

On April 5, 2012, President Barack Obama signed H.R. 3606, the Jumpstart Our Business Startups (JOBS) Act, H.R. 3606, into law. The JOBS Act, a legislative package with bipartisan support, encourages entrepreneurship and job creation by exempting small businesses from certain financial regulations. Both President Obama and Representative Eric Cantor (R-VA) praised the JOBS Act as a successful bipartisan effort.¹

In an election year with high unemployment, Congress welcomed the opportunity to pass a jobs bill. In the beginning of 2012, the unemployment rate remained around 8.3 percent.² According to testimony by the New York Stock Exchange, businesses less than five years old accounted for all net job growth in the US between 1980 and 2005.³ The Jumpstart Our Business Startups (JOBS) Act supported young businesses by removing costs associated with filing for initial public offerings (IPOs). Going public allows companies to grow and expand business by hiring more workers. A majority of job growth from small businesses, around 92 percent, occurs after the company's IPO.⁴

The number of startup businesses filing for an initial public offering (IPO) declined between 2001 and 2011. In 1996, 761 new companies went public. Between 2001 and 2008, only 157 IPOs occurred on average each year.⁵ According to the Small Business Administration, banks have become more risk-averse since 2008, making it difficult for startup businesses to obtain loans.⁶ The number of small business loans made by lending institutions has fallen every year since 2008.⁷ Fewer young, growing companies means a decrease in job growth. By supporting the JOBS Act, members of Congress could tell constituents that they supported a plan to increase job growth and accelerate economic recovery.

In his 2011 State of the Union, President Obama revealed his Startup America Initiative, aimed to encourage small companies to go public and, in turn, create more jobs. The Jumpstart America Initiative aimed to expand access to capital for young and growing businesses. The Startup America legislation would lower costs associated with an IPO by exempting young and growing companies from certain regulations and by expanding

access to capital. By removing barriers to public capital markets, the Obama administration hoped that the Startup America legislation would spur job creation.⁸

The President's support for increasing job growth through small businesses encouraged Congress to pursue legislation aimed at lowering financial regulations for growing companies. Some of these measures, such as H.R. 2930 and H.R. 1070, resulted from President Obama's Startup America Legislative Agenda.⁹ Others, like H.R. 3606 were not included in President Obama's legislative Agenda, but pursued similar ends.

When introduced, H.R. 3606 contained only one of the seven components included in the final JOBS Act. The initial bill created a new category of business. The bill defined "emerging growth companies" as businesses that earned less than \$1 billion in revenue during the most recent fiscal year. H.R. 3606 amended the Securities Act to exempt "emerging growth companies," businesses that earned less than \$1 billion in revenue during the most recent fiscal year, from certain financial regulations.¹⁰ An identical Senate version of the Reopening American Capital Markets to Emerging Growth Companies Act of 2011, S. 1933 died in the Senate in December due to fears from Democrats that it decreased investor protections.¹¹

Supporters of the bill in the House of Representatives took a different approach by combining the Reopening American Capital Markets to Emerging Growth Companies Act with more popular, bipartisan bills. Representative Fincher (R-TN) and John Carney (D-DE) introduced H.R. 3606, the Reopening American Capital Markets to Emerging Growth Companies Act. In a press statement Fincher said, "Small companies are our nation's best job creators, but have been the hardest hit by burdensome regulations... The best thing our government can do to get our economy moving again is to create an environment in which the private sector is once again the leader of new ideas and start-up companies have the chance to grow and succeed."¹² With the 112th Congress's focus on job creation and economic recovery, the House Committee on Financial Services reported H.R. 3606 by a bipartisan 54-1 vote.¹³

The House Rules Committee amended the H.R. 3606 to include H.R. 2940, H.R. 2930, H.R. 1070, H.R. 2167, and H.R. 4088, all of which were previously approved by the Committee on Financial Services.¹⁴ Together,

the bills created a comprehensive regulatory reform package that exempted small businesses from certain financial regulations associated with expanding and going public. The law expands access to public financing and delays or phases in financial regulations as businesses grow. After the House Rules Committee combined the measures, President Obama issued a statement of administration policy in support of the JOBS Act.¹⁵

The JOBS Act drew strong lobbying support from outside groups. The National Venture Capital Association, New York Stock Exchange, Nasdaq Stock Market, and U.S. Chamber of Commerce lobbied in favor of the bill. The banking industry also played a large role in lobbying for the bill. In a letter to the House of Representatives, James Ballentine of the American Bankers Association wrote, “[H.R. 3606] would enable community based banks to deploy their capital in lending, rather than spending it on regulatory requirements that provide little incremental benefit to the banks, shareholders, or the public.”¹⁶ The banking industry provided millions of dollars toward lobbying for the JOBS Act. Of lobbying groups that spent over \$500,000, more than two thirds lobbied in favor of the bill.¹⁷

The JOBS Act also received support from small business owners and entrepreneurs. In early 2011, three entrepreneurs formed Startup Exemption, an organization devoted to lobbying Congress to legalize crowdfunding. They held rallies, spread petitions, and spoke with legislators to support their cause. Congress included the resulting bill, H.R. 2930, in the JOBS Act.¹⁸ Another small business owner, Melanie Plageman began lobbying for her business, Motaavi, and worked alongside other tech lobbyists to encourage Congress to legalize crowdfunding in the JOBS Act.¹⁹ The JOBS Act gained support from the individuals interested in starting businesses as well as from the large banking industry.

