-act-november-2016.pdf.

[4] Kevin Murphy et al, "White Paper on Characteristics of Emerging Growth Companies as of May 15, 2016," Staff Paper, Public Company Accounting Oversight Board, 12, available at https://pcaobus.org/EconomicAndRiskAnalysis/ORA/Documents/White-Paper-on-Characteristics-of-Emerging-Growth-Companies-May-2016.pdf.

[5] Id.

label indicating lighter standards for listing; it is not a statement, one way or another, about the kind of company going public.

In fact, EGC companies tend to be lower in quality from a listing and investment perspective. Out of the 65 percent of active EGC filers that provided a management report on internal controls (which became a permissive requirement under the JOBS Act until *after* filing one annual report), a whopping 46 percent reported material weaknesses in controls. [6] Exchange-listed EGCs reported material weaknesses at only 12 percent, but that was still *twice* the rate of non-EGC exchange-listed filers. This suggests that the JOBS Act provisions eliminating Sarbanes-Oxley auditor attestation for EGCs is having a negative impact on offering quality.

Nor has profitability or operating efficiency made up for these investor protection risks. One study recently found that the financial performance of EGC companies is significantly worse than comparable firms, with on average a 21.8 percent lower return on assets and 3 percent lower stock performance.[7]

Capital formation for companies and market liquidity for their stock also appears negatively affected. One study found that EGCs experienced 7 percent more underpricing than similarly sized companies prior to the JOBS Act.[8] Investors are demanding a bigger bump to accept the risks of what they do not know about companies, meaning less money going to job creation and company growth. Non-EGC experienced 13 percent less underpricing than EGCs.

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[6] Id at 13.
[7] Kai Lu, "The JOBS Act and Post IPO Performance of EGC Firms," Wash. Univ. Olin Business School, Feb. 1, 2017, 20, available at https://ssrn.com/abstract=2927722.
[8] Sudip Gupta and Ryan D. Israelsen, "Indirect Costs of the JOBS Act: Disclosures, Information Asymmetry, and Post-IPO Liquidity," Kelley School of Business Research Paper No. 2014-34, Aug. 29, 2014, 3, available at https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2473509.

The study also found reduced market liquidity in the form of higher spreads for EGC companies.[9]

Another study was more positive about the JOBS Act's effects, finding on a preliminary basis a 25 percent increase in IPO volume over 2001-2011 levels.[10] By analyzing which provisions firms took advantage of, the study also concluded that the most helpful provisions were the confidentiality and "test-the-waters" provisions that "de-risked" the offering in terms of its outward facing communications that enabled it to more carefully control its reception in the marketplace.[11] In contrast, the "de-burdening" provisions, such as the opt-outs of accounting rule changes, auditor attestation, say-on-pay, reduced compensation disclosure, and future PCAOB rule changes, were not meaningful.[12] This is an important conclusion because it shows that most of the provisions that reduced investor protection were not important in terms of increasing IPO availability.

Overall, the study concluded that firms in biotech and pharma tended to benefit most than other companies, noting a 307 percent increase in those IPOs as of March 2014. The study questioned whether these companies would have staying power since one of the notable value-maximization strategies in this sector, which is dominated by research life cycles, is to conduct an IPO before being acquired by another firm.[13] The study also found limited evidence of improved analyst coverage despite the reductions in investor protections from conflicts of interest.[14]

