The JOBS Act at Four:
Examining Its Impact and Proposals to Further Enhance Capital Formation

Testimony by
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Before the
Subcommittee on Capital markets and Government Sponsored Enterprises
Committee on Financial Services
U.S. House of Representatives

The Honorable Scott Garrett, Chairman
The Honorable Carolyn Maloney, Ranking Member

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Chairman Garrett, thank you for hosting this important hearing today on the JOBS Act and the need to enhance capital formation. The Small Business & Entrepreneurship Council (SBE Council) is pleased to submit this testimony. Thank you for your invitation.

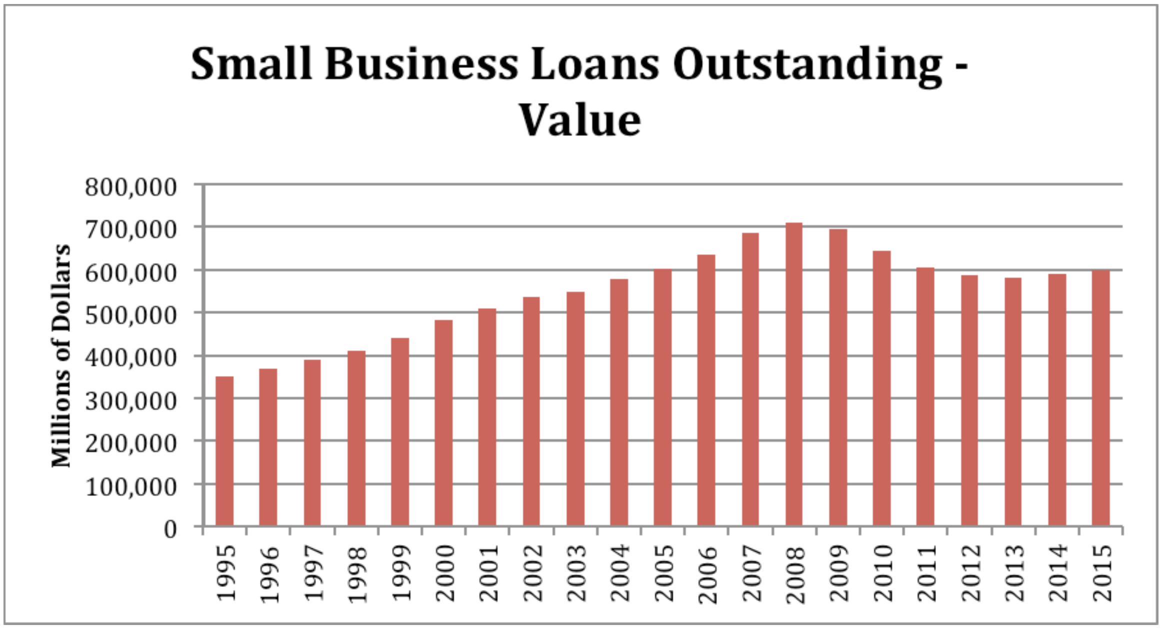
My name is Raymond Keating, and I am the chief economist for SBE Council, as well as serving as an adjunct professor in the Townsend Business School at Dowling College where I teach a variety of courses in the MBA program; and being the author of several books, including the latest nonfiction book being *Unleashing Small Business Through IP: Protecting Intellectual Property, Driving Entrepreneurship*.

SBE Council is a nonpartisan, nonprofit advocacy, research and training organization dedicated to protecting small business and promoting entrepreneurship. With more than 100,000 members and our network of business groups nationwide, SBE Council is engaged at the local, state, federal and international levels where we collaborate with elected officials, policy experts and business leaders on initiatives and policies that enhance competitiveness and improve the environment for business start-up and growth. Since our founding in 1994, SBE Council has helped to strengthen the ecosystem for small business and entrepreneurial success in the U.S. and across the world. Access to capital has remained one of SBE Council's core issues since our founding.

Small Business Challenged on Raising Financial Capital

Access to financial capital – whether via equity or debt – is vital for entrepreneurs seeking to start up, operate or expand businesses, and at the same time, gaining access to capital has remained an enduring challenge for many small businesses. The financial crisis and Great Recession made the situation worse as capital became increasingly hard to access from institutional banks and various capital market players. And while there have been improvements due to the economic recovery and healing in the capital markets, many entrepreneurs continue to struggle with accessing the capital they need to compete and grow.

