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Crowdfunding and Other Recent Legislative Initiatives Focused on Capital Raising and Job Creation

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This article summarizes various legislation introduced in Congress that would make it easier for smaller companies to raise capital and would lessen the regulatory burden on those companies.

Legislators have introduced eight different proposals in Congress to make it easier for smaller companies to raise money and lessen the regulatory burden on those companies. These proposed acts are the following:

- H.R. 1070 - Small Company Capital Formation Act of 2011
- S. 1544 - Small Company Capital Formation Act of 2011
- H.R. 2930 - Entrepreneur Access to Capital Act
- S. 1791 - Democratizing Access to Capital Act
- S. 1970 - Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2011 or the Crowdfund Act
- H.R. 2940 - Access to Capital for Job Creators Act
- S. 1933 - Reopening American Capital Markets to Emerging Growth Companies Act of 2011
- H.R. 2167 - Private Company Flexibility and Growth Act

Two of these proposed acts already have passed through the House of Representatives: H.R. 1070 (Small Company Capital Formation Act of 2011), which passed through the House on November 2, 2011 by a vote of 421 to 1, and H.R. 2930 (Entrepreneur Access to Capital Act), which passed through the House on November 3, 2011 by a vote of 407 to 17. The overwhelming support by representatives in the House for these proposed acts is a very positive sign. Versions of these two proposed acts are now navigating their way through the Senate. The remaining legislative initiatives remain under debate in the House or the Senate and have not been passed by either chamber.

This article summarizes all of these proposed acts. Appendix A to this article is a chart that summarizes the major provisions of these proposed acts, and Appendix B to this article is a chart that compares the proposed "crowdfunding" acts described in more detail below.

Small Company Capital Formation Act

The Small Company Capital Formation Act of 2011 (H.R. 1070) is one of the more promising initiatives making its way through the legislative process. This legislation was introduced in the first quarter of 2011 and, as mentioned above, passed through the House with a vote of 421 to 1 in the last quarter of 2011. A substantively identical act is making its way through the Senate (S. 1544 - Small Company Capital Formation Act of 2011).

The Small Company Capital Formation Act would make substantive amendments to Regulation A of the Securities Act of 1933 (Securities Act). Regulation A is promulgated under Section 3(b) of the Securities Act, which authorizes the Securities and Exchange Commission (SEC) to exempt from registration securities offerings up to $5 million. Currently, Regulation A provides an exemption for public offerings not exceeding $5 million in any 12-month period. A company relying on this exemption must file an offering statement that requires information similar to what one would find in a registration statement filed under the Securities Act. This offering statement is reviewed by the Staff of the SEC and a company is required to respond to comments by amending the offering statement and providing a response letter to the Staff. This process could take several months. Regulation A offerings are currently very similar to registered public offerings since a prospectus type document (the offering statement) is subject to SEC review and required to be provided to investors, an issuer can use general solicitation and general advertising when selling securities under Regulation A, and the securities sold in a Regulation A offering are freely transferrable. Under Regulation A as currently in effect, financial statements included in the offering statement do not have to be audited and issuers raising capital via Regulation A offerings are not subject to the ongoing reporting requirements of the Securities Exchange Act of 1934 (the Exchange Act).

Regulation A is not frequently used by companies to raise capital. The reason for the limited use of Regulation A may be that even after going through a full SEC Staff review of your offering statement, state securities regulators also have an opportunity to review your offering statement, which adds additional time constraints and burdens on small companies trying to raise capital. Most companies considering the undertaking of a Regulation A offering ultimately will decide to do a registered public offering since the time and work are substantially similar. One benefit that Regulation A provides is that following a Regulation A offering, unlike a registered public offering, a company is not required to file periodic reports (annual, quarterly, current, etc.) under the Exchange Act.

The Small Company Capital Formation Act (H.R. 1070 and S. 1544) would make several changes to Regulation A. The aggregate offering amount for any 12-month period would be raised from $5 million to $50 million. This $50 million ceiling would be reviewed by the SEC every two years and raised as appropriate. Increasing the amount of capital that could be raised under Regulation A could be very helpful to companies who need to raise more than $5 million and increase the use of Regulation A by companies to raise capital. A company raising money under proposed revisions to Regulation A, however, would be required to file audited financial statements with the SEC as part of the offering statement and thereafter on an annual basis. It is not clear from the act how long the requirement to file audited financials would extend. Also, whereas there is currently no periodic reporting requirement following the Regulation A offering, a company would now be required to make some periodic disclosures about its business operations, its financial condition, its corporate governance principles, and its use of investor funds received in the financing. The SEC would determine the regularity and period of time during which periodic disclo-

sure is required. New Regulation A would also contain disqualification provisions for bad actors that are similar to Section 926 of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, or Dodd-Frank. "Bad actor" disqualification requirements prevent companies and shareholders of such companies from participating in exempt securities offerings if they have been convicted of, or are subject to sanctions for, securities fraud or other violations of certain laws.