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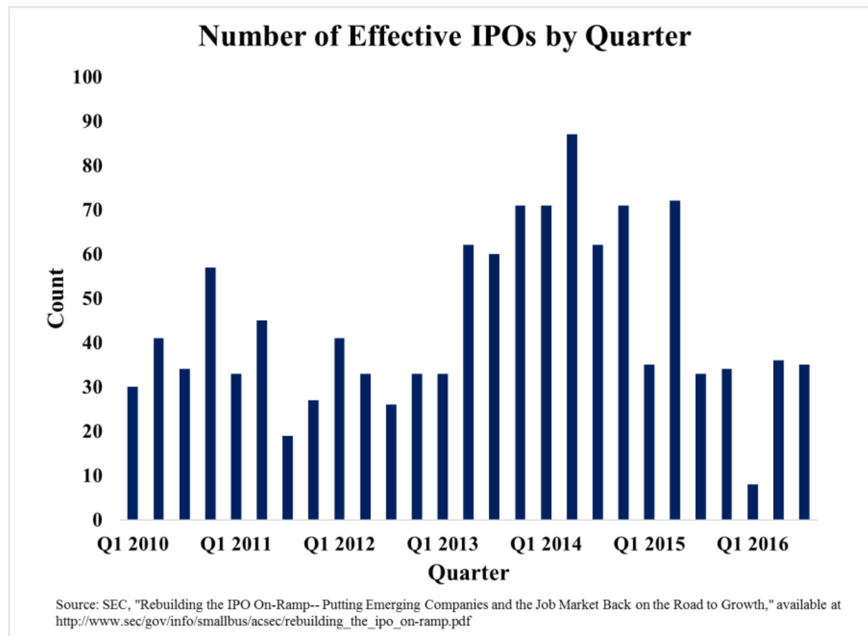
[9] Id. at 5.
[10] Michael Dambra, Laura Casares Field, Matthew Gustafson, "The JOBS Act and IPO Volume: Evidence that Disclosure Costs Affect the IPO decision," 21, available at: http://ssrn.com/abstract=2459591.
[11] Id. at 25.
[12] Id. at 24.
[13] Id. at 25.
[14] Id.

The authors noted that the study may not fully reflect the underlying dynamics of overall market conditions, potentially overstating or understating the results. Indeed, as depicted in Figure 1, the increase in IPO activity immediately after the JOBS Act was enacted subsequently gave way in 2015 and 2016 to the lowest level of IPOs since the Great Recession. This may be market clearing behavior, or it may give weight to the principle that many factors influence the IPO market and that compliance requirements on companies are of lesser influential.[15]

Figure 1: Number of Effective IPOs by Quarter



[15] Jay Ritter et al., "A Review of IPO Activity, Pricing, and Allocations", Working Paper 8805, *The National Bureau of Economic Research*, available at http://www.nber.org/papers/w8805.pdf; Jay Ritter, "The Long-Run Performance of Initial Public Offerings," *Journal of Finance*, Volume 46, Issue 1 (March 1991), 3-27, available at http://www.kellogg.northwestern.edu/researchcomputing/workshops/papers/ritter_jf1991.pdf.

The question then is whether the lighter compliance requirements of Title I still make sense. Confidential filings and "test the waters" provisions seem to be the most useful, and also least harmful, and so are worth keeping for now. The other "de-burdening" provisions of Title I both less impact on IPO volume and raise more serious investor protection concerns. For example, allowing an IPO with only two years of financial statements represents a 33 percent reduction in core financial disclosure and a departure from comparable jurisdictions internationally. Permitting the types of conflicts of interest between research analysts and investment banking that characterized the frauds of the "Dot Com" era also seems troubling. As noted above, the provisions that eliminate auditor attestation have had a demonstrably negative impact on the reliability of a company's internal controls.

Given the dramatic decline in IPOs in 2016 and the limited positive impact of deregulation, if Congress wishes to boost the viability of the public markets, it must clearly turn its attention to other factors. One factor to consider is the impact of the JOBS Act itself, as the provisions of Title II and Title V work at cross purposes with Title I's goal of boosting IPOs. Those titles, respectively, permitted public advertising for non-public companies and dramatically loosened the requirement for a company to go public when it hits a certain growth level determined by the number of shareholders. Data in this area is limited, but anecdotal evidence dating back to the passage of the JOBS Act itself is that companies are staying private longer.[16] Moreover, as discussed below, the nearly doubling in the size of the private market

[16] Jamie Hutchinson, "Why Are More Companies Staying Private?" February 15, 2017, available at https://www.sec.gov/info/smallbus/acsec/hutchinson-goodwin-presentation-acsec-021517.pdf; Begum Erdogan, Rishi Kant, Allen Miller, and Kara Sprague, "Grow Fast or Die Slow: Why Unicorns Are Staying Private" (McKinsey, 2016), available at http://www.mckinsey.com/industries/high-tech/our-insights/grow-fast-or-die-slow-why-unicorns-are-staying-private.