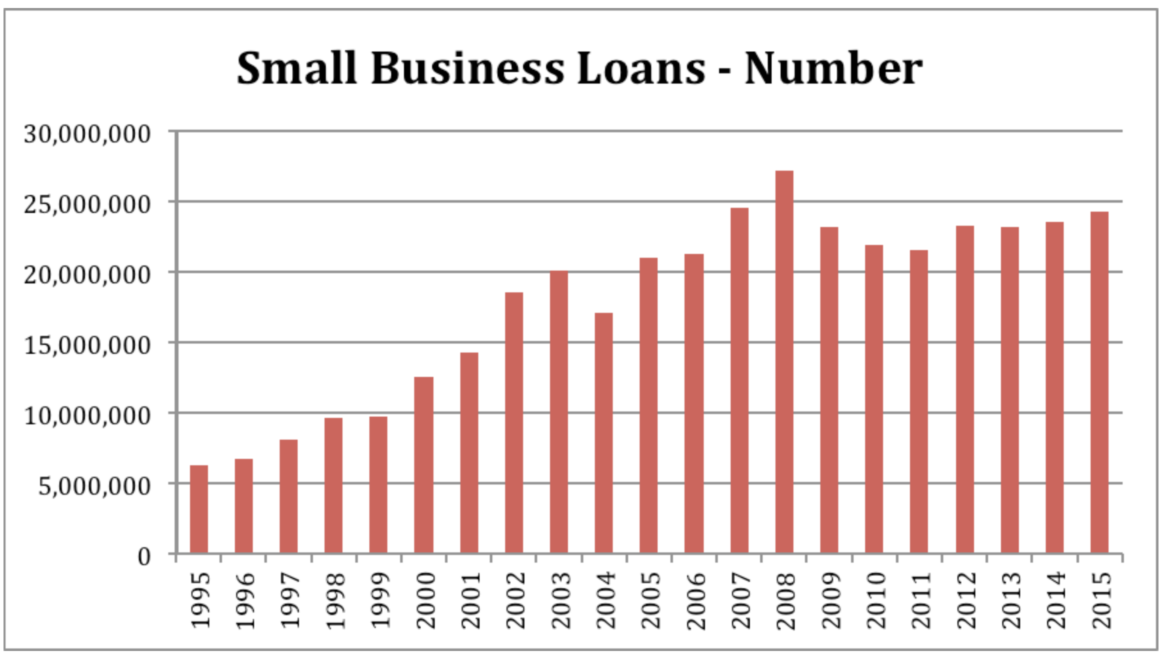
Consider the decline in bank small business loans (less than $1 million) over the past several years. The value of small business loans outstanding hit a high of $711.5 billion in 2008, and subsequently fell for five straight years, with some growth resuming in 2014 and 2015. The 2015 level came in at $599.3 billion, which is roughly where the small business loan level was in 2005. That's a decade of no growth.



Data Source: Federal Deposit Insurance Corporation, Quarterly Banking Profile

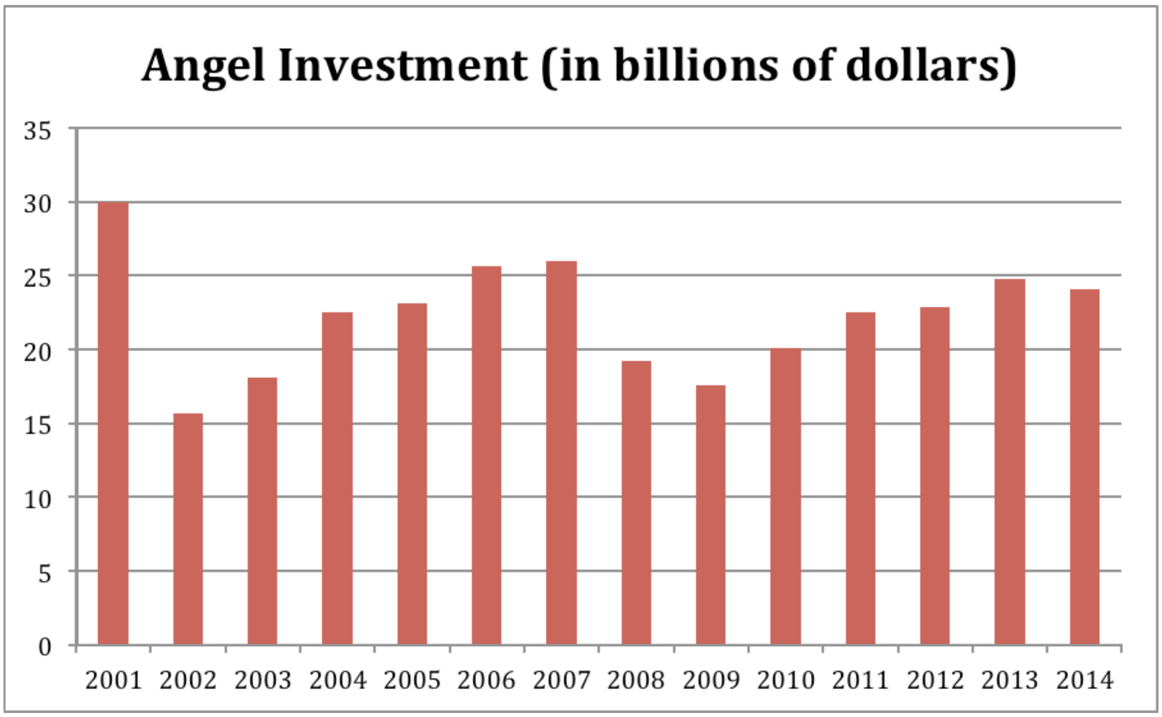
The small business share of commercial and industrial loan value outstanding registered, for example, 33 percent in 1995, 35 percent in 2004, and 30 percent in 2007. As of the fourth quarter of 2015, however, it had fallen to only 20 percent. Looking at nonfarm nonresidential loans, the small business share came in at 52 percent in 1995, and had declined to 39 percent in 2007. At the end of 2015, the small business share further declined to 23 percent.