The Small Company Capital Formation Act did not totally preempt state securities regulators from reviewing Regulation A offerings. The act could have done this by providing that all securities issued in a valid Regulation A offering are covered securities that are exempted from state regulation. This is unfortunate because it is cumbersome and time-consuming to be subject to both a federal and potential state review of your offering statement. The current version of the act provides that securities would be covered if they are offered or sold on a national securities exchange or offered or sold to a qualified purchaser. Presumably, the national securities exchanges would change their rules to allow smaller companies that have done Regulation A offerings to list. But even so, these companies would presumably have to become full reporting companies under the Exchange Act and this eliminates one of the benefits of the current Regulation A. The act does not define qualified purchaser. Depending on how this term is ultimately defined, Regulation A offerings may or may not become more prevalent.

Crowdfunding

One act that passed the House and is now making its way, albeit in two different versions, through the Senate, is H.R. 2930, the Entrepreneur Access to Capital Act. The Senate versions are known as S. 1791 - Democratizing Access to Capital Act and S. 1970 - Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2011 or the Crowdfund Act. These acts would create an exemption from the registration requirements of the Securities Act for crowdfunding activities. Crowdfunding has already gained popularity through websites such as Kickstarter (www.kickstarter.com) and Indiegogo (www.indiegogo.com) as a means of raising capital to fund artists and filmmakers or to pre-sell products. On these websites crowdfunders (i.e., backers who register on the website and decide to fund projects advertised on the website) either grant (i.e., gift) money to aspiring artists or pre-order goods at discounted prices, which goods will be delivered once the funded company is up and running and able to make the goods. For example, on Kickstarter a group of engineers was able to raise almost $370,000 from over 1,500 people for their proposed new product, an at-home espresso machine that functions like a professional machine for a fraction of the cost. They offered to backers who pledged $10 an espresso shot glass with the company logo on it and to those backers who pledged $200 or more one of the company's espresso machines that it expects to retail at $400 per unit. Importantly, these websites do not permit companies to sell their securities online. The reason is that the offer and sale of securities online in such a manner would require registration under Section 5 of the Securities Act as a public offering. The various crowdfunding acts would change this by creating an exemption for online securities offerings so long as specified requirements are complied with.

The House crowdfunding act and the Senate versions are substantially similar, but do have important differences. Appendix B to this article is a chart that shows the differences among the three acts. In general, the crowdfunding acts create a new Section 4(6) of the Securities Act, which exempts from the registration requirements of the Securities Act securities issued in a valid crowdfunding transaction as specified in Section 4(6).

Under the House version of the crowdfunding act, a company would be able to sell up to $1 million of securities under the exemption or $2 million of securities if audited financial statements are provided to investors. Under the Senate versions of the crowdfunding act, the limit would be $1 million whether

or not audited financial statements are provided. The House version of the act would allow individual investors to invest as much as $10,000 in a particular issuer through a crowdfunded offering. If the investor earns less than $100,000 per year in annual income, however, the ceiling under the House act would be 10% of such investor's annual income. The Senate versions are more restrictive. One version (S. 1791) would limit the individual amount that can be invested by a single investor in a single issuer to $1,000, and the other version (S. 1970) would limit such amount to the greater of: (a) $500, or (b) if the investor has annual income of: (1) greater than $50,000, but less than $100,000, 1 percent of the annual income of such investor, or (2) greater than $100,000, 2 percent of the annual income of such investor. One of the Senate versions (S. 1970) also puts an overall cap on the amount that any investor can invest in crowdfunding transactions for all issuers that it invests in. It provides that no investor can purchase securities in crowdfunding transactions that in the aggregate from all issuers exceed the greatest of (1) $2,000; (2) if the investor has annual income of greater than $50,000 but not more than $100,000, 4% of the annual income of such investor, or (3) if the investor has annual income of greater than $100,000, 8% of the annual income of such investor.

The Senate versions of the crowdfunding act require the crowdfunding transaction to take place through a funding portal known as a crowdfunding intermediary, or, in the case of S. 1970, through a crowdfunding intermediary or a registered broker-dealer. The House version does not require a crowdfunding intermediary and permits the issuer to undertake crowdfunding transactions through its own website. All of the acts place upon the crowdfunding intermediary or the crowdfunding intermediary or issuer (in the case of the House act) various obligations and requirements, which are set forth in Appendix B to this article.