Consumer protection organizations and regulatory agencies opposed the bill. Securities and Exchange Commission Chairwoman, Mary Schapiro, said the bill would expose investors to fraud. In a letter to the Senate Banking Committee, she wrote, “investors will lose confidence in our markets, and capital formation will ultimately be made more expensive.”²⁰ In a press release, Jack Herstein, president of the North American Securities Administrators Association (NASAA), said, “while well intentioned, the JOBS Act approved today by

the House sacrifices essential investor protections.”²¹ The NASAA warned legislators the bill had potential to seriously weaken the economy. The Consumer Federation of America, AFL-CIO, AARP, and Council of Institutional Investors also lobbied against the bill. In a letter to the Senate Banking Committee, the Consumer Federation of America called the JOBS Act, “premised on the dangerous and discredited notion that the way to create jobs is to weaken regulatory protections.”²²

Lobbyists from both sides admitted the bill would have passed regardless of lobbying efforts. In an election year when voters considered the economy a major issue, legislators welcomed the opportunity to pass a pro-jobs, pro-economic recovery bill. By passing the JOBS Act, members of Congress could advertise to constituents that they voted for a jobs bill just seven months before the election. National Venture Capital Association spokeswoman, Emily Mendell, said, “Congress was very eager on a bipartisan basis to pass something that would create jobs.”²³

The Jumpstart Our Business Startups Act received bipartisan support in the House. The Act passed with 90 percent of House votes, including 96 percent of Republicans and 83 percent of Democrats. No Republicans voted against the bill, and only 41 Democrats voted against it.²⁴

The JOBS Act faced stronger opposition from Senate Democrats. Some Democrats argued the bill left investors vulnerable to fraud. Senators Merkley, Bennett, Levin, Landrieu, and Reed vocally opposed H.R. 3606 as passed by the House and fought to amend the bill to strengthen regulations designed to protect investors.²⁵ Democratic Senators proposed amendments meant to increase investor protection. Senator Merkley successfully amended the bill to require intermediaries in crowdfunding offerings to register with the Securities and Exchange Commission.²⁶ The amended JOBS Act passed the Senate with 73 percent support. A majority of Democrats, 51 percent, and 98 percent of Republican Senators voted in favor of the bill.²⁷

The House approved the amended H.R. 3606. This time, the Act passed through the House with 88 percent, including 97 percent of Republican and 76 percent of Democratic representatives. No Republicans voted against the bill, and only 41 Democrats voted against the final bill.²⁸ After the House approved the

Senate's amendment, President Obama signed the JOBS Act, praising the bipartisan effort to increase job growth.²⁹

¹ Eric Cantor, "Majority Leader Cantor on the JOBS Act," CSPAN, 4:59, April 5, 2012, <http://www.c-spanvideo.org/program/305323-3>.

² Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey," U.S. Department of Labor. Accessed 5 March 2013, <http://data.bls.gov/timeseries/LNS14000000>.

³ NYSE Euronext, *The Committee on Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises: "H.R. 3606, the Reopening American Capital Markets to Emerging Growth Companies Act of 2011,"* 112th Cong. 1-5 (2011) <http://financialservices.house.gov/uploadedfiles/121511nyse.pdf>.

⁴ NYSE Euronext, 2011.

⁵ NYSE Euronext, 2011.

⁶ Victoria Williams, "Small Business Lending in the United States 2010-2011," Office of Advocacy, U.S. Small Business Administration (2012): 4.

⁷ Williams, 2012.

⁸ "Startup America Initiative," Jumpstart America. Accessed 28 February 2013, <http://www.jumpstartamerica.org/about-us/about-startup-america-initiative.aspx>.

⁹ "Startup America Legislative Agenda," The White House. Accessed 28 February 2013, http://www.whitehouse.gov/sites/default/files/uploads/startup_america_legislative_agenda.pdf.

¹⁰ Reopening American Capital Markets to Emerging Growth Companies Act of 2012, H.R. 3606, 112th Cong. (2012).

¹¹ "S. 1933 (112th): Reopening American Capital Markets to Emerging Growth Companies Act of 2011," Govtrack.us. Accessed 3 March 2013, <http://www.govtrack.us/congress/bills/112/s1933#overview>.