As for the number of small business loans, these rose steadily up to 2008 (hitting 27.1 million in 2008 compared to 6.3 million in 1995), and subsequently declined and struggled to recover, climbing back to 24.3 million in 2015.



Data Source: Federal Deposit Insurance Corporation, Quarterly Banking Profile

On the equity side, angel investment is a critical source of funding for start-ups and early-stage businesses. But here, again, the story has been one of under-performance or sluggishness in recent years. According to the Center for Venture Research at the University of New Hampshire, after a big drop in 2002, coinciding with the aftermath of the 2001 recession (as well as the post "tech bubble"), growth resumed from 2003 through 2007, with angel investments increasing from $15.7 billion in 2002 to $26 billion in 2007. However, subsequently, there was a big drop-off in 2008 and 2009, and the subsequent growth has been underwhelming. For all of 2014, angel investment came in at $24.1 billion, down from $24.8 billion in 2013, and still not back to the $26 billion level in 2007. In fact, the 2014 level came in just ahead the 2005 level – again, nearly a decade of no growth. For the first half of 2015 compared to the same period in 2014, angel investment was up by 4.1 percent.



Source: Center for Venture Research at the University of New Hampshire

To sum up, long after the financial crisis hit in late 2008 and the Great Recession came to an official end in mid-2009, the value and number of traditional small business loans are still down markedly, and angel investment is still down compared to 2008. Based on these numbers, the struggle for entrepreneurs to gain access to the financial resources needed to start up, thrive or just survive continues to be difficult.

The bottom line is that small businesses need more options or avenues to expand access to financial capital. The securities market would seem to be an option, but the regulatory and legal costs long had been prohibitive.

The JOBS Act

In the midst of these struggles, SBE Council staff and members were instrumental in advancing the JOBS Act into law. SBE Council President Karen Kerrigan and key SBE Council members joined President Obama at the White House for the JOBS Act signing ceremony in April 2012. The overwhelmingly bipartisan bill focused on helping to stimulate the U.S. economy by promoting capital formation.

At the time the legislation was signed, Kerrigan observed: "Passage of the JOBS Act is proof that elected officials and leaders can put political differences aside for the good of the country and the economy. President Obama's steadfast leadership and support of the JOBS Act was central to this important victory for small businesses. The unwavering support of House and Senate Republican leaders, as well as the collaborative work that many Democrat and GOP members of Congress put into this important package was critical to a successful legislative effort. These leaders on both sides of the political aisle were driven by one goal – to find solutions that would free up capital for America's job creators… The lack of access to capital is holding budding entrepreneurs and promising firms back, and without money or credit these businesses cannot grow, innovate or create jobs. The JOBS Act is a potent mix of regulatory reforms and relief that will free up precious capital for growth, and create new models and platforms for businesses to raise funds."