All of the crowdfunding acts exempt the crowdfunding intermediary from being required to register as a broker-dealer, but prohibit the intermediary from providing recommendations or investment advice. The acts also prohibit the crowdfunding intermediary and its officers, directors and other interested people from having any interest in the issuers making offerings on the intermediary's website.

The securities issued in a crowdfunding transaction would be restricted securities and subject to at least a one year holding period. Transfers would be allowed in limited circumstances, including sales to accredited investors or back to the issuer. In the case of S. 1970, the act implements a two year holding period with a prohibition on transfers, except to accredited investors, as part of a registered offering, or to a family member or equivalent upon the death of the investor.

All of the acts include prohibitions on bad actors from using the crowdfunding exemption utilizing a regime similar to Section 926 of Dodd-Frank. The House version of the act and S. 1970 make securities issued in a crowdfunding transaction covered securities, which preempts the state securities regulators from requiring registration of the transactions. However, S. 1970 does make information filed by the issuer and the crowdfunding intermediary with the SEC available to state securities regulators. S. 1791 crowdfunding transactions, on the other hand, require the issuer to file information in one of two states – either the state of incorporation of the issuer or the state where more than 50% of the capital raised in the crowdfunding transaction originated.

Access to Capital for Job Creators Act

H.R. 2940 – Access to Capital for Job Creators Act, is the shortest of the acts discussed in this article, but it could potentially carry the biggest bang for small businesses and startups. This act would amend Section 4(2) of the Securities Act to permit general solicitation or general advertising in private placements where all of the purchasers are accredited investors. This is significant because issuers that currently try to raise money under Section 4(2) of the Securities Act and Regulation D promulgated under Section 4(2) cannot

engage in a general solicitation or general advertising. Accordingly, they are limited to making offers to those with whom they have a pre-existing relationship or with whom a broker-dealer that they engage has a pre-existing relationship. These changes would allow offers to be made publicly and investors to be generally solicited (including non-accredited investors) so long as all of the actual buyers end up being accredited investors. The act does not, however, preempt state regulation. Therefore, offerings under this new version of Section 4(2) would be subject to the scrutiny of regulators in the various states in which the offerings are made. Although much of the state regulatory regime is streamlined to some extent through use of a Small Company Offering Registration form, not all states have the same registration requirement and it can be burdensome and time-consuming for issuers seeking to raise capital to comply with state regulation of their offerings.

The Access to Capital for Job Creators Act would, if enacted, accomplish much of what the proposed changes to Regulation A under the Small Company Capital Formation Act are designed to achieve. The changes to Section 4(2) in this act would allow issuers to conduct an offering to accredited investors using advertising and general solicitations, but not require the issuer to thereafter become a public reporting company. The act would do this, but unlike Regulation A, would not require the filing of an offering statement with the SEC. Since many issuers have no desire to raise capital from non-accredited investors prior to becoming a public reporting company, this act may achieve the goals of issuers with the minimum regulatory burden.

Reopening American Capital Markets to Emerging Growth Companies Act of 2011

Another act designed to reduce the regulatory burdens of relatively smaller public companies is S. 1933 - Reopening American Capital Markets to Emerging Growth Companies Act of 2011. This act is designed to create an “IPO On-Ramp” for “Emerging Growth Companies”. It defines Emerging Growth Companies as issuers that have less than $1 billion in annual revenues at the time they register with the SEC and less than $700 million in publicly-traded shares (held by non-affiliates) after the IPO. The IPO On-Ramp is a temporary and transitional period immediately following an IPO during which Emerging Growth Companies would qualify for scaled down regulation. By creating this on-ramp, relatively smaller companies will get relief from certain costly compliance requirements, including Section 404(b) of the Sarbanes-Oxley Act of 2002 (SOX), which requires a publicly-held company’s auditor to attest to, and report on, management’s assessment of its internal controls, for a predictable period of time. Emerging Growth Companies will also be able to report information in the format currently available under SEC rules for smaller reporting companies, including the ability to provide only two years of audited financial statements and Management’s Discussion and Analysis, or MD&A, disclosure as opposed to three. The IPO On-Ramp period would last as many as five years, or until a company reaches $1 billion in annual revenue or $700 million in publicly-traded shares, or float. Full compliance with SEC reporting obligations would be phased in during that period.

