

## MEMORANDUM

**To:** Members of the Committee on Financial Services

**From:** Republican Staff

**Date:** February 3, 2023

**Re:** Subcommittee on Capital Markets Hearing Entitled “Empowering Entrepreneurs: Removing Barriers to Capital Access for Small Businesses”

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On Wednesday, February 8, at 2:00 p.m. (ET), the Subcommittee on Capital Markets will hold a hearing, entitled: “Empowering Entrepreneurs: Removing Barriers to Capital Access for Small Businesses” in Room 2128 of the Rayburn House Office Building. In light of the JOBS Act’s recent 10-year anniversary, the purpose of this hearing is to examine policies designed to reduce barriers preventing small businesses and entrepreneurs from accessing capital and reaching their potential.

This will be a one-panel hearing with the following witnesses:

### **Witnesses**

- Mac Conwell, Founder and Managing Partner, RareBreed Ventures
- Deborah Gladney, Co-Founder, WorkTorch
- Doug Ellenoff, Partner, Ellenoff Grossman & Schole LLP
- Darcy Howe, Founder and Managing Director, KCRise Fund
- Alexandra Thornton, Senior Director, Center for American Progress

### **The JOBS Act’s Efforts to Empower Small Businesses and Entrepreneurs**

Nearly eleven years ago, a divided Congress passed the *Jumpstart Our Business Startups Act*, or JOBS Act of 2012, to facilitate capital formation for small companies and entrepreneurs. To encourage more small-cap IPOs, Title I created a new “Emerging Growth Company” (EGC) designation and an IPO “on ramp” for companies to gradually begin complying with public company regulatory requirements. Title II eased the process by which startups market their securities by extending the Rule 506 offering exemption to securities marketed through a general solicitation or advertising if the purchaser is an accredited investor. Title III allowed startups to raise funds through a new equity crowdfunding exemption. Title IV required the SEC to add a class of securities that would be exempt from registration for offerings up to \$50 million. Titles V and VI raised the thresholds for mandatory registration as a public company so private companies would not be forced to go public until they were ready.

Thanks to the bipartisan JOBS Act, small businesses and entrepreneurs can raise capital more easily than ever before. The JOBS Act's updates to offering exemptions and the new crowdfunding exemption have opened more pathways for companies and entrepreneurs to raise capital, and companies are taking advantage of these enhancements. For example, from July 1, 2021 to June 30, 2022, issuers relying on exemptions in Rule 506 raised more than \$2.3 trillion, compared to the \$126 billion raised in IPOs in the same period.<sup>1</sup> In addition, the number and size of Regulation Crowdfunding offerings continues to increase, creating new jobs and benefiting communities outside traditional capital raising hubs.<sup>2</sup> In fact, as of June 2022, 160,000 workers were employed by businesses that raised funds under Regulation Crowdfunding.<sup>3</sup> These statistics underscore the importance of the private markets as a source of capital for millions American small businesses that are not publicly traded companies.

Despite the JOBS Act's success, regulatory and other barriers continue to impede small business growth, which hinders the United States' competitiveness at home and abroad. These burdens negatively impact smaller businesses, which make up 99 percent of all enterprises in the U.S. and employ almost half of our workforce.<sup>4</sup> Prior to the COVID-19 pandemic, small businesses were more successful at obtaining loans, lines of credits, and cash advances with 81% of small-business applicants being approved for at least some of the funds for which they applied.<sup>5</sup> However, after March 1, 2020, only 70 percent of small businesses received partial approval for funds.<sup>6</sup> In 2021, approval rates dropped further to 68 percent.<sup>7</sup> The percentage of small businesses that experienced financial hardships increased from 66 percent to 80 percent between 2019 and 2020.<sup>8</sup>

Committee Republicans believe that entrepreneurs and founders should raise money with as little friction as possible. As a result, Congress and regulators must adopt common sense, forward-thinking policies that reduce barriers and increase access to capital raising opportunities for American entrepreneurs. By providing companies and entrepreneurs options to raise capital, we will increase American competitiveness, economic growth, and job creation.