On April 5, 2016, Locavesting.com offered an excellent status report on the JOBS Act as it turned four years old, summing up key sections and the impact in the marketplace. A few points from the report warrant noting here:

> • Title I ("Reopening American Capital Markets to Emerging Growth Companies") "created a new category of issuers called 'emerging growth companies,' defined as an issuer with total annual gross revenues of less than $1 billion during its most recently completed fiscal year. To encourage these growth companies to go public and address an alarming drop-off in IPOs, Congress created an IPO 'on-ramp' … by relaxing regulatory requirements for going public, including requirements for financial disclosure and reporting. ECGs may also submit draft registrations for confidential, non-public review by the SEC… The provision was further modified by the FAST Act, signed into law in December, 2015," which "simplified disclosure requirements for smaller issuers and clarified rules for secondary selling of these privately issued securities."
>
> ***The impact? "Emerging Growth Companies have accounted for the lion's share of recent IPOs—86% of IPOs in 2015, according to Citi, and two-thirds of IPOs in 2014, according to another study." (Emphasis added.)***
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> • Title II ("Access to Capital for Job Creators") allows for "accredited investor" crowdfunding by letting "private companies conducting a private placement under Regulation D Rule 506 to publicly market the offering. Before that such marketing was banned. The securities can only be sold to accredited (wealthy)

investors. Specifically, the JOBS Act amended Reg D Rule 506—a widely used securities exemption for private companies raising money from accredited investors—to include a new sub-rule, Reg D 506(c) that eliminates the ban on general solicitation and advertising. Companies issuing securities under the new 506(c) exemption can now openly talk about and advertise the fact they are raising money… In practical terms, Title II improves the existing private placement process, allowing companies to reach out to more accredited investors, but it does not represent a major new funding avenue." The rules went into effect on September 23, 2013.

The impact? "In its first two years, there have been more than 6,000 offerings conducted under Title II, according to Crowdnetic, with recorded capital commitments of $870 million (there is no way of tracking how much of that capital was successfully raised). That's still a small portion of Regulation D private offerings, but growing fast." (Emphasis added.)

• Title III (The Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act or CROWDFUND Act), which goes into effect on May 16, 2016, "allows any American, regardless of wealth, to easily invest in private companies for the first time in more than 80 years. This public investment crowdfunding must take place on SEC-sanctioned funding portals—think of it like Kickstarter, but for investing." The basics include:
– Companies being able to raise up to $1 million every 12 months.
– "Investors are limited in what they can invest each year (to $2,000 or 5% of net worth or income if net worth or annual income is less than $100,000; or 10% of net worth or annual income (whichever is lesser) if those measures are $100,000 or greater."
– "Offering must be conducted via an SEC-sanctioned intermediary, either a funding portal or a broker/dealer platform."
– "Communications between issuers and potential investors must primarily take place on the funding platform."
– "Issuers must file Form C with the SEC at least 21 days prior to launching an offering."
– "Once the offering is complete, companies must update shareholders on an annual basis."

The impact? "To be seen! Title III is expected to have a slow ramp up as portals, investors and entrepreneurs get comfortable with the new law. In the meantime, the long wait for Title III has inspired at least 30 states to create their own exemptions allowing investment crowdfunding within their state borders, which may offer some issuers and investors a more attractive option." (Emphasis added.)

• Title IV ("Small Company Capital Formation (aka Regulation A+)) "required the SEC to boost the offering amount allowed under Regulation A from $5 million and fix some of its drawbacks, namely the need to register with both

> federal and state regulatory authorities. The new Reg A+ rules create two tiers of offerings: Tier 1 allows issuers to raise up to $20 million in a 12-month period; Tier II, up to $50 million. Significantly, the SEC preserved the ability for unaccredited as well as accredited investors to participate in Reg A+ offerings, making it a true public offering. And it added a valuable tool: the ability for companies to 'test the waters' with potential investors before committing to an offering. This is a capital-raising tool for high-growth companies with large capital needs. And it is not inexpensive. Issuers need to file a thick offering document (Form 1-A) with the S.E.C. for approval. Tier 1 preserves the need for state by state "Blue Sky" registration and review, which is costly and time consuming. And Tier 2 imposes on companies an ongoing reporting burden, including audited financials, much like the reporting requirements of a public company." The rules went into effect in June 2015.
>
> ***The impact? Reg A+ has been the sleeper of the JOBS Act. In less than a year, it has attracted bold and innovative entrepreneurial ventures that might have lacked suitable funding in the past. Examples include next generation electric cars, sci-fi aircraft, media and medical marijuana ventures. In addition, crowdfunding platforms and online lenders have used it to extend investment opportunities to unaccredited investors." (Emphasis added.)***

Regarding Title III going into effect in May 2016, SBE Council Karen Kerrigan told Crowdfundinsider.com in October 2015 that the impact on entrepreneurship "will be significant." She explained:

> "First, as entrepreneurs in search of start-up or growth capital, Title III crowdfunding releases an immense pool of capital that has been locked away due to archaic thinking and laws. For many of our members who are locked out of networks or don't have access to Venture Capital networks or Angels, this next phase of investment crowdfunding blows the market wide open. For women entrepreneurs, the potential is quite significant as online platforms will continue to grow, diversify and serve niche markets. Investors will be in search of quality businesses to invest in – regardless of gender or race. Second, small businesses will be stronger once they grasp what it takes to raise capital via equity and debt-based crowdfunding. The knowledge they will absorb by going through the fundraising process, and preparing for it – including the vetting and feedback – will make for stronger and more competitive businesses. This is not only good for the entrepreneur, but for our economy as a whole. Third, more small business owners and entrepreneurs will become investors themselves. This will be tremendously powerful for the ecosystem."

