The Chamber remains very concerned about the long-term decline in the number of public companies in the U.S., a development that has endured through varied market and political cycles. The U.S. is now home to roughly half the number of public companies as 20 years ago, and we have only slightly more public companies than existed in 1982. As more companies elect to remain private longer, retail investors are denied the opportunity to invest in innovative growth companies early on and enjoy the full benefit of stock price appreciation. Over the past decade, we have also seen an uneven rate of new businesses being started, sometimes because of financial access issues.
In 2018, the House Financial Services Committee negotiated bipartisan legislation designed to increase the availability of capital to businesses, especially small and emerging growth companies. The legislation, modeled after the 2012 Jumpstart Our Businesses Startups (JOBS) Act, passed the U.S. House of Representatives with near unanimous support, but its progress stalled, and the legislation has lingered.

**There are several current legislative proposals that Congress should consider that would expand opportunities for businesses to access capital as they try to rebuild from the most recent economic crisis.**

The 2012 JOBS Act has provided significant capital-raising opportunities for both public and private enterprises. Beyond its specific policy impacts, the JOBS Act has also unleashed a new and positive way of thinking about the future of securities regulation. But the JOBS Act was just an initial step toward bringing our nation’s securities laws into the 21st century, and some of the provisions in the law (as well as subsequent freelancing by regulators) need to be revisited if it is going to achieve its full potential. Congress should also continue to examine the reasons for the dramatic decline in public companies over the past two decades, and the role that corporate governance laws and regulation have in capital formation and the incentives for companies to go public.

There are several current legislative proposals that Congress should consider that would expand opportunities for businesses to access capital as they try to rebuild from the most recent economic crisis. Much of the bipartisan “JOBS Act 3.0” bill negotiated during the 115th Congress is now even timelier as small businesses attempt to access capital during these uncertain economic times. Swift enactment of such a bipartisan package, in addition to recent measures put forward in the wake of the pandemic, would provide a big boost to our economic recovery.

**The Crowdfunding to Combat the Coronavirus Act (H.R. 6253–116th)** would eliminate offering ceilings under Regulation Crowdfunding, Regulation A, and Regulation A+ under the Securities Act of 1993. While this would provide important capital-raising options for companies not ready to complete an Initial Public Offering (IPO), the Securities and Exchange Commission (SEC) should remain vigorous in its enforcement of any company—regardless of what exemption it may use under the securities laws—that makes false claims, particularly related to the pandemic.
The Relief for Small Businesses Through Micro-Offerings Act of 2020 (H.R. 6252–116th) would provide an exemption from registration requirements for small offerings that do not exceed $250,000 in the aggregate, or more than $5,000 to any one investor, and that is conducted through a regulated broker or funding portal. This would benefit entrepreneurs who are looking to raise relatively small amounts of capital and cannot afford costly legal and registration requirements.

The Crowdfunding Amendments Act (H.R. 4860–116th) would address some of the unnecessary compliance burdens that currently exist under the SEC’s crowdfunding rules by allowing for the use of “crowdfunding vehicles” and also exempting securities issued in crowdfunding offerings from registration requirements under the Securities Exchange Act of 1934.

The Helping Angels Lead Our Startups (HALOS) Act (H.R. 1909–116th) would help startup businesses communicate with potential investors by clarifying the definition of “general solicitation” under the 2012 JOBS Act. The bill would affirm that startups and angel investors can participate in “demo days” or other similar events where no specific offerings of securities are made.

The Access to Small Business Investor Capital Act (H.R. 7375–116th) would exempt business development companies (BDCs) from the acquired fund fees and expenses requirement that currently mandates the disclosure of misleading information regarding the costs of investments in BDCs. Passage of this bill will increase institutional investment in BDCs, which are a critical source of nonbank financing for small and middle market companies throughout the country.

The Gig Economy Infrastructure Act (H.R. 6254–116th) would expand the pool of workers who can receive equity compensation under the SEC’s Rule 701 to include independent contractors and “gig” economy workers.

The Improving Investment Research for Small and Emerging Issuers Act (H.R. 2919–116th) would direct the SEC to study and provide recommendations for how to improve research coverage for small capitalization and pre-IPO companies. A lack of analyst coverage in small companies has plagued much of our equity markets for years. This bill would ultimately help increase the flow of information to investors.

The Modernizing Disclosures for Investors Act (H.R. 4076–116th) would permit an alternative method for public companies to provide quarterly disclosures, including through a shortened form or press release. This would cut down on repetitive and costly disclosure requirements without depriving investors of material information they need to make informed decisions.
The Expanding Access to Capital for Rural Job Creators Act (H.R. 2409–116th) would expand the focus of the Office of the Advocate for Small Business Capital Formation at the SEC to include ways to increase capital access for rural small businesses. We believe this would help ensure that rural areas receive due consideration during any future SEC rulemaking process. A 2016 report from the Economic Innovation Group found that half of all post-recession business creation in the U.S. occurred across only 20 counties, and that many rural areas have not seen expected economic growth since the 2008 financial crisis. This bill is an incremental but important step that would focus the SEC on the needs of businesses in rural communities.

The Helping Startups Continue to Grow Act of 2019 (H.R. 4918–116th) would allow certain issuers of securities regulated as emerging growth companies to continue operating under such regulations, including those related to reduced disclosures and other exemptions, for an additional five years.