(offerings under Rule 506(b) of Regulation D) indicates that the private markets are making large amounts of capital available as needed.

In addition, greater attention should be paid to the role of mergers and acquisitions (M&A) in the health of the public capital markets. According to a notable study, M&A is now the biggest reason for the marked decline in public listings in the U.S.[17] The study rejects a number of the usually cited reasons – the level of regulatory standards, reduced investment bank analyst coverage or trading, economies of scale – and instead points to reduced antitrust enforcement and resulting greater market concentration as causes.[18] Ask any entrepreneur in Silicon Valley and he or she will tell you that M&A is the most prominent exit strategy for start-ups in recent years.

In this context, market concentration impacts the capital markets in at least two ways. First, if large firms can extract above-market rents owing to their size, market dominance, or other reasons, they may be able to share those rents with founders through M&A, making the M&A exit more attractive than doing the hard work of growing a successful stand-alone company. At the same time, if markets are not sufficiently competitive, founders may increasingly believe that they have little real chance to compete against the largest firms, and so sell out through M&A rather than compete on their own.

With growing evidence of market concentration across the economy, it is worth asking the question whether the 30-year trend towards permissive enforcement of antitrust laws and

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[17]Craig Doige, G. Andrew Karolyi, and Rene M. Stulz, "The U.S. Listing Gap," July 2015, available at https://www8.gsb.columbia.edu/faculty-research/sites/faculty-research/files/finance/Finance%20Seminar/Fall%202015/Doidge_Karolyi_Stulz_Listing_Gap_July2015.pdf.

[18] Doige, 4-6; on antitrust also citing to Gustavo Grullon, Yelena Larkin and Roni Michaely, "The Disappearance of Public Firms and the Changing Nature of U.S. Industries," 2015, Working Paper, Rice University.

other factors leading to market consolidation are hampering the ability or willingness of companies to become and remain independent public companies.[19] Much of the focus should rightly be placed on the antitrust agencies, and additional enforcement can make a real difference by deterring anti-competitive deals.[20]

The SEC too has a role to play. The Exchange Act section 23(a) mandates the SEC consider competition as part of its rulemakings, and directives to promote competition are sprinkled throughout the federal securities laws.[21] Competition mandates have generally lay dormant or interpreted narrowly for years. Competition is about more than simply lowering costs, and it may be time to rediscover them and apply them more broadly. The SEC shouldn't be in the business of duplicating the work of the antitrust agencies, but it does have a unique role to play in boosting transparency across the market. And, it may be appropriate to consider other steps in areas under its control to tilt the playing field away from concentrated private markets and towards competitive public markets. I do not have specific recommendations to offer today, but this is a topic that I encourage us all to do more thinking about. Overall, it is important for Congress to remember that the health of the capital markets is intimately connected to the vibrancy of competition in our industrial landscape.

[19] Marc Jarsulic, Ethan Gurwitz, Kate Bahn, and Andy Green, "Reviving Antitrust: Why Our Economy Needs a Progressive Competition Policy" (Center for American Progress, 2016), available at https://cdn.americanprogress.org/wp-content/uploads/2016/06/28143212/RevivingAntitrust.pdf.

[20] See, e.g., Joseph Clougherty, Tomaso Duso, Miyu Lee, and Jo Seldeslachts, "Effective European Antitrust: Does EC Merger Policy Generate Deterrence?", DIW Berlin Discussion Paper 1523, 2015, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2695314, finding that immediate actions on mergers generated "robust deterrence," reducing merger notifications in years following.

[21] Securities and Exchange Act of 1934 as amended, section 23(a) and other provisions.

The Small Business Access to Capital Impact Has Been Mixed, and Risks to Investors Remain: A New Focus on the Wealth, Skills, and Network Gaps Is Needed

After boosting the number of IPOs, the second major promise of the JOBS Act was that it would increase access to capital for start-ups and small businesses. However, those two groups of companies tend to access capital differently. Start-ups in growth sectors tend to raise money – at first from friends and family, and perhaps angel investors – with an eye towards future fundraising rounds and a market exit of some sort. Here, think of the computer software designer who has an idea. She will probably think about the securities laws and their implications from an early stage, and if she has a network of wealthy backers, may use the capital markets from day one.

