

113TH CONGRESS
2D SESSION

H. R. 4564

To amend the Jumpstart Our Business Startups Act to improve the crowdfunding provisions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2014

Mr. MCHENRY (for himself and Mr. GARRETT) introduced the following bill;
which was referred to the Committee on Financial Services

A BILL

To amend the Jumpstart Our Business Startups Act to improve the crowdfunding provisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equity Crowdfunding
5 Improvement Act of 2014”.

6 **SEC. 2. CROWDFUNDING.**

7 (a) REPEAL OF EXISTING LAW.—The
8 CROWDFUND Act is hereby repealed and the provisions
9 of law amended by such Act are revived or restored as
10 if such Act had not been enacted.

1 (b) NEW CROWDFUNDING LAW.—The Jumpstart
2 Our Business Startups Act is amended—

3 (1) by inserting after title II the following:

4 **“TITLE III—ENTREPRENEUR**
5 **ACCESS TO CAPITAL**

6 **“SEC. 301. CROWDFUNDING EXEMPTION.**

7 “(a) IN GENERAL.—Section 4(a) of the Securities
8 Act of 1933 (15 U.S.C. 77d(a)(6)) is amended by adding
9 at the end the following:

10 ““(6) transactions involving the offer or sale of
11 securities by an issuer, provided that—

12 ““(A) the aggregate amount sold within
13 the previous 12-month period in reliance upon
14 this exemption is—

15 ““(i) \$3,000,000, as such amount is
16 adjusted by the Commission to reflect the
17 annual change in the Consumer Price
18 Index for All Urban Consumers published
19 by the Bureau of Labor Statistics, or less;
20 or

21 ““(ii) if the issuer provides potential
22 investors with audited financial statements,
23 \$5,000,000, as such amount is adjusted by
24 the Commission to reflect the annual
25 change in the Consumer Price Index for

1 All Urban Consumers published by the Bu-
2 reau of Labor Statistics, or less;

3 ““(B) the aggregate amount sold to any
4 investor who is not an accredited investor in re-
5 liance on this exemption within the previous 12-
6 month period does not exceed the greater of—

7 ““(i) \$5,000, as such amount is ad-
8 justed by the Commission to reflect the an-
9 nual change in the Consumer Price Index
10 for All Urban Consumers published by the
11 Bureau of Labor Statistics;

12 ““(ii) 10 percent of the investor’s an-
13 nual income; or

14 ““(iii) 10 percent of the investor’s net
15 worth;

16 ““(C) in the case of a transaction involving
17 an intermediary between the issuer and the in-
18 vestor, such intermediary complies with the re-
19 quirements under section 4A(a);

20 ““(D) if the aggregate amount sold within
21 the previous 12-month period in reliance upon
22 this exemption is—

23 ““(i) \$500,000 or less, the issuer pro-
24 vides potential investors with financial
25 statements that have been certified by the

1 principal executive officer of the issuer to
 2 be true and complete in all material re-
 3 spects; and

4 ““(ii) more than \$500,000 and less
 5 than \$3,000,000, the issuer provides po-
 6 tential investors with financial statements
 7 that have been reviewed by a public ac-
 8 countant who is independent of the issuer,
 9 using professional standards and proce-
 10 dures for such review; and

11 ““(E) at the time such securities are
 12 issued, the issuer is a corporation.’.

13 ““(b) REQUIREMENT ON INTERMEDIARIES.—The Se-
 14 curities Act of 1933 (15 U.S.C. 77a et seq.) is amended
 15 by inserting after section 4 the following:

16 “**“SEC. 4A. REQUIREMENTS ON INTERMEDIARIES WITH RE-**
 17 **SPECT TO CROWDFUNDING TRANSACTIONS.**

18 ““(a) REQUIREMENTS ON INTERMEDIARIES.—For
 19 purposes of section 4(a)(6), a person acting as an inter-
 20 mediary in a transaction involving the offer or sale of secu-
 21 rities shall comply with the requirements of this subsection
 22 if the intermediary—

23 ““(1) registers with the Commission as—

24 ““(A) a broker; or

1 “(B) a person acting as an intermediary
2 who does not—

3 “(i) offer investment advice or rec-
4 ommendations;

5 “(ii) explicitly solicit purchases,
6 sales, or offers to buy particular securities
7 offered or displayed on its website or por-
8 tal;

9 “(iii) directly compensate employees,
10 agents, or other persons for direct sale of
11 securities displayed or referenced on its
12 website or portal; or

13 “(iv) manage, possess, or otherwise
14 handle investor funds or securities;

15 “(2) warns investors, including on the
16 intermediary’s website used for the offer and sale of
17 such securities, of the speculative nature generally
18 applicable to investments in startups, emerging busi-
19 nesses, and small issuers, including risks in the sec-
20 ondary market related to illiquidity;

21 “(3) warns investors that they are subject to
22 the restriction on sales requirement described under
23 subsection (d);

24 “(4) takes reasonable measures to reduce the
25 risk of fraud with respect to such transaction;