## Legislative Proposals

- **H.R. \_\_\_\_\_, the “Improving Crowdfunding Opportunities Act”.** This bill preempts state regulation of secondary transactions involving crowdfunding vehicles and clarifies legal liability for crowdfunding portals. It also increases the allowable aggregate amount companies can raise in any 12-month period from \$5 million to \$10 million and allows all

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<sup>1</sup> See Office of the Advocate for Small Business Capital Formation Annual Report for Fiscal Year 2022 (Dec. 2022), available at <https://www.sec.gov/files/2022-oasb-annual-report.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See Frequently Asked Questions, SBA Office of Advocacy, available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/11/05122043/Small-Business-FAQ-2020.pdf>.

<sup>5</sup> Federal Reserve System, Small Business Credit Survey: 2021 Report on Employer Firms (Feb. 3, 2021), available at <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2021-sbcs-employer-firms-report>.

<sup>6</sup> *Id.*

<sup>7</sup> Federal Reserve System, Small Business Credit Survey: 2022 Report on Employer Firms (Feb. 22, 2022), available at <https://www.fedsmallbusiness.org/survey/2022/report-on-employer-firms>.

<sup>8</sup> See Federal Reserve System, *supra* note 5.

non-accredited investors to invest up to 10% of the greater of their annual income or net worth. This bill also allows investment companies to participate in crowdfunding offerings and increases the offering size threshold under which an issuer may meet its financial statement requirements.

- **H.R. \_\_\_\_\_, the “Small Entrepreneurs Empowerment and Development (SEED) Act of 2023”**. This bill provides small issuers with a micro-offering exemption free of mandated disclosures or offering filings, but subject to the antifraud provisions of the Federal securities laws.
- **H.R. \_\_\_\_\_**, to preempt blue sky laws for off-exchange secondary trading in companies who make available current public information, including information required by Regulation A or Rule 15c2-11.
- **H.R. \_\_\_\_\_**, to direct the SEC to update its definitions of “small entities” under the Regulatory Flexibility Act to ensure that the SEC more carefully accounts for impacts on small businesses when pursuing rulemakings.
- **H.R. \_\_\_\_\_, the “Developing and Empowering our Aspiring Leaders Act of 2023”**. This bill requires the SEC to revise the definition of a qualifying investment, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act of 1940, to include equity securities issued by qualifying portfolio companies as well as investments in other venture capital funds.
- **H.R. \_\_\_\_\_, the “Improving Capital Allocation for Newcomers Act of 2023”**. This bill modifies the Qualifying Venture Capital Fund Exemption under Section 3(c)(1) of the Investment Company Act of 1940 by increasing the cap on aggregate capital contributions and uncalled capital commitments from \$10 million to \$150 million and increasing the allowable number of beneficial owners from 250 to 600. It also increases the current beneficial owners limit for funds that rely on the broader exemption in Section 3(c)(1) from 100 to 200 beneficial owners.
- **H.R. \_\_\_\_\_, the “Regulation A+ Improvement Act of 2023”**. This bill increases the offering amount that companies can raise under Regulation A from \$50 million to \$150 million, adjusted for inflation by the SEC every two years to the nearest \$10,000.
- **H.R. \_\_\_\_\_, the “Unlocking Capital for Small Businesses Act of 2023”**. This bill directs the SEC to finalize its 2020 proposed exemption from broker registration requirements for “finders” who help issuers raise capital in private markets from accredited investors.
- **H.R. \_\_\_\_\_, the “Helping Angels Lead Our Startup Act of 2023” or the “HALOS Act of 2023”**. This bill defines an angel investor for purposes of the federal securities laws. It also clarifies the definition of general solicitation contained in the Securities Act to ensure that startups can discuss their products and business plans at certain events, known as “demo days,” without such discussions being considered an investment offering.
- **H.R. \_\_\_\_\_**, to amend the Investment Advisers Act of 1940 to increase the exemption from registration threshold for certain investment advisers of private funds.