Ordinary small businesses raise money from friends and family, credit cards, the equity in the entrepreneur's own home, and perhaps a loan from a community development financial institution (CDFI). Here, think of a young man starting a small vegan bakery that he aims to operate on a popular street. As he develops a track record, he might get funded through an SBA-guaranteed bank loan too. As a community-focused enterprise, the bakery's initial foray into the capital markets may take the form of a local or regional offering, as opposed to national offering. If successful, the bakery might morph into a vegan baked-goods manufacturer, where national capital markets funding may become relevant.

The JOBS Act aimed to have an impact on both forms of capital-raising. Title II made it easier for the software designer to instead tap an audience beyond her limited angel network. For example, Title II's crowdfunding provisions facilitates accredited investors to come together online. Although data is limited, this appears to be one of the more successful parts of Title II.

The main thrust of Title II, which enabled public advertising for these private deals, is much more problematic in scope. Most companies are not taking advantage of this route and instead are sticking to tried and true way of soliciting private investors. But to the extent that some of the less scrupulous actors are already taking to the airwaves – which it appears they are – this channel for capital raising becomes a venue for fraud.

Expanded general solicitation for private offerings has unfortunate implications all around. Not only are senior citizens, immigrant communities, and plain ordinary people at greater risk of falling victim to securities fraud, but if the public comes to associate general solicitation for private securities offerings with fraud, it may undermine their confidence as investors across the board. A recent study on investment fraud vulnerability by the AARP also yielded striking results, with implications for the risks associated with general solicitation. For example, investment fraud victims were more likely to agree that "The most profitable financial returns are often found in investments that are not regulated by the government."[22] And almost six out of ten victims received at least one telephone call each month selling securities, nearly twice the level or non-fraud victims. Victims also tended to be older, male, married, and veterans (at varying rates.) A lot more study is needed to understand where investment fraud vulnerabilities lie and what more can be done to protect against acts that rob the elderly and others of their hard-earned savings.

It is also clear that SEC resources are simply not sufficient to monitor and crack down on these small-scale offerings after the fact. That is why moving towards stricter enforcement of the filing requirement of Form D with the SEC and the state securities regulators and a strong

[22] Doug Shadel and Karla Pak, "AARP Investment Fraud Vulnerability Study," AARP, 2017, 5-6, available at http://www.aarp.org/research/topics/economics/info-2017/investment-fraud-survey.html.

approach to "bad actor" disqualification, along with FINRA's supervision of the broker-dealer marketplace, are more important than ever.[23] To the extent that general solicitation seeks to make private offerings look more like public offerings, the only reasonable solution to protect the public is to make investors protections look more like those in public offerings. Unfortunately, the SEC has not made progress on advancing proposed new investor protections for Rule 506(c) offerings.[24] At a minimum, the SEC should carefully monitor the market and continue to make data available so we can all evaluate the results.

The JOBS Act offered other avenues to make it easier for start-ups and small businesses to raise capital. As staff to the Senate's lead author on what became Title III crowdfunding, I believe crowdfunding is one of the most interesting of these paths. Crowdfunding fills a somewhat in-between niche. It will never be a true alternative to angel or venture capital for start-ups with high growth potential, if for no other reason than that by its very nature it requires disclosure to the public of the venture's "big idea." But for some ideas it may make sense. Perhaps the entrepreneur lives far away from Silicon Valley or Silicon Alley, or the idea is focused on serving a local community. Crowdfunding may then offer a genuinely valuable way to expand the pool of capital available for worthy projects. The rules were only fully operational about nine months ago and take-up appears to be growing.[25] One of the biggest challenges is a lack of awareness by small businesses and investors. Educating small business attorneys,

[23] On this topic, see also Commissioner Kara M. Stein, "Remarks before The North American Securities Administrators Association 2014 Public Policy Conference," April 8, 2014, available at https://www.sec.gov/news/speech/2014-spch040814kms.
[24] See Securities and Exchange Commission, Proposed Rule, Amendments to Regulation D, Form D and Rule 156, Release No. 33-9416, July 10, 2013, available at https://www.sec.gov/rules/proposed/2013/33-9416.pdf.
[25] See Crowdfunding Indices, Crowdfunding Capital Advisors, available at http://crowdfundcapitaladvisors.com/cca-regulation-crowdfunding-indices/.

accountants and entrepreneurs, as well as investors, of both the availability of and how to properly use this opportunity should be a priority.