1 “(5) provides the Commission with the
2 intermediary’s physical address, website address,
3 and the names of the intermediary, the chief officer
4 of the intermediary (or person fulfilling a similar
5 role), and any employee of the intermediary respon-
6 sible for the intermediary’s direct compliance with
7 the securities laws (as defined under section 3 of the
8 Securities Exchange Act of 1934), and updates such
9 information with the Commission within 6 business
10 days of such information changing;

11 “(6) provides the Commission with continuous
12 investor-level access to the intermediary’s website;

13 “(7) requires each potential investor to answer
14 questions demonstrating—

15 “(A) an understanding of the level of risk
16 generally applicable to investments in startups,
17 emerging businesses, and small issuers;

18 “(B) an understanding of the risk of
19 illiquidity; and

20 “(C) such other areas as the Commission,
21 in consultation with self-regulatory organiza-
22 tions (as defined in section 3 of the Securities
23 Exchange Act of 1934), may determine appro-
24 priate by rule or regulation;

1 “(8) requires the issuer to state a target offer-
2 ing amount and a deadline to reach the target offer-
3 ing amount and ensure the third party custodian de-
4 scribed under paragraph (11) withholds offering pro-
5 ceeds until—

6 “(A) aggregate capital raised from inves-
7 tors other than the issuer is no less than 100
8 percent of the target offering amount; and

9 “(B) the issuer has complied with all re-
10 quirements under this section;

11 “(9) carries out a background check on the ex-
12 ecutive officers, directors, and shareholders with 15
13 percent or more voting control of the issuer (or per-
14 sons fulfilling similar roles) to ensure such persons
15 would not meet the disqualification provisions adopt-
16 ed in accordance with section 926 of the Dodd-
17 Frank Wall Street Reform and Consumer Protection
18 Act;

19 “(10) provides the Commission and potential
20 investors with notice of the offering, not later than
21 the first day securities are offered to potential inves-
22 tors, including—

23 “(A) the issuer’s name, legal status, phys-
24 ical address, and website address;

1 “(B) the names of the executive officers,
2 directors, and shareholders with 15 percent or
3 more voting control of the issuer (or persons
4 fulfilling similar roles);

5 “(C) the intended use of the proceeds of
6 the offering; and

7 “(D) the target offering amount and the
8 deadline to reach the target offering amount;

9 “(11) outsources cash functions to a qualified
10 third party custodian, such as a broker or dealer
11 registered under section 15(b)(1) of the Securities
12 Exchange Act of 1934 or an insured depository in-
13 stitution;

14 “(12) maintains such books and records as the
15 Commission determines appropriate;

16 “(13) makes available on the intermediary’s
17 website a method of communication that permits the
18 issuer and investors to communicate with one an-
19 other;

20 “(14) provides the Commission with a notice
21 upon completion of the offering, which shall include
22 the aggregate offering amount and the number of
23 purchasers; and

24 “(15) does not offer investment advice.

1 “(b) VERIFICATION OF INVESTOR INFORMATION.—

2 For purposes of section 4(a), an intermediary may rely
3 on a certification by an investor as to—

4 “(1) the investor’s status as an accredited in-
5 vestor; and

6 “(2) with respect to an unaccredited investor,
7 the investor’s annual income, net worth, and the ag-
8 gregate amount of securities sold to the investor in
9 reliance on the exemption provided by section 4(a)
10 within the previous 12-month period.

11 “(c) INFORMATION AVAILABLE TO STATES.—The
12 Commission shall make the notices described under sub-
13 sections (a)(10) and (a)(14) and the information described
14 under subsection (a)(5) available to the States.

15 “(d) RESTRICTION ON SALES.—Newly issued securi-
16 ties purchased in a transaction made in reliance on section
17 4(a)(6) may not be resold by any person during the 1-
18 year period beginning on the date of original purchase,
19 unless such securities are sold to—

20 “(1) the issuer of such securities; or

21 “(2) an accredited investor.

22 “(e) REQUIREMENT FOR USE OF INTERMEDIARIES
23 WHEN SELLING TO UNACCREDITED INVESTORS.—With
24 respect to a transaction described under section 4(a)(6),
25 an issuer may only enter into a transaction with an

1 unaccredited investor through the use of an intermediary,
2 and any resale of a security originally issued in reliance
3 on section 4(a)(6) may only be made with an unaccredited
4 investor through the use of an intermediary.

5 “(f) RULES OF CONSTRUCTION.—

6 “(1) NO REGISTRATION AS BROKER.—With re-
7 spect to a transaction either made pursuant to sec-
8 tion 4(a)(6) or involving the resale of a security
9 originally issued pursuant to section 4(a)(6) and in-
10 volving an intermediary, such intermediary shall not
11 be required to register as a broker under section
12 15(a)(1) of the Securities Exchange Act of 1934
13 solely by reason of participation in such transaction.

14 “(2) RIGHT TO SELECT TRANSACTIONS.—An
15 intermediary may select in which transactions to
16 serve as an intermediary, and such selection shall
17 not be considered investment advice or subject the
18 intermediary to regulation under the Investment Ad-
19 visers Act of 1940.