Meanwhile, Sherwood Neiss, a partner at Crowdfund Capital Advisors who co-authored *Crowdfund Investing for Dummies* and played a key role in making the JOBS Act happen though his education, advocacy and working with SBE Council, noted in VentureBeat.com in October 2015 that the U.S. has a lot of catching up to do on the crowdfunding front. He noted, for example, developments in the United Kingdom and China:

• The United Kingdom. “Since 2012, the four types of crowdfunding — donation, rewards, debt (peer-to-peer and peer-to-business), and equity — have been reclassified as Alternative Finance. The United Kingdom led the way by crafting policy that was data intensive and prescriptively light. Rather than regulating the industry out of business due to fear, the U.K.’s Financial Services Authority (FSA) decided to understand how these online platforms are digitally storing data on companies that never existed in the private capital markets before, providing transparency and immediate access to company data, performance, and disclosures so investors can make informed decisions, and efficiently facilitating the flow of capital at very cost-effective rates. In response, both the debt and equity markets for crowdfunding skyrocketed, companies and individuals that didn’t qualify for traditional bank financing were receiving access to capital, fraud turned out to be nonexistent, and default rates are averaging lower than those experienced by banks. To substantiate this, an Alternative Finance Market report by the University of Cambridge and Ernst & Young found that in 2014 €2.34 billion ($ 3.61 billion) worth in crowdfunding was transacted in the U.K., making up nearly 75 percent of the total value of the online alternative finance market in Europe.”

• China. “Asia saw the explosion of peer-to-peer lending in China, with one platform originating over $16 billion in loans last month alone!... In China, one of the P2P lenders raised $93 billion in deposits in less than a year. All banks globally didn’t accomplish that last year. And the default risk of P2P lenders is half that of banks. P2P lending platform Zopa, for example, has a default rate of .005 percent. Why? Because it has better data.”

Looking at the U.S. and what lies ahead after the “Securities and Exchange Commission finally decides to stop playing politics and start helping small businesses by okaying securities-based crowdfunding,” Neiss pointed to the following five expected developments:

- **“Transparency**: Companies that tend to be successfully funded have spent a significant amount of time prepping for the raise, preparing their financials for review, and creating necessary disclosures for investors to vet.”
- **“Access to capital**: Companies have access to short-term financing that the banks have been unwilling or unable to finance.”
- **“Sophistication**: Companies tend to follow a path of management discipline, internal governance, and external communication.”
- **“Deal flow**: Companies that are transparent, leverage this capital smartly, and execute on their plans are seen as quality deal flow for follow-on investments, VCs, and even traditional banks.”
- **“Diversification:** Investors have access to a broader and more diverse set of investment opportunities within a regulated and transparent environment at attractive yields.”

Work To Do

Even given the significant and positive changes being brought about for entrepreneurs and investors with the JOBS Act, there are areas in need of improvement. A serious concern persists regarding extra government regulation or placing too many limitations on the ability of entrepreneurs to gain access to capital, and/or on investors' abilities to make investments in entrepreneurial ventures.

Indeed, few better understand the costs of government regulations, rules and restrictions than small businesses owners. After all, they are on the frontlines of having to deal with the very real costs of regulation, whether that means dealing with added costs of running a business day to day, or if it means reduced access to financial capital.