One of the critiques of Title III crowdfunding is cost. However, costs to issuers are only one part of the equation. Across the federal securities laws, we only place requirements on issuers because they benefit investors and promote the public interest, which are critical to having any market at all. Costs could be zero, but if investors do not show up, no capital will be raised at all. Congress decided that it was worthwhile to invest, so to speak, upfront in building investor confidence in this market. Small companies do fail at a high rate even when their founders have the best of intentions.

Costs are also not set in statute. I believe it is worth seeing whether the market itself, through innovative technologies or simply through scale, can help bring those costs down over time. I have seen firsthand how a range of new, eager service providers offering smart technologies to make Title III much more cost-efficient. In addition, the SEC was smart to build into its rule a review period to look back at whether it struck the right balance. To support that lookback, the SEC should deploy its new investor testing tools that the Office of the Investor Advocate has been pioneering.[26] A better appreciation of what works effectively for retail investors could help refine this and other markets.

Some have argued that cost is a function of the offering size. To that end, it is worth noting that approximately 30 percent of Rule 506 offerings are $1 million or less, and $1 million is the median offering size for non-financial issuers. It is thus perfectly reasonable to have set

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[26] See Rick A. Fleming, Investor Advocate, U.S. Securities and Exchange Commission, "Improving Investor Engagement: The SEC Speaks in 2017," Feb. 24, 2017, available at https://www.sec.gov/news/speech/fleming-improving-investor-engagement.html.

the Title III crowdfunding cap there.[27] Higher levels appear to largely serve the interests of those that seek to use crowdfunding for real estate investment, rather than small business start-ups. We should be open to re-evaluating this approach, though, as additional data becomes available.

The SEC can also watch the natural experiments occurring through the several new channels it has opened to permit crowdfunding via Regulation A+ and through rules overseen by the states, specifically Rule 147, new Rule 147A, and updated Rule 504. One note of caution, though. The SEC should guard against investor confusion, should problems that occur in one market taint the reputation for crowdfunding under other rules. Ultimately, it is also important to remember that there is a high risk of fraud, as well as plain old loss in these types of investments.[28] While we all hope these new markets can succeed, we should take a clear-eyed, objective approach to whether they are or not. We should not permit them simply to linger on and become problems.[29]

Before wrapping up our analysis, however, I would like to consider the relationship between the JOBS Act and its baseline goal of expanding access to capital for startups and small businesses. As Figure 2 below shows, the amount of capital raised under Regulation D, the primary private offering channel, *doubled* between 2009 ($595 billion) and 2014 ($1.3 trillion).

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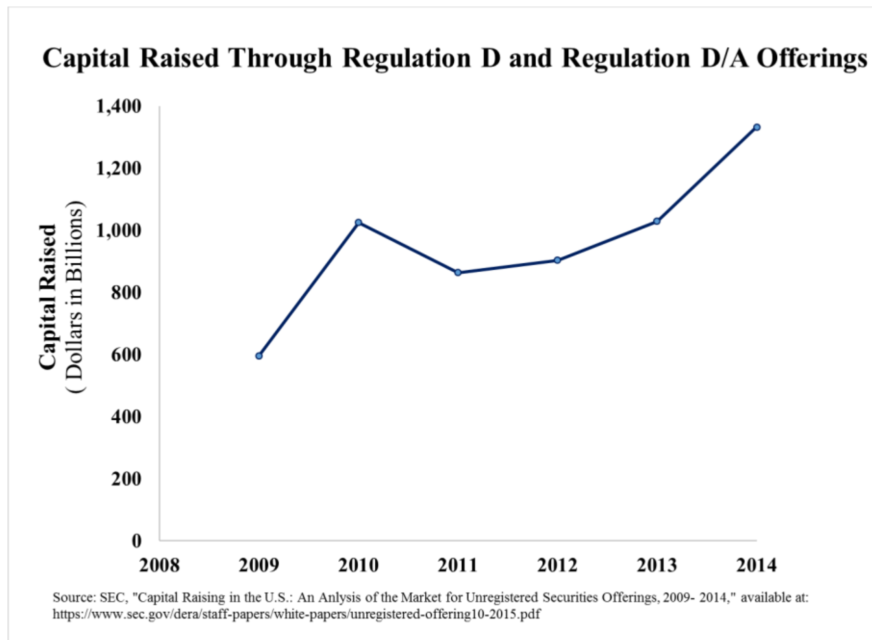
[27] Scott Bauguess, Rachita Gullapalli, and Vladimir Ivanov, "Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2014," Securities and Exchange Commission Staff White Paper, Oct. 29, 2015, 15, 24, available at https://www.sec.gov/dera/staff-papers/white-papers/30oct15_white_unregistered_offering.html.