20 “(3) RIGHT TO TERMINATE TRANSACTION.—
21 An intermediary may review the transaction and ter-
22 minate the transaction at any time if—

23 “(A) in carrying out the intermediary’s
24 due diligence under the transaction, the inter-

1 mediary determines that termination is appro-
2 priate;

3 “(B) the intermediary is able to return all
4 funds provided by potential investors; and

5 “(C) the custodian has not transferred
6 the offering proceeds to the issuer.

7 “(4) NO PRECLUSION OF OTHER CAPITAL
8 RAISING.—Nothing in this section or section 4(a)(6)
9 shall be construed as preventing an issuer from rais-
10 ing capital through securities offerings made in reli-
11 ance on other exemptions from registration.’.

12 “(c) RULEMAKING.—Not later than 120 days after
13 the date of the enactment of this title, the Securities and
14 Exchange Commission shall issue such rules as may be
15 necessary to carry out section 4A of the Securities Act
16 of 1933. In issuing such rules, the Commission shall con-
17 sider the costs and benefits of the action.

18 “(d) DISQUALIFICATION.—Not later than 120 days
19 after the date of the enactment of this title, the Securities
20 and Exchange Commission shall by rule or regulation es-
21 tablish disqualification provisions under which an issuer
22 shall not be eligible to utilize the exemption under section
23 4(a)(6) of the Securities Act of 1933 based on the discipli-
24 nary history of the issuer or its predecessors, affiliates,
25 officers, directors, or persons fulfilling similar roles. The

1 Commission shall also establish disqualification provisions
 2 under which an intermediary shall not be eligible to act
 3 as an intermediary in connection with an offering utilizing
 4 the exemption under section 4(a)(6) of the Securities Act
 5 of 1933 based on the disciplinary history of the inter-
 6 mediary or its predecessors, affiliates, officers, directors,
 7 or persons fulfilling similar roles. Such provisions shall be
 8 substantially similar to the disqualification provisions con-
 9 tained in the regulations adopted in accordance with sec-
 10 tion 926 of the Dodd-Frank Wall Street Reform and Con-
 11 sumer Protection Act (15 U.S.C. 77d note).

12 “(e) TREATMENT OF CROWDFUNDING INVESTMENT
 13 COMPANIES.—Section 3(c) of the Investment Company
 14 Act of 1940 (15 U.S.C. 80a–3(c)) is amended by adding
 15 at the end the following:

16 ““(15) Any person substantially all of whose
 17 business is confined to investing in securities pur-
 18 chased in a transaction made in reliance on section
 19 4(a)(6) of the Securities Act of 1933.’.

20 **“SEC. 302. EXCLUSION OF CROWDFUNDING INVESTORS**
 21 **FROM SHAREHOLDER CAP.**

22 “Section 12(g)(5) of the Securities Exchange Act of
 23 1934 (15 U.S.C. 78l(g)(5)) is amended—

24 “(1) by striking ‘(5) For the purposes’; and in-
 25 serting the following:

1 ““(5) DEFINITIONS.—

2 ““(A) IN GENERAL.—For the purposes’;

3 and

4 ““(2) by adding at the end the following:

5 ““(B) EXCLUSION FOR PERSONS HOLDING

6 CERTAIN SECURITIES.—For purposes of this

7 subsection, securities originally issued in trans-

8 actions described under section 4(a)(6) of the

9 Securities Act of 1933 shall neither be deemed

10 to be nor counted towards the definition of

11 “‘held of record’”.

12 **“SEC. 303. PREEMPTION OF STATE LAW.**

13 ““(a) IN GENERAL.—Section 18(b)(4) of the Securi-

14 ties Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

15 ““(1) by redesignating subparagraphs (C) and

16 (D) as subparagraphs (D) and (E), respectively; and

17 ““(2) by inserting after subparagraph (B) the

18 following:

19 ““(C) section 4(a)(6);’.

20 ““(b) CLARIFICATION OF THE PRESERVATION OF

21 STATE ENFORCEMENT AUTHORITY.—

22 ““(1) IN GENERAL.—The amendments made by

23 subsection (a) relate solely to State registration, doc-

24 umentation, and offering requirements, as described

25 under section 18(a) of the Securities Act of 1933

(15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, intermediary, or any other person or entity using the exemption from registration provided by section 4(a)(6) of such Act.

“(2) CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF INTERMEDIARIES, ISSUERS, AND CUSTODIANS.—Section 18(c)(1) of the Securities Act of 1933 is amended by striking ‘with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.’ and inserting the following: ‘, in connection with securities or securities transactions, with respect to—

“(A) fraud or deceit;

“(B) unlawful conduct by a broker or dealer; and

“(C) with respect to a transaction described under section 4(a)(6), unlawful conduct by an intermediary, issuer, or custodian.’.”; and

(2) in the table of contents for such Act by amending the items relating to title III to read as follows:

“TITLE III—ENTREPRENEUR ACCESS TO CAPITAL

“Sec. 301. Crowdfunding exemption.

“Sec. 302. Exclusion of crowdfunding investors from shareholder cap.
“Sec. 303. Preemption of State law.”.

