



## ANGEL CAPITAL ASSOCIATION

### ACA Public Policy Flash

March 27, 2012

Dear ACA Member -

Unless you've been on a vacation on a remote island, you have heard that the US House and Senate have each passed their own versions of the **JOBS Act** (*Jumpstart Our Business Startups Act*, [HR 3606](#)), aimed at making it easier for small businesses to raise capital and have positive exits and thereby creating jobs. We understand that the House just voted on the Senate bill today, and the bill is being sent to President Obama for signature immediately.

The JOBS Act is complicated, but we wanted to provide you with information about the bill. The main thing to understand about this bill is that it does not deal with any tax issues, which are very difficult to pass in this partisan environment in Congress. Instead, the leaders of the House and Senate have focused on those structural and regulatory issues that inhibit startup growth, but don't directly impact government revenue.

Many angels are asking questions about it and we know opinions about part of the bill vary quite widely ([crowdfunding](#), anyone?). Below is a quick summary, with an eye toward how angels are or might be affected, and also links to some more detailed resources. The bill covers multiple issues:

- **Allows equity-based crowdfunding** - New businesses will be able raise up to \$1 million in equity capital from unaccredited investors. The Senate version of the JOBS Act creates a number of restrictions, aimed at protecting investors. Among those restrictions are limiting individual investments to \$10,000 or 10 percent of the investor's annual income (whichever is less) and registration by intermediary platforms and issuers with the SEC. Federal law would preempt state regulations, meaning that issuers could raise funds from across the United States. The SEC has 180 days after the bill's enactment to publish rules for crowdfunding.
- **Removes prohibitions on general solicitation of Regulation D offerings** - Allows for advertising of Reg D 506 offerings, as long as advertisements are focused on accredited investors. Angels should especially note the "McHenry Amendment," which clarifies that angel and incubator platforms that do not charge a fee connected to the purchase or sale of securities are exempt from broker-dealer registration. This is helpful for Web platforms such as AngelList or Gust and venture forums aimed at accredited investors, and also for some of your angel groups.
- **Creates an IPO "on ramp"** - Reduces the cost of going public for "emerging growth companies" - those with annual revenues of less than \$1 billion and after the IPO, less than \$700 million in publicly traded shares. These companies receive a 5 year exemption from costly Sarbanes-Oxley 404(b) requirements such as hiring outside auditors, while still requiring some quarterly and annual SEC disclosures. A number of other related technical issues are included, many recommended by a study committee of the [National Venture Capital Association](#).
- **Increases threshold for Regulation A "mini public offerings"** - Regulation A currently allows companies to go public and be exempted from SEC registration for offerings up to \$5 million.

The JOBS Act increases the offering threshold for this little used exemption to \$50 million, perhaps making it a more useful option for more angel-backed companies.

- **Raises cap on private shareholders from 500 to 2,000** - Many private companies are forced by regulations to file as a public company once they exceed 500 shareholders and \$10 million in assets. The bill increases the shareholder limit to 2,000 accredited investors or 500 unaccredited investors. The updated cap allows for flexibility to Facebook in staying private or going public, and could also benefit secondary market platforms that can offer a more robust market for the shares of private companies.

ACA has been working with our [Public Policy Advisory Council](#) to better understand many of these issues and to keep you all accurately informed. Thanks go particularly to Joe Bartlett, Bill Carleton, Dan Hansen, and Lori Smith.

The SEC will have 90 days to publish rules on most of these items, with 180 days to set the crowdfunding rules. ACA will be in contact with the SEC to provide feedback on the rules for many of these issues to ensure the best possible environment for healthy angel investment. In addition, we are currently working with [VC Experts](#) to hold a **Webinar on the JOBS Act in April** - before the rules are set - to catch you up on the details and to get ACA member feedback.

ACA is supportive of the JOBS Act, acknowledging its complexity and differences of opinions on the impact of crowdfunding on sophisticated angel investing and startups. We continue to generally support the concept, as we wrote you in December, while also noting some concerns about fraud and other issues. We will also point Congress to the need to catalyze angel investment - through tax credits and extension of the 100% exemption of gains on Qualified Small Business Stock - so that the companies that raise capital through crowdfunding have access to the excellent angel investment they will need to survive and grow.

We will stay in touch with you as the rules and details for the JOBS Act concepts are set. If you have questions or suggestions, please do not hesitate to contact us.

Regards,

Dan Rosen, Chair, ACA Policy Committee  
Marianne Hudson, ACA Executive Director

For more information about JOBS Act:

- [PDF of this Policy Flash](#) (in case it is easier to forward to your members)
- [Jumpstart our Business Startup Act](#)
- [ACA public statement on crowdfunding](#) and additional details for members (December, 2011)
- [www.wac6.com](http://www.wac6.com) - William Carleton, Counselor @ Law (several detailed blogs)
- [www.forbes.com/sites/jjcolao/2012/03/21/jobs-act/](http://www.forbes.com/sites/jjcolao/2012/03/21/jobs-act/)
- <http://jimhamiltonblog.blogspot.com/2012/03/house-passes-capital-formation.html>
- [www.nvca.org/](http://www.nvca.org/) - National Venture Capital Association (see "recent news")