Other benefits under the act for Emerging Growth Companies during the IPO On-Ramp period include:

- An exemption from “say on pay” and “say on golden parachute” votes, and the disclosure of pay versus performance and the ratio of CEO to worker pay compensation, as required by Dodd-Frank
- Permitted use of scaled back Compensation Disclosure and Analysis disclosure requirements
- Permits brokers and dealers, including underwriters participating in the Emerging Growth Company’s IPO, to publish or distribute research reports about the Emerging Growth Company prior to and immediately following the IPO (without waiving rules and regulations relating to analysts conflicts of interest)

- Expands the company's range of permissible pre-filing communications with qualified institutional buyers or accredited investors

- Allows Emerging Growth Companies to file a confidential registration statement with the SEC

One interesting benefit of the act is the ability of an Emerging Growth Company to file a registration statement with the SEC confidentially and to go through the SEC review process on a confidential basis. This is a significant benefit for private companies that desire to go public because it gives them the ability to file without having to disclose that they are contemplating an offering until they are ready to do so. This right to file confidentially had historically only been given to certain foreign issuers. However, in December 2011 the Staff of the SEC changed its policy with respect to confidential filings and now only allows confidential filings by foreign private issuers in very limited circumstances. If S. 1933 is enacted, it would reverse SEC policy and allow confidential filings at least in the case of Emerging Growth Companies.

Private Company Flexibility and Growth Act

The Private Company Flexibility and Growth Act (H.R. 2167) gives relief to companies that would otherwise be forced to become public reporting companies before they desire to do so. Once a private company has more than 499 stockholders of record (and $10 million or more in assets), Section 12(g)(1) of the Exchange Act mandates that the company must register with the SEC and provide periodic reports (i.e., annual, quarterly and current reports) mandated by the SEC's periodic reporting system. This requirement is problematic for a private company that is not yet ready for the financial, time and other burdens of being a public reporting company. Facebook, which filed its initial Form S-1 registration statement on February 1, 2012, is a good example of a company currently facing this dynamic. Google faced a similar situation when it went public.

The Private Company Flexibility and Growth Act would amend Section 12(g)(1) of the Exchange Act to increase the number of record shareholders from 500 to 1,000. The act would also exempt from the definition of "held of record" persons who received the securities pursuant to an employee compensation plan in transactions exempt from the registration requirements of Section 5 of the Securities Act without affecting the Rule 12h-1(f) exemption, under which stock options, including compensatory employee stock options (but not the class of securities underlying such options) are considered a separate class of equity security. This change is key because companies like Google and Facebook have so many shareholders in part because they have compensated their many employees with equity. If employees who receive equity through employee compensation plans are not counted toward the Section 12(g)(1) threshold, it will likely take much longer for companies to reach this threshold. The act would also require the SEC to adopt safe harbor provisions that issuers can follow when determining that holders of their securities received the securities pursuant to an employee compensation plan in transactions that were exempt from registration.

Conclusion

The proposed acts summarized in this article have the potential to make it significantly easier in many respects for smaller companies to raise capital. The key to successful legislation ultimately will be to strike the right balance between making regulatory obstacles easy enough for companies to navigate while simultaneously protecting investors.

Existing funding intermediaries like Kickstarter already have blazed a trail for others to follow. The power of crowdfunding is evident from the projects that have been funded on Kickstarter and similar websites already. If legislators are able to harness the power of the crowd by striking a proper balance between

investor protection and the need that startups and other small businesses have for capital, more companies may be able to raise the capital that they need to invest in their business, create jobs and generate tax revenue.

If you have any questions about the content of this publication, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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APPENDIX A—SUMMARY OF VARIOUS LEGISLATIVE INITIATIVES

Name of Act	Sponsor(s)	Law(s)/Regulation(s) Affected	Summary of Major Provisions
H.R. 1070: Small Company Capital Formation Act of 2011	David Schweikert (R-AZ)	Regulation A	Increases the maximum amount that can be raised in any twelve month period under Regulation A from $5 million to $50 million Requires audited financial statements to be filed with the SEC and distributed to investors Allows SEC to impose other terms and conditions, including: ▪ content of required offering statement ▪ disqualification provisions similar to Section 926 of Dodd-Frank ▪ limit the nature of securities to be issued to equity securities, debt securities and debt securities that are convertible into equity ▪ requirement to make available to investors and file with the SEC periodic disclosures regarding the issuer SEC to review $50 million cap every two years Includes within the definition of covered security securities offered or sold on a national securities exchange or offered or sold to a qualified purchaser, but not a security offered or sold through a broker-dealer; it is not clear how the SEC will define qualified purchaser for this purpose
S. 1544: Small Company Capital Formation Act of 2011	Jon Tester (D-MT) Co-Sponsors: Richard Blumenthal (D-CT) Mike Crapo (R-ID) Claire McCaskill (D-MO) Robert Menendez (D-NJ) Pat Toomey (R-PA)	Regulation A	Based upon and substantively identical to H.R. 1070, which is summarized above

