

# Update on the JOBS Act and Its Impact on Crowdfunding



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April 5, 2013 marked the one year anniversary of President Obama's signing of the Jumpstart Our Business Startups (JOBS) Act into law after the legislation received bipartisan support in Congress. With its stated goal of making it easier for small businesses to access capital, the JOBS Act was enthusiastically embraced by the start-up community.

The JOBS Act included a provision that allows a company to have up to 1,000 shareholders of record before the company is required to register its common stock with the Securities and Exchange Commission (SEC). Further, the JOBS Act lessened the regulatory and disclosure requirements that an "emerging growth company" must put forth in its registration statement when it files to go public and five years thereafter. Although the aforementioned provisions of the JOBS Act took effect immediately, other provisions will not become effective until the SEC enacts rules that govern their implementation.

One of the provisions still on hold deals with crowdfunding. As a result of the current popularity of Kickstarter.com and similar websites, the mainstream press and business media devoted most of their coverage to the provision in the JOBS Act that enabled crowdfunding. The JOBS Act amended Regulation D of the Securities Act of 1933, creating a new exemption that will allow investing via crowdfunding. As a result of the new exemption, companies can raise up to \$1 million over a 12 month period using crowdfunding. The JOBS Act aimed to protect potential investors participating in these new issuances by restricting the amount of funds that they may place in these potentially risky investments. Individuals with an annual income or net worth of less than \$100,000 are limited to annual investments of \$2,000 or five percent of the investors' income, whichever is greater. For those investors with an annual income or net worth of greater than \$100,000, the limit is increased to the lesser of \$100,000 or 10 percent of an investor's annual income or net worth.

Although the Securities and Exchange Commission was supposed to have promulgated the necessary regulations by January 5 of this year, at the time of this writing, the start-up community is still waiting.

Recent developments on the regulatory front include the Financial Industry Regulatory Authority's (FINRA) issuance of a voluntary *Interim Form for Funding Portals* on January 10, 2013, and the SEC's issuance of *Frequently Asked Questions About the Exemption from Broker-Dealer Registration in Title II of the JOBS Act* on February 13, 2013. As the crowdfunding regulations are finalized and implemented,

Keiter will strive to keep you updated on these important changes and their impact on the start-up community.

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