[28] Nathaniel Popper, "Doubts Arise as Investors Flock to Crowdfunded Start-Ups," *The New York Times*, January 24, 2017, accessed at: https://mobile.nytimes.com/2017/01/24/business/dealbook/crowdfunding-fraud-investing-startups.html?ref=dealbook&_r=0&referer.

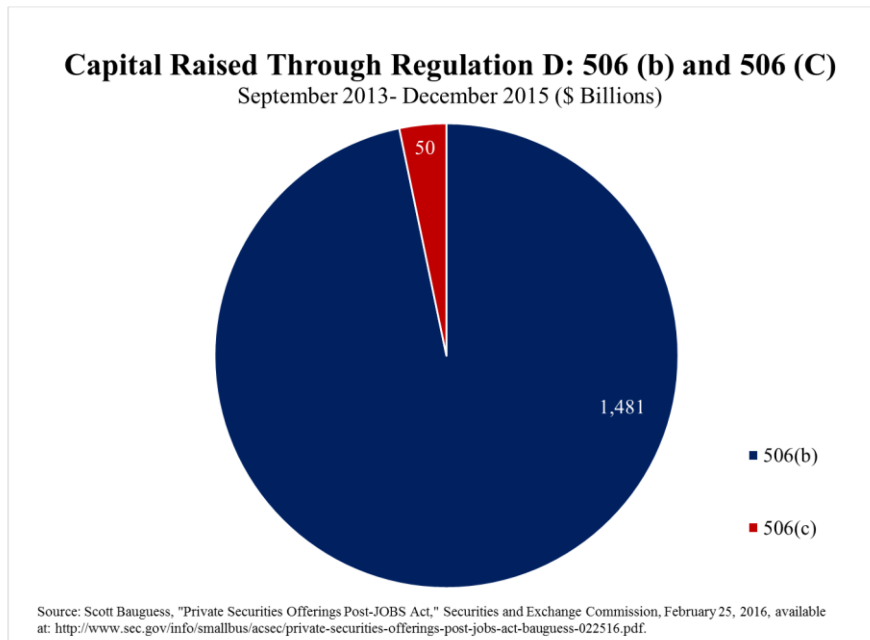
[29] See, e.g., Joshua White, "Outcomes from Investing in OTC Stocks," Securities and Exchange Commission Staff White Paper, December 16, 2016, available at https://www.sec.gov/dera/staff-papers/white-papers/16dec16_white_outcomes-of-investing-in-otc-stocks.html; see also Commissioner Luis A. Aguilar, Securities and Exchange Commission, "Addressing Known Risks to Better Protect Investors: SEC Speaks," Feb. 21, 2014, available at https://www.sec.gov/news/speech/2014-spch020421laa.

Figure 2: Capital Raised Through Regulation D and Regulation D/A Offerings



The overwhelming majority of that occurred under the old Rule 506(b). See Figure 3below. This suggests that the old tools for capital raising were sufficient to support a very large expansion of investor and company demand.