Name of Act	Sponsor(s)	Law(s)/Regulation(s) Affected	Summary of Major Provisions
H.R. 2930: Entrepreneur Access to Capital Act	Patrick T. McHenry (R-NC) Co Sponsors: Kevin Brady (R-TX) Robert Dold (R-IL) Sean Duffy (R-WI) Jean Schmidt (R-OH) David Schweikert (R-AZ)	Securities Act and Exchange Act	Exempts qualified crowdfunding transactions from the registration requirements of the Securities Act through a new Section 4(6) Issuer can sell no more than (i) $1 million worth of securities within 12 months if no audited financial statements are provided, or (ii) $2 million worth of securities within 12 months if audited financial statements are provided; dollar limit will be adjusted by SEC to reflect Consumer Price Index (CPI) Maximum amount an issuer can sell to a single investor in a 12 month period is the lesser of $10,000 (adjusted for increases in CPI) or 10% of the investor's annual income Allows for transactions through crowdfunding intermediaries or without the use of an intermediary Imposes several requirements on intermediary or issuer to comply with Section 4(6), including: ▪ warning investor about speculative nature of startups ▪ warning investors about restrictions on re-sale ▪ take measures to reduce risk of fraud ▪ provide SEC with information about the issuer and crowdfunding intermediary ▪ provide SEC with continuous investor level access to the issuer's and crowdfunding intermediary's website, as applicable ▪ require investor to answer questions that demonstrate qualification ▪ require issuer to state a target offering amount and a deadline to reach the target ▪ ensure that third party custodian or escrow agent withholds offering proceeds until aggregate capital is raised from investors at a level equal to 60% of target ▪ crowdfunding intermediary must carry out a background check on the issuer's principals ▪ provide SEC with notice of the offering no later than the first day securities are offered to potential investors ▪ qualified third party custodian, such as broker-dealer or depository institution, must act as escrow agent ▪ maintain records consistent with rules that SEC will promulgate ▪ provide SEC with notice of completion of offering

Name of Act	Sponsor(s)	Law(s)/Regulation(s) Affected	Summary of Major Provisions
			▪ crowdfunding intermediary can not offer investment advice ▪ disclose to investors that the issuer has an interest in the offering A purchaser in a crowdfunding offering can not transfer the securities for a year unless sold to the issuer or to an accredited investor Intermediary does not have to register as a broker-dealer SEC to enact disqualification provisions similar to 926 of Dodd-Frank Amends Section 12(g) of Exchange Act to carve out from the definition of record holder persons who buys securities in a crowdfunding Preempt state regulation of crowdfunding by making securities issued under Section 4(6) covered securities
S. 1791: Democratizing Access to Capital Act	Scott Brown (R-MA) Co-Sponsors: Kelly Ayotte (R-NH) Saxby Chambliss (R-GA)	Securities Act and Exchange Act	Similar to H.R. 2930, exempts qualified crowdfunding transactions from registration requirements of the Securities Act through new Section 4(6) Amount raised is limited to $1 million in 12 month period Individual investments limited to $1,000 Crowdfunding exemption criteria include: ▪ requisite level of disclosure to investors, including regarding risks, obligations, benefits, history and costs of offering ▪ only an incorporated entity formed under state law may participate ▪ notice filed with SEC Similar to H.R. 2930, certain issuers would be disqualified (similar to 926 of Dodd-Frank) Imposes one year holding period on re-sales Amends Section 12(g) of Exchange Act to carve out from the definition of record holder persons who buy securities in a crowdfunding transaction Pre-empts state regulation by making securities issued in a crowdfunding covered securities Exempts crowdfunding intermediary from definition of broker and dealer under the Exchange Act Crowdfunding intermediary must be ▪ open and accessible by general public

Name of Act	Sponsor(s)	Law(s)/Regulation(s) Affected	Summary of Major Provisions
			▪ provide public communication portals for investors and potential investors ▪ warn investors of speculative nature of startups and restrictions on resale ▪ take reasonable measures to reduce risk of fraud ▪ prohibit employees from investing in offerings and prohibit intermediary from having any financial interest in the issuer ▪ prohibits intermediary from offering investment advice or recommendations ▪ provides requisite information to SEC, including investor level access to intermediary website ▪ requires investors to answer questions demonstrating qualification ▪ requires issuer to state target offering amount and can not break escrow until 60% of target is reached ▪ crowdfunding intermediary must carry out background checks on the issuer ▪ crowdfunding intermediary must provide the SEC with basic notice of offering not later than first day on which funds are solicited from potential investors ▪ crowdfunding intermediary must outsource cash management to qualified custodian such as broker-dealer or insured depository ▪ crowdfunding intermediary must maintain books and records as required by SEC rules that will be adopted ▪ crowdfunding intermediary must develop a process for raising and resolving complaints, including alternatives available to investors if the intermediary is unable to resolve a dispute to the satisfaction of the investor
S. 1970: Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2011 or the Crowdfund Act	Jeff Merkley (D-OR) Co-Sponsors: Michael Bennet (D-CO) Mary Landrieu (D-LA)	Securities Act and Exchange Act	Aggregate amount sold during 12 month period is limited to $1 million, as adjusted by CPI Aggregate amount sold to any investor during a 12 month period can not exceed the greater of: (a) $500, as adjusted by CPI, or (b) if the investor has annual income of: (i) greater than $50,000, but less than $100,000 (as adjusted by CPI), 1 percent of the annual income of such investor, or (ii) greater than $100,000 (as adjusted by CPI), 2 percent of the annual income of such investor Must be conducted through a broker or funding portal