On the crowdfunding front, in his October 30, 2015, statement, Securities and Exchange Commission (SEC) Commissioner Michael S. Piwowar observed:

> "While crowdfunding was intended to be a treat for the smallest and least sophisticated companies seeking to raise capital, today's rules are full of tricks. The rules will spin a complex web of provisions and requirements for compliance. I fear that many traps for the unwary are hidden in the regulations, creating potential nightmares for small business owners that fail to place regulatory compliance at the top of their business plans. Such burdens will spook many small businesses from pursuing crowdfunding as a viable path to raising capital.
>
> "A number of concerns have already been raised as to whether our rules are too restrictive or too burdensome. In fact, many of these restrictions are embedded in the statute itself. For instance, even if you are Warren Buffet or Bill Gates, you are limited to investing no more than $100,000 during any 12-month period in all crowdfunding investments.
>
> "In other cases, the majority of the Commission has exercised discretion to make capital raising using crowdfunding even more difficult. In a change from the proposal, the rules will limit the ability to invest in crowdfunding opportunities based on the lesser of annual income or net worth. Because the majority of the Commission cannot trust ordinary Americans – the non-accredited investors – to be able to exercise appropriate judgment in how to spend or invest their resources, our rules will now place smaller limits on the amounts that can be invested. Rather than actually protecting investors, these smaller limits will discourage legitimate companies from engaging in crowdfunding, while simultaneously encouraging less reputable actors to use affinity-based solicitation methods akin to multi-level marketing, a development that could stifle crowdfunding efforts."

Neiss worries about the following: "The question remains, will the SEC regulate the opportunity to death, or will it foster the development of this ecosystem and position the United States as the leader that will live up to President Obama's statement that this is 'game changing'?"

Also, consider, what David Burton, a senior fellow in economic policy at the Heritage Foundation, in a February 2014 analysis noted:

> "'Going public' now costs a company about $2.5 million. This money is spent on lawyers, accountants, and other expenses to meet the registration

> requirements of the Securities Act. Moreover, it costs more than $1 million annually to remain public. Any company issuing stock is subject to these burdensome requirements unless an exemption applies…
>
> Even the SEC's own figures, however, put the crowdfunding compliance costs (including the cost of lawyers, accountants, filing fees, and so on) at 20 percent to 50 percent of the amount raised for offerings of less than $100,000, about 15 percent for those between $100,000 and $500,000, and 11 percent–12 percent for offerings between $500,000 and the $1 million annual cap. This makes crowdfunding a very expensive way to raise money and will limit its usefulness."

In terms of making headway toward reducing the costs for entrepreneurs to gain access to financial capital, SBE Council supports the four legislative initiatives being considered at this hearing.

• H. R. 4852 Private Placement Improvement Act of 2016

The Private Placement Improvement Act (H.R. 4852) would amend federal securities laws to ensure that small businesses do not face complicated and unnecessary regulatory burdens when attempting to raise capital through private securities offerings issued under SEC Regulation D.

The Regulation D capital market is a critical one for the U.S. economy. In 2012, Regulation D offerings ($903 billion) accounted for over half of all private offerings. It is the primary means by which startups and growth companies raise equity capital, according to the SEC. Still, raising this capital is expensive.

The strong bipartisan passage of the JOBS Act should have sent a very clear message to the SEC. That is, outdated and excessive regulatory impediments must be addressed to encourage capital formation for our most promising entrepreneurial firms.

As noted in the CRS summary, H.R. 4852 would direct

> "the Securities and Exchange Commission (SEC) to revise the filing requirements of Regulation D (which provides exemptions from securities registration requirements) to require an issuer that offers or sells securities in reliance upon a certain exemption from registration (for limited offers and sales without regard to the dollar amount of the offering [Rule 506]) to file, no earlier than the date of first sale of such securities, a single notice of sales containing the information required by Form D (used to file a notice of an exempt offering of securities under Regulation D) for each new offering of securities.
>
> "The SEC shall not: (1) require the issuer to file any notice of sales containing the information required by Form D except for this single notice; (2) condition the availability of the Rule 506 exemption upon the filing of a Form D or similar report; or (3) require issuers to submit written general solicitation materials in connection with a limited offering subject to Rule 506, except when it requests such materials pursuant to specified authority.

> “The SEC shall revise a specified rule, regarding a Rule 506 offering of a private fund, to characterize as an accredited investor a ‘knowledgeable employee’ of that private fund or the fund's investment adviser.”

This legislation is consistent with the goals of Title II of the JOBS Act by ensuring that small businesses do not face complicated and unnecessary regulatory burdens when attempting to raise capital through private securities offerings under Rule 506, while at the same time preserving important investor protections. If the SEC followed the clear intent of Congress, H.R. 4852 would not be necessary. But unfortunately, the proposed rules make Regulation D more expensive, complex and burdensome for small businesses, which was not the purpose of the JOBS Act.

While the SEC adopted a rule lifting the ban on general solicitation and advertising for certain private securities offerings under Rule 506 of Regulation D, as mandated under Title II of the JOBS Act, the separate rule proposal would impose a number of new regulatory requirements on small companies seeking to utilize amended Rule 506, including proposals to submit additional Form D filings to the SEC in advance and at the conclusion of an offering, and to file written general solicitation materials with the SEC. In essence, one regulatory filing would be replaced with three, plus any written general solicitation materials. This means higher costs for small businesses.