Figure 3: Capital Raised Through Regulation D



This is not to say that access to capital is ubiquitous or equitable. A recent Center for American Progress report, "A Progressive Agenda for Inclusive and Diverse Entrepreneurship" found that even at the same levels of education, income, and wealth African American households, Hispanic households, and single female-headed households had lower rates of business ownership. The report found that (1) African American households are 5 percent less likely to own a business than white households, even at the same levels of education, income, and wealth; (2) Hispanic households are 6.7 percent less likely to own a business than white households, even at the same levels of education, income, and wealth; and (3) business ownership is also much lower among single women headed households, indeed 3.9 percent less likely than among single men. The report identified several interrelated challenges underlying these disparities: wealth, skills, and network gaps. None of them are amenable to a deregulatory

solution. Instead, CAP encourages policymakers to adopt innovative, targeted policies such as the State Small Business Credit Initiative (SSBCI), which supports a wide range of credit enhancement initiatives run by state small business development programs. With bipartisan support at both the federal and state level, SSBCI succeeded at leveraging $1.5 billion in federal dollars yielding $15 billion in economic activity. It currently pending reauthorization.[30]

Public investments in apprenticeships, entrepreneurship training and education among young people, local "one stop shops", and Self- Employment Assistance Programs (SEAPs) all will yield dividends at closing the wealth, skills, and network gaps that are the real barrier to access to capital for would-be entrepreneurs. Broader "middle out" policies that ensure small business customer demand are also extremely important to small businesses success and the ability for the next generation of entrepreneurs to thrive.

Conclusion: We Need to Rebuild Middle Class Economic Security and Restore Trust in Public and Private Institutions

The JOBS Act had noble purposes: boosting IPOs and helping small businesses and start-ups thrive. No one argues with those goals. As this testimony suggests, the toolkit that the JOBS Act deployed has, however, yielded mixed results for companies and poses new challenges for investors and the public. Some of the tools, such as crowdfunding, offer genuine potential, and we should monitor them over the next two to three years, evaluate the results, and then make tweaks as needed. I have offered at several places above various suggestions for how Congress and the SEC can improve our capital markets so that they can better achieve to the goals found in the JOBS Act. And, I have offered additional suggestions for policies, such as

[30] U.S. Department of the Treasury, "State Small Business Credit Initiative (SSBCI)," October 27, 2016, available at https://www.treasury.gov/resource-center/sb-programs/Pages/ssbci.aspx.

enhanced antitrust enforcement, and programs, such as SSBCI and small business training programs, that can help enhance the dynamism and equity of our economy and its ability to sustainably support – and in some cases, re build – the long-term health of American middle class.

In the end, let's not forget what we have been through. Between 2001 and 2010, the average middle class household in America saw its real wealth collapse by 49 percent.[31] And while it rebounded under President Obama by 16 percent to 2013 and under the growing Obama economy more since, ordinary American families were hit extraordinarily hard by the 2008 Financial Crisis and Great Recession, as well as policies that concentrated and hollowed out our manufacturing industries.[32] Family budgets are still squeezed by the high costs of big-ticket items such as child-care and college, and the opportunities to save for retirement are slim to none. Health care progress is under threat. And what's more, trust in American institutions overall, including business, is at deep lows. A succession of post-Financial Crisis scandals has left Wall Street's reputation more tarnished than ever. While the inability of prosecutors or regulators to fully hold culprits accountable or bar bad actors from markets going forward leaves the public deeply distrustful of the effectiveness of government, business, and markets generally.

The solution is not to keep doing what has been done before. Rather than seeking to handcuff the SEC with even more "regulatory reform" burdens, eliminate the government's ability to bar "bad actor" institutions, and let dealer-banks get back in the business of betting against customers – all of which seem to be on the table in this Congress – it is time to develop

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[31] Carmel Martin, Andy Green, and Brendan Duke, eds. "Raising Wages and Rebuilding Wealth: A Roadmap for Middle Class Economic Security, (Center for American Progress, 2015), 2, available at https://www.americanprogress.org/issues/economy/reports/2016/09/08/143585/raising-wages-and-rebuilding-wealth/.
[32] Id. at 3.

strong approaches that ensure the financial markets accomplish their critical mission of supplying capital to competitive businesses in a fair and efficient manner while protecting investors, consumers, and the taxpaying public.