Name of Act	Sponsor(s)	Law(s)/Regulation(s) Affected	Summary of Major Provisions
			Requirements of crowdfunding intermediary: ▪ register with the SEC as a broker or a funding portal (as defined in new Section 3(a)(80) of the Exchange Act) ▪ register with any applicable self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act) ▪ provide disclosure regarding risks and other investor education materials as the SEC determines ▪ ensure that each potential investor (i) reviews investor-education information, (ii) positively affirms that the investor understands that the investor is risking the loss of the entire investment and the investor can bear that risk, and (iii) answers questions demonstrating (A) an understanding of the level of risk applicable to investments in startups, emerging businesses, and small issuers, (B) an understanding of the risk of illiquidity, and (C) an understanding of such other matters as the SEC, by rule, determines ▪ take measures to reduce risk of fraud, including criminal background check and securities enforcement regulatory history check on each officer, director and person holding 20 percent or more of the shares of the issuer ▪ not later than one month prior to the first day on which securities are offered provide the SEC with information about the issuer that is required by the rule ▪ ensure that offering proceeds are only provided to the issuer when the aggregate capital from investors is equal to the target offering amount and allow all investors to cancel their commitments to invest as the SEC determines ▪ take action to make sure that no investor purchases securities offered under Section 4(6) of the Securities Act that in the aggregate from all issuers exceed the greatest of (a) $2,000 (as adjusted by CPI), (b) If the investor has annual income of greater than $50,000 but not more than $100,000 (as adjusted for CPI), 4% of the annual income of such investor, or (c) if the investor has annual income of greater than $100,000 (as adjusted for CPI), 8% of the annual income of such investor ▪ take steps to protect the privacy of information collected from investors ▪ not compensate promoters, finders, lead generators or other persons to attract or provide the personal information of potential investors

Name of Act	Sponsor(s)	Law(s)/Regulation(s) Affected	Summary of Major Provisions
			▪ prohibit its directors, officers, partners, or employees from having any financial interest in an issuer using its services Issuer requirements: ▪ must be organized under and subject to the laws of a state ▪ must file with the SEC and provide to actual and potential investor and the relevant broker or funding portal (a) name, legal status, physical address, and website address of the issuer, (b) names of the directors and officers and each person holding more than 20%, (c) description of the business of the issuer and the anticipated business plan of the issuer, (d) a description of the financial condition of the issuer, including (i) financial statements reviewed by a public accountant who is independent of the issuer, and (ii) for offerings seeking to raise more than $500,000, audited financial statements, (e) a description of the stated purpose and intended use of the proceeds of the offering, (f) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount, (g) the price at which the securities will be offered for a given ownership stake, and (h) a description of the ownership and capital structure of the issuer, how the securities being offered are being valued, what the rights of the securities are, and how the rights may be exercised by the issuer and shareholders ▪ not advertise the specific details of the offering, except for notices which direct investors to the funding portal or broker ▪ file with the SEC and provide investors with quarterly reports of the results of operations and financial statements, as the SEC may determine subject to such exceptions and termination dates as the SEC may establish The issuer and any person who is a director or officer or partner of the issuer shall be liable to any person acquiring such security that was subject to an offering pursuant to Section 4(6) for any untrue statement of a material fact or omission to state a material fact required to be stated in connection with any offering made pursuant to Section 4(6)

