



March 15, 2012

The Honorable Harry Reid
Majority Leader
522 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

Dear Majority Leader Reid and Minority Leader McConnell:

The National Small Business Association (NSBA) supports the *Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012 (CROWDFUND Act, S. 2190)*, which would promote entrepreneurship, job creation and economic growth by making it much easier for small companies to raise capital and get new ideas off the ground. This legislation represents a reasonable effort to accommodate differing points of view and to move this important idea forward.

Representing over 150,000 small-business owners across the nation, NSBA is the country's oldest small-business advocacy organization and greatly appreciates your leadership on such an important issue for America's entrepreneurs and small-business community.

This legislation creates a crowdfunding exemption allowing a company to raise up to \$1 million with reasonable per investor limits. It also pre-empts state level registration requirements, which is critical if crowdfunding legislation is to have a meaningful positive impact. Furthermore, it adds additional regulations designed to safeguard investors.

Under current law, equity markets are largely closed to entrepreneurs and small businesses because they are generally only permitted to raise capital from people with whom they have a pre-existing relationship or through investment bankers who demand a large share of the company for their services. Even private placements (usually Regulation D offerings) involve high legal fees and generally require that the offering be limited to accredited investors (those with incomes over \$300,000 or a residence exclusive net worth over \$1 million).

The costs associated with starting and growing a business are significant. According to the Bureau of Labor Statistics (BLS), from March 2009 – March 2010, only 505,473 new businesses were created in the United States, the lowest rate of growth since the BLS

started compiling data. This bill would facilitate job creation, incentivize entrepreneurs, and promote long term economic growth.

Despite our general support for S. 2190, there are a few areas where we hope this legislation could be further improved as it moves forward:

- We would hope and recommend that the \$1 million annual limit could be increased to \$2 million in conference. There are many small business ideas that require more than \$1 million to get off the ground.
- Although we regard most of the investor safeguards as reasonable, there are a few provisions that we believe should be amended, as they may increase legal risk and administrative costs considerably. In particular, the provision requiring an explanation of the valuation method used by the issuer creates substantial legal risk and uncertainty since in retrospect almost any valuation method will prove incorrect. It is not clear what “valuation” would meet this requirement and protect issuers from litigation risk given the fact that any valuation is going to prove wrong either on the upside or, more relevantly, on the downside.
- In addition, the provisions granting the Securities and Exchange Commission almost unfettered discretion to issue additional regulations governing crowdfunding could prove highly problematic. The legislation should contain a provision limiting this discretion and requiring the Commission to consider the costs of any additional regulation and its likely impact on the crowdfunding marketplace.

Small businesses are America’s economic engine and are the most dynamic and innovative sector of the U.S. economy. They comprise 99.7% of all domestic employer firms, employ approximately 50% of all private sector employees, and have created roughly 65% of America’s new net jobs over the past 17 years.

NSBA is pleased to support the *Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012 (CROWDFUND Act, S. 2190)* and thanks Senators Merkley, Bennet, Brown and Landrieu for their tireless efforts to improve small-business capital access. We look forward to working with you to address the concerns outlined and, ultimately, together help to enact this critical piece of legislation.

Sincerely,



Todd O. McCracken
President

Cc: Senator Jeff Merkley
Senator Michael Bennet
Senator Scott Brown
Senator Mary Landrieu