Oct. 21, 2011

Dear Chairman Bachus and Ranking Member Frank,

Now that the Senate has defeated the so-called American Jobs Bill, which was in reality just another big-spending stimulus bill, it's time for Congress to pursue legislation that liberates to stimulate – liberates American entrepreneurs, investors, and workers from the shackles of big-government regulations that strangle the process of job creation.

Rep. Stephen Fincher's Small Company Job Growth and Regulatory Relief Act of 2011, which earlier this month passed the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises, is an example of such legislation that we support. It would broaden the exemption from the costly accounting mandates of Section 404(b) of the Sarbanes-Oxley Act of 2002 to public companies with market capitalization up to $350 million

Research from the respected Kauffman Foundation in Kansas City, Mo., shows that new businesses – firms less than five years old – are America's net job creators. And in a time of tight credit, every dollar these companies can raise by going public and issuing shares is one less that they have to raise by borrowing from a bank.

Yet Sarbanes-Oxley has made it cost-prohibitive for many small and midsize firms to go public. Although the Securities and Exchange Commission (SEC) initially estimated that the costs of Section 404(b) compliance would be $91,000 per year, a 2009 SEC study found that companies actually spend, on average, $2.3 million annually on Section 404(b) compliance. Moreover, the study revealed that the long-term cost burden on smaller companies is more than seven times greater than the burden imposed on large firms.

The handful of recent initial public offerings does not negate Sarbanes-Oxley's substantial burden on all companies and albatross on small and midsize firms. Most of those recently launching high-profile IPOs, such as LinkedIn, are large-cap companies with more than $1 billion in market cap. By contrast, when Home Depot went public in the 1980s, it was a small firm with only four stores. Home Depot co-founder Bernie Marcus has said repeatedly that the young firm likely never could have gone public—a crucial step for it and other firms to raise capital and expand— had Sarbanes-Oxley been in effect at the time.

For all the cost, Sarbanes-Oxley and its mandates have achieved little benefit for shareholders. As required by section 404, auditors signed off on the "internal controls" of Lehman Brothers and Countrywide Financial. Yet that didn't stop these companies from engaging in destructive transactions that led to the financial meltdown. And Congress still hasn't downsized the two entities that were the prime cause of this meltdown – Fannie Mae and Freddie Mac.

It's time to free honest entrepreneurs and their shareholders from the yoke of Sarbanes-Oxley's burdensome mandates. If Congress wants to remove a significant barrier to job creation, it should pass the Small Company Job Growth and Regulatory Relief Act of 2011 – to use the president's terminology -- right now.

Sincerely,

Phil Kerpen
Vice President for Policy
Americans for Prosperity

Grover Norquist
President
Americans for Tax Reform

John Berlau
Director, Center for Investors & Entrepreneurs
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