Name of Act	Sponsor(s)	Law(s)/Regulation(s) Affected	Summary of Major Provisions
			The SEC shall make information available to the regulatory authority of each state Securities issued pursuant to a Section 4(6) transaction may not be transferred by the purchaser during the 2 year period beginning on the date of purchase unless such securities are transferred to the issuer, an accredited investor as part of an offering registered with the SEC or to a member of the family of the purchaser or the equivalent in connection with the death of the purchaser Dodd-Frank 926 disqualification – applies to funding portal too Provides Exchange Act Section 12(g) exemption from record holder definition as determined by SEC Funding portal is defined as a person engaged in the business of effecting transactions in securities solely under Section 4(6) that does not (a) offer investment advice or recommendations; (b) solicit purchasers, sales or offers to buy the securities offered or displayed on its website portal; (c) compensate employees, agents or third parties for such solicitation based on the sale of securities displayed or references on its website or portal; (d) hold, manage possess or otherwise handle investor funds or securities; or (e) engage in such other activities as the SEC may by rule determine appropriate SEC will conduct a fraud response review every 6 months during the first two years after the date of the enactment of the act, annually during the 3 years following the 2 year period and not less frequently than every 5 years after that
H.R. 2940: Access to Capital for Job Creators Act	Kevin McCarthy (R- CA) Co-Sponsors: Robert Dold (R-IL) Nan A. S. Hayworth (R-NY)	Section 4(2) of the Securities Act	Amends Section 4(2) of the Securities Act to permit general solicitation or general advertising in private placements where all of the purchasers are accredited investors

Name of Act	Sponsor(s)	Law(s)/Regulation(s) Affected	Summary of Major Provisions
S. 1933: Reopening American Capital Markets to Emerging Growth Companies Act of 2011	Charles Schumer (D-NY) Pat Toomey (D-VA) Mark Warner (D-VA) Mike Crapo (R-ID)	Securities Act and Exchange Act	Establishes a category of issuers called "Emerging Growth Companies" that have less than $1 billion in annual revenues and less than $700 million in public float Creates up to five year "IPO On-Ramp" for Emerging Growth Companies by applying scaled-down regulation Only two years of audited financial statements are required with two year MD&A discussion Exemption from "say on pay/golden parachute" votes Exemption from auditor attestation requirements under SOX Section 404(b) Allows brokers to publish research reports about these companies prior to and immediately following IPO Expands range of pre-filing communications with qualified institutional buyers or accredited investors Allows for confidential filings with the SEC
H.R. 2167: Private Company Flexibility and Growth Act	David Schweikert (R-AZ) Co-Sponsored by 27 other Representatives	Section 12(g)(1) of the Exchange Act	Changes from 500 to 1,000 the number of holders of record that a company with at least $10 million in assets would have to have before it has to register under the Exchange Act Would also exempt from the definition of "holders of record" those shareholders who obtained the stock under an employee compensation plan in a transaction exempt from the registration requirements of the Securities Act Would require the SEC to adopt safe harbor provisions that issuers can follow when determining whether shareholders received securities pursuant to employee compensation plans in exempt transactions

APPENDIX B—COMPARISON OF CROWDFUNDING ACTS

Provision of Act	H.R. 2930 (Entrepreneur Access to Capital Act)	S. 1791 (Democratizing Access to Capital Act)	S. 1970 (Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2011 or the Crowdfund Act)
Establishes new Section 4(6) of the Securities Act	Yes	Yes	Yes
Aggregate amount that may be sold under new Section 4(6) by an issuer within previous 12 month period in reliance on exemption	$1 million if issuer does not provide audited financial statements $2 million if issuer does provide audited financial statements Adjusted by the SEC based upon Consumer Price Index (CPI)	$1 million – no reference or requirement to provide audited financial statements	$1 million, as adjusted by CPI
Aggregate amount that may be sold under new Section 4(6) by an issuer to any single investor	The lesser of (i) $10,000, as adjusted for CPI; and (ii) 10% of such investor's annual income	$1,000	The greater of: (a) $500, as adjusted by CPI, or (b) if the investor has annual income of: (i) greater than $50,000, but less than $100,000 (as adjusted by CPI), 1% of the annual income of such investor, or (ii) greater than $100,000 (as adjusted by CPI), 2% of the annual income of such investor
Overall cap on crowdfunding investing	No mention	No mention	No investor can purchase securities offered under new Section 4(6) that in the aggregate from all issuers exceed the greatest of: (a) $2,000 (as adjusted by CPI); (b) If the investor has annual income of greater than $50,000 but not more than $100,000 (as adjusted for CPI), 4% of the annual income of such investor, or (c) If the investor has annual income of greater than $100,000 (as adjusted for CPI), 8% of the annual income of such investor