As stated in a letter to the SEC chairman in July 2013, U.S. Rep. Garrett and Patrick McHenry from North Carolina:

> “Regulation D 506(c) offerings, which benefit from the lifting of the ban on general solicitation, provide opportunities to raise capital from investors that can afford to take risk, can afford advisors and, under the vastly expanded information technology of today as compared to 1933, have an improved ability to investigate investment opportunities and investment managers…
>
> “The primary concern arising from the Proposed Rules results from an apparent error that the Commission made when drafting this proposal. Proposed Rule 503 requires a fifteen day waiting period, after filing Form D, before allowing advertisements- this restriction appears to violate the law by imposing a fifteen day ban on general solicitation. Title II of the JOBS Act lifted the ban on general solicitation for Regulation D 506 offerings to accredited investors. As a result, the Form D pre-filing requirement effectively violates Title II of the JOBS Act.
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> “This ban on solicitation imposed via a pre-filing requirement would extend substantially longer than fifteen days, particularly for smaller businesses that have reduced access or experience with complex legal matters. If a business decides to proceed with advertising a 506 offering, it must first file an expanded Form D, which will require hiring qualified counsel and require considerable time to complete. Upon submission of a completed Form D, the issuer must then wait fifteen days prior to posting an advertisement.
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> “As a result, the Form D pre-filing requirement imposes a lengthy waiting period between the day that an issuer decides to advertise under Rule 506(c), and

> the day of the actual advertisement. Congress specifically required the Commission to lift the ban on general solicitation for those Rule 506 offerings that solely target accredited investors and qualified institutional buyers. Congress did not say that the Commission can delay free speech for fifteen days."

From our perspective, the statute clearly states that any marketing an issuer does must point prospective investors to the funding portal or broker's site where the listing is posted. The point of this is to make sure that issuers limit the information about their offering to only the objective criteria laid out in the statute. Having issuers file general solicitation materials only adds unnecessary red tape, time and cost to the process. An issuer who is already limited in what they can "say" would need to incur the extra legal expense of a counsel review prior to sending it to the SEC, then wait for any feedback from either counsel or the SEC. This extra step does not provide any extra investor protection but unnecessarily increases costs for capital-strapped entrepreneurs.

H.R. 4852 is a common-sense measure that would align the rules governing Title II of the JOBS Act with the clear intention of Congress, and would reduce costs and enhance the abilities of entrepreneurs to raise capital.

• H. R. 4850 Micro Offering Safe Harbor Act

The Micro Offering Safe Harbor Act (H.R. 4850) would define the "non-public offering" exemption under the Securities Act of 1933, and thereby provide small businesses the confidence needed to know that they are not violating the law. Since the federal securities laws were first enacted in 1933, "transactions by an issuer not involving any public offering" have been exempt. One or more of the following requirements need to be met for the non-public offering exemption:

- pre-existing relationship: each investor has a substantive pre-existing relationship with an officer, a director or a shareholding of 10 percent or more of the shares of the issuer;
- 35 or fewer purchasers;
- small offering - the total amount of securities sold by the issuer during the 12-month period does not exceed $500,000.

SBE Council agrees with Congressman Tom Emmer of Minnesota, who introduced this bill, in his statement: "Entrepreneurs will be able to more easily launch their startups and existing businesses will have better prospects for growth. By simply clarifying an old law, more small businesses will raise capital through non-public offerings, easing the burdens of red-tape, onerous paperwork, and the threat of lawsuits."

SBE Council believes this legislation would appropriately scale federal rules and regulatory compliance for small businesses, thus providing another practical option for entrepreneurs to raise the capital they need to startup or grow their firms. Small private companies would not have to incur formidable legal costs and uncertainties, and the SEC would not have to take any action. With fraud protection still in place, this legislation stands out as a sound, much-needed legislative step that reduces regulatory costs and legal risks.

• H. R. 4855 Fix Crowdfunding Act

While SBE Council remains enthusiastic about the future of equity crowdfunding and the upcoming date of May 16 when Title III officially goes live, we support fixes that will lower the cost of raising capital, and allow for the growth of a dynamic and diverse funding portal marketplace. H.R. 4855 provides key fixes that are needed.