¹² Congressman Stephen Fincher, "Reps. Fincher and Carney Introduce Bipartisan Legislation to Help Small Companies Grow," Press Release (December 8, 2011), <http://fincher.house.gov/press-release/rep-fincher-and-carney-introduce-bipartisan-legislation-help-small-companies-grow>.

¹³ "H.R. 3606 (112th): Jumpstart Our Business Startups," Govtrack. Accessed 1 March 2013, <http://www.govtrack.us/congress/votes/112-2012/s55>.

¹⁴ U.S. House of Representatives Committee on Rules, "Notice of Action: H.R. 3606, Financial Services, Reopening American Capital Markets to Emerging Growth Companies Act of 2011," March 6, 2012. Accessed 5 March 2013, http://democrats.rules.house.gov/news_details.aspx?NewsID=5311.

¹⁵ "Statement of Administration Policy: H.R. 3606 – Jumpstart Our Business Startups Act," The White House (March 6, 2012). Accessed 5 March 2013, <http://www.presidency.ucsb.edu/ws/index.php?pid=99976>.

¹⁶ James Ballentine, Executive Vice President, Congressional Relations and Political Affairs, "Re: ABA's View on the JOBS Act," Letter to the Members of the U.S. House of Representatives, (March 7, 2012). Accessed 4 March 2013, <http://majorityleader.gov/uploadedfiles/AmericanBankersAssociation.pdf>.

¹⁷ Michael Rapoport, "Tallying the Lobbying Behind the JOBS Act," Washington Post (May 25, 2012). Accessed 5 March 2013, <http://blogs.wsj.com/washwire/2012/05/25/tallying-the-lobbying-behind-the-jobs-act/>.

¹⁸ Media Advisory: "Rally for Capital," "A 'Rally for Capital' Urging the Senate to Pass House-Backed Legislation to Provide Community Capital to Fund Small Businesses and Create Jobs," November 16, 2011. Accessed 3 March 2013, <http://archive.sbecouncil.org/news/display.cfm?ID=4677>.

¹⁹ Erin Griffith, "A Startup Goes to Washington: How Motaavi Lobbied for Its Right to Survive," Pando Daily, March 27, 2012.

²⁰ David S. Hilzenrath, "Jobs Act could remove investor protections, SEC chair Mary Schapiro warns," Washington Post, March 14, 2012. Accessed 3 March 2013, http://www.washingtonpost.com/business/economy/jobs-act-could-open-a-door-to-investment-fraud-sec-chief-says/2012/03/14/gIQA1vx1BS_story.html.

²¹ North American Securities Administrators Association, "NASAA Statement on the Jumpstart Our Business Startups (JOBS) Act, H.R. 3606," Press Release (March 8, 2012). Accessed 2 March 2013, <http://www.nasaa.org/11237/nasaa-statement-on-the-jumpstart-our-business-startups-jobs-act-h-r-3606/>.

²² Consumer Federation of America, "Public Interest Groups Oppose Anti-Investor 'Capital Formation' Bills," Letter to Senator Johnson and Senator Shelby, Chairman and Ranking Member, Senate Committee on Banking, Housing and Urban Affairs (March 5, 2012). Accessed 1 March 2013, <http://www.consumerfed.org/news/467>.

²³ Michael Rapoport, "Tallying the Lobbying Behind the JOBS Act," Washington Post (May 25, 2012). Accessed 5 March 2013, <http://blogs.wsj.com/washwire/2012/05/25/tallying-the-lobbying-behind-the-jobs-act/>.

²⁴ "H.R. 3606 (112th): Jumpstart Our Business Startups," Govtrack. Accessed 1 March 2013, <http://www.govtrack.us/congress/votes/112-2012/s55>.

²⁵ AFL-CIO, "Statement by AFL-CIO President Richard Trumka on So-called 'JOBS Act,'" Press Release (March 22, 2012), <http://www.aflcio.org/Press-Room/Press-Releases/Statement-by-AFL-CIO-President-Richard-Trumka-on-So-called-JOBS-Act>.

²⁶ "Bill Summary & Status, 112th Congress (2011-2012), S. Amdt. 1884," The Library of Congress. Accessed 4 March 2013, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:SP01884>:

²⁷ "H.R. 3606 (112th): Jumpstart Our Business Startups," Govtrack. Accessed 1 March 2013, <http://www.govtrack.us/congress/votes/112-2012/s55>.

²⁸ "H.R. 3606 (112th): Jumpstart Our Business Startups Act."

²⁹ Kim Hart, "Obama: JOBS Act a 'game changer,'" POLITICO, April 5, 2012. Accessed 5 March 2013, <http://www.politico.com/news/stories/0412/74882.html>.