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Requirement that there be a crowdfunding intermediary	No	Yes	Yes, either a broker or crowdfunding intermediary referred to as a funding portal
Requirement that the issuer be an entity incorporated under state law	No mention	Yes	Must be organized under and subject to the laws of a state
Requirement that crowdfunding intermediary be open and accessible to general public	No mention	Yes	No mention
Requirement to provide public communication portal to investors and potential investors	No mention of public communication portal for investors; however, contains a requirement that investors be able to communicate with the issuer	Yes	No mention
Requirement to provide some level of disclosure to investors of all rights of investors, including information about the risks, obligations, benefits, history and costs of offering	No, but requirement to disclose some risks as outlined below	Yes	Yes and must file information with the SEC, including: (a) description of the business of the issuer and the anticipated business plan of the issuer, (b) a description of the stated purpose and intended use of the proceeds of the offering, and (c) a description of the ownership and capital structure of the issuer, how the securities being offered are being valued, what the rights of the securities are, and how the rights may be exercised by the issuer and shareholders

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Requirement to provide educational materials to investors	No	No	Yes
Financial statement requirement	None mentioned	None mentioned	Requires a description of the financial condition of the issuer, including (i) financial statements reviewed by a public accountant who is independent of the issuer, (ii) for offerings seeking to raise more than $500,000, audited financial statements
Requirement of intermediary and/or issuer to warn investors of risky nature of investing in startups and risk of illiquidity in re-sale market	Yes	Yes	Yes
Requirement of intermediary and/or issuer to warn of restriction on re-sale	Yes	Yes	Yes
Requirement to take reasonable measures to reduce the risk of fraud	Yes	Yes	Yes
Requirement to provide SEC with intermediary physical address, website address and names of intermediary and employees of the intermediary	Yes	Yes	Yes

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Provide SEC with continuous investor access to intermediary and/or issuer website	Yes	Yes	No mention
Require potential investor to answer questions indicating requisite level of qualification and understanding of risks	Yes	Yes	Yes
Require issuer to state a target offering amount and a deadline to reach the target offering amount	Yes and custodian can not release funds to issuer until 60 percent of target offering amount is reached	Yes, but no mention of deadline for offering; custodian can not release funds to issuer until 60 percent of target offering amount is reached	Yes and funds can't be released unless 100% of target is reached; issuer must provide regular updates regarding the progress of the issuer in meeting the target offering amount
Allow investors to cancel their commitments to invest as the SEC determines	No mention	No mention	Yes
Requirement to run background check on principals of issuer	Yes	Yes	Background check and securities enforcement regulatory history check
Requirement to provide pre-offering notice to SEC	Yes	Yes	Yes

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Requirement to provide SEC with notice of completion of offering	Yes	No mention	No mention
Ongoing disclosure requirement	No mention	No mention	File with the SEC and provide investors with quarterly reports of the results of operations and financial statements, as the SEC may determine subject to such exceptions and termination dates as the SEC may establish
Requirement to outsource cash management function to broker-dealer or insured depository institution	Yes	Yes	Yes
Requirement to maintain books and records as SEC's rules will dictate	Yes	Yes	No mention
Crowdfunding intermediary required to make available on its website a method of communication that permits issuer and investors to communicate with one another	Yes	No mention, provided, however, that investor public communication portal required, but presumably this is for communication among investors	No mention
Prohibition on providing investment advice or recommendations	Yes	Yes	Yes

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If issuer offering without intermediary, requirement to disclose that issuer is an interested party	Yes	Crowdfunding transaction can not be done without an intermediary	Crowdfunding transaction can not be done without an intermediary or broker-dealer
Ability to rely on certification of annual income provided by persons to whom securities are sold	Yes	No mention	No mention
Prohibition on re-sale	Yes, for one year, unless securities are sold to the issuer or an accredited investor	Yes, for one year	Yes, for two years, unless such securities are transferred to the issuer, an accredited investor, as part of an offering registered with the SEC or to a member of the family of the purchaser or the equivalent in connection with the death of the purchaser
Requirement that crowdfunding intermediary be a broker-dealer registered under the Exchange Act	No	No	No
Disqualification provisions similar to Section 926 of Dodd-Frank	Yes	Yes	Yes
Exempts from definition of "holder of record" in Section 12(g) of the Exchange Act persons who purchase securities in a crowdfunding transaction	Yes	Yes	Yes

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Preempts state regulation by making securities issued in a crowdfunding transaction covered securities	Yes	May be required to file information in one or two states (state of incorporation and state where more than 50% of capital was raised)	Information made available to the states by the SEC, but no mention of filing with states
Gives state securities commissions jurisdiction to investigate and bring enforcement actions with respect to fraud, deceit or unlawful conduct by a securities intermediary	No mention	Yes	No mention
Prohibition on employees of intermediary from investing in offerings made through the intermediary or to have any financial interest in the companies posting offerings through the intermediary	No	Yes	Yes

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Requirement to make available a process for raising and resolving complaints, including alternatives for investors if the intermediary is unable to resolve a dispute to the satisfaction of an investor	No mention	Yes	No mention