As reported by CrowdfunderInsider.com, "The proposed legislation addresses some of the problematic portions of Title III crowdfunding. Specifically the bill, as it stands now, allows for 'Special Purpose Vehicles' (SPVs) and increased the amount of the possible raise to $5 million. The proposed law also clarifies several aspects of the existing law such as the liability risk attributed to funding portals. These issues, among others, have been cited as many in the industry as crippling a potentially powerful exemption. Retail crowdfunding is widely viewed as a unique opportunity to improve access to capital for smaller companies across the country. The exemption should give a boost to under-banked sectors of the economy such as minority and women entrepreneurs."

Expanding investment levels for Title III crowdfunding and limiting the potential liability risks to funding portals again mean reduced costs, expanded opportunities for both entrepreneurs and investors, more innovation in the marketplace, and greater choice for small businesses.

Suggested Amendment

Finally, by way of suggestion, SBE Council is concerned with the application of anti-money laundering (AML) requirements to funding portals. AML compliance is quite costly, and since portals are prohibited from holding customer funds, imposing such mandates on funding portals would be duplicative and unnecessary. FINRA dropped this requirement in its final funding portal rules. However, it is our understanding that now Treasury wants to pursue it.

In a February 2014 letter on the issue, David Burton, senior fellow in economist at the Heritage Foundation, observed:

> "Proposed rule 300(b) would require funding portals to comply with Anti-Money Laundering (AML) and the associated 'Know Your Customer' requirements, to file suspicious activity reports (SARs) and comply with other aspects of the Bank Secrecy Act. This is a mistake of the first order. These rules are so complex and expensive to comply with that many European banks are now unwilling to accept U.S. customers and are terminating their relationship with existing U.S. customers.
>
> "Funding portals do not handle customer funds. The JOBS Act prohibits them from doing so. The banks and broker-dealers that do handle customer funds must comply with these rules. It is inappropriate to require funding portals to

> comply with these rules because the ability to engage in, or facilitate, money laundering does not exist to any meaningful degree and the costs of complying with these rules are likely to be so high as to make funding portals uneconomic. It will result in a situation where the only intermediaries are broker-dealers. It will frustrate the intention of Congress to establish a more lightly regulated intermediary class."

The Fix Crowdfunding Act could be amended to make it clear that funding portals are not subject to the AML rules given that they are prohibited from holding customer funds.

• H. R. 4854 Supporting America's Innovators Act of 2016

The purpose of the Supporting America's Innovators Act of 2016 (H.R. 4854) is to "amend the Investment Company Act of 1940 to expand the investor limitation for qualifying venture capital funds under an exemption from the definition of an investment company." For a venture capital fund, the exemption would include funds with fewer than 500 stakeholders, and the "'term "qualifying venture capital fund" means any venture capital fund … that does not purchase more than $10,000,000 in securities of any one issuer, as such dollar amount is annually adjusted by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor'"

To the extent that this legislation would reduce the costs, it would be another positive step for further enhancing the incentives and resources for investing in entrepreneurial ventures.

Conclusion

In conclusion, it's worth highlighting whom exactly benefits from increased regulation. The assumption too often is that the average person – in this case, the small investor – is helped. But in reality, increased regulatory costs tend to protect large, established businesses, while raising costs of entry for new, entrepreneurial, small businesses. That certainly is not good news for the average investor. Consider what was reported by *The Wall Street Journal* editorial page in February 2015:

> "On Tuesday at an investor conference, the Goldman Sachs CEO explained how higher regulatory costs are crushing the competition.
>
> "More intense regulatory and technology requirements have raised the barriers to entry higher than at any other time in modern history," said Mr. Blankfein. "This is an expensive business to be in, if you don't have the market share in scale. Consider the numerous business exits that have been announced by our peers as they reassessed their competitive positioning and relative returns." …
>
> "While the Goldman boss wasn't endorsing all of the added directives from Washington, he said his bank is 'prepared to have this relationship with our regulators'—and the regulators are prepared to have a deep relationship with Goldman—'for a long time.'
>
> "None of this will surprise our readers, who understand that one goal of Dodd-Frank was to turn big banks into the equivalent of financial utilities…

> Goldman can afford to hire battalions of lawyers and lobbyists to commune with regulators…”

The JOBS Act amounted to a clear push in the opposite direction, that is, in the direction of reduced regulation and lower costs expanding opportunity for entrepreneurs to raise much-needed financial capital, and to expand opportunities for investors, lenders and crowdfunding facilitators. The idea is to expand entrepreneurial opportunities in the financial arena, and in the broader economy. These four legislative measures – H.R. 4850, H.R. 4852, H.R. 4854, and H.R. 4855 – would make further headway in a positive, pro-entrepreneur direction.

Thank you for your time and attention. I look forward to your questions and further discussion.