The Small Business, Mergers, Acquisitions, Sales and Brokerage Simplification Act (H.R. 609–116th) would simplify SEC registration requirements and provide a safe harbor for certain financial professionals who assist small and mid-size businesses that are looking to transfer corporate ownership. Importantly, the legislation also includes strong investor protections such as requiring the disclosure of relevant information to clients as well as the owners of eligible privately held companies. The bill does not impede in any way on the ability of the SEC to crack down on bad actors, or to prohibit past securities law violators from taking advantage of the exemption.

The Expanding Investment in Small Businesses Act (H.R. 3050–116th) would require the SEC to study whether diversified mutual funds should be permitted to take a larger stake in the voting shares of individual companies. Concerns have been raised that the current 10% threshold limits the amount available for investment in small companies. This legislation could expand the pool of capital available to emerging growth companies and other small issuers.

The Accelerating Access to Capital Act of 2017 (H.R. 4529–115th) would revise Form S-3 and liberalize the offering of securities to accelerate the ability of a business to become a public company. This bill would also modernize the use of Form S-3 and allow smaller issuers to take advantage of the simplified registration statement.

The Family Office Technical Correction Act of 2017 (H.R. 3972–115th) would provide certainty for “family offices” defined under securities laws by clarifying that such offices are accredited investors. This bill would help preserve the ability of family offices to invest in certain private offerings and help them remain an important source of capital for growing businesses.
The Public Company Registration Threshold Act (H.R. 5051–115th) would increase from 500 to 2,000 the number of non-accredited shareholders a company must have before being required to register with the SEC. This legislation would build on the 2012 JOBS Act, and would help many companies, including companies that raise money through crowdfunding and the private markets, avoid having to undergo costly registration with the SEC.

The Small Business Audit Correction Act of 2018 (H.R. 6021–115th) would exempt privately held non-custodial brokerage firms from a requirement to have a Public Company Accounting Oversight Board (PCAOB)-registered firm conduct their annual audit. Small broker-dealers are often important sources of capital for startups or small businesses around the country, and there is no compelling reason to subject them to an audit process that is more fitting of a large company.

The Developing and Empowering Our Aspiring Leaders Act of 2018 (H.R. 6177–115th) would expand the definition of a “qualifying investment” in venture capital funds to include certain equity securities bought on the secondary market. It would allow venture funds to continue to play an important role in deploying capital to growing businesses without having to undergo costly registration requirements.

The Fair Investment Opportunities for Professional Experts Act (H.R. 4762—116th) would provide an innovative way to expand the “accredited investor” definition in a limited manner to bring more sophisticated investors into the market. Traditionally, the accredited investor threshold has been determined through asset and income tests, which have resulted in both an under- and overinclusive outcomes. The definition leaves out sophisticated and savvy investors who may not meet financial thresholds while including a wealthy person with no experience in financial markets.

An individual who has met the educational and licensing requirements to sell securities and investments should be able to qualify as an accredited investor, and the SEC should, through notice and comment rulemaking, consider further ways to expand the accredited investor definition. This process would help balance investor protection concerns with the need to facilitate capital formation.

In August 2020, the SEC finalized a rule expanding the definition of “accredited investor” to include more individual investors, such as those with professional qualifications in the financial industry.

**ACTION:** Further expansion of the SEC’s definition of “accredited investor”—such as updating the net worth thresholds and recognizing more individuals with demonstrable education or job experience—is necessary to properly reflect certain individual investors’ level of sophistication.
ESTABLISH A LEGAL FRAMEWORK FOR VENTURE EXCHANGES

Technological changes in equity markets over the past two decades have helped reduce trading costs, increase liquidity, and make markets more efficient. However, many small and midsize public companies, including emerging growth companies (EGCs), still operate in a less liquid and more fragmented trading environment compared with the overall equity market. Venture exchange legislation would move policymakers from a regulatory “one-size-fits-all” model by providing a tailored trading platform for certain thin liquidity stocks. This would help promote liquidity for companies with smaller market capitalizations by exempting those stocks from rules that are more appropriate for deeply liquid and highly valued stocks, such as “tick size” and auction rules.

**ACTION:** Congress should enact legislation amending the Securities Exchange Act of 1934 to permit the creation of venture exchanges.

EXPAND EMPLOYEE OWNERSHIP IN STARTUP COMPANIES

The JOBS Act of 2012 included an important provision that exempted certain employee compensation plans from calculations determining when a business must register with the SEC. The intent behind this provision was to encourage more rank-and-file employees, who have firsthand knowledge of a business, an opportunity to share in ownership of the business and share in the opportunity for wealth creation. The rules were updated after bipartisan urging by Congress but are still not reaching their full potential.

In July 2018, the SEC finalized a rule that would increase the threshold from $5 to $10 million the amount of securities sold to employees per year without imposing complicated and costly disclosure requirements. However, the rule does not extend to independent contractors, therefore limiting opportunities for the workforce of the gig economy to share in wealth creation. Furthermore, the final rule only increases the annual threshold for the amount of securities sold under the registration exemption to only $10 million.

**ACTION:** The SEC should clarify that updates to its rules also cover independent contractors.

**ACTION:** The SEC should expand the threshold from $10 million to $20 million so more of the workforce can share in the profits of their employers.