



No. 7

March 19, 2012

H.R. 3606 – JOBS Bill

On March 8, 2012, the House of Representatives passed H.R. 3606 by a 390-23 vote and cloture was filed in the Senate on March 15, 2012.

Noteworthy

- On Thursday, March 15, 2012, Senator Reid filed cloture on H.R. 3606, Jumpstart Our Business Startups (the JOBS bill), and on two amendments.
- H.R. 3606 passed the House 390-23 with overwhelming bipartisan support; Republicans supported it 232-0 and Democrats supported it 158-23.
- H.R. 3606 increases the availability of capital for emerging growth companies, increases access to capital for small companies, simplifies crowdfunding (funding by numerous small contributions), reduces reporting for small company capital formation, and other measures.

Overview

The JOBS bill incorporates a number of earlier legislative efforts to increase access to capital for small businesses largely through reductions in the burden imposed on small businesses seeking capital by the Securities and Exchange Commission. The JOBS bill: (1) creates a new class of issuer, the emerging growth company, with a lower regulatory burden; (2) allows general solicitation and advertising for private offerings to accredited investors; (3) modernizes regulation for crowdfunding; (4) increases the threshold, which has not been increased since the 1990s, for small company capital formation to \$50 million; (5) increases the threshold for mandatory registration for small companies; (6) increases the threshold for mandatory registration for small banks; and (7) requires the SEC to inform the public of statutory changes resulting from this bill.

House Action

The JOBS Act, H.R. 3606, was introduced in the House of Representatives on December 8, 2011. The House Committee on Financial Services marked up and reported it out on February 16, 2012, by a 54-1 vote. The bill passed the House 390-23 with no Republican voting against it and 158 Democrats voting for the bill.

Bill Provisions

Section 1 – Short Title

Jumpstart Our Business Startups Act.

Section 2 – Table of Contents

Title I – Reopening American Capital Markets to Emerging Growth Companies

Section 101 – Definitions

This section amends 15 U.S.C. § 77b(a) to define an emerging growth company as one that conducts an initial public offering with annual gross revenues of less than \$1 billion and other terms.

Section 102 – Disclosure Obligations

This section amends 15 U.S.C. §§ 78n-1(e), 78n(i) and P.L. 111-203 (the Dodd-Frank Act) to exempt emerging growth companies from shareholder approval of executive compensation. It also amends 15 U.S.C. § 77g(a) and requires modification of 17 C.F.R. § 229.303(a) to require only two years of financial statements for registration of emerging growth companies.

Section 103 – Internal Controls Audit

This section amends 15 U.S.C. § 7262(b) to exempt emerging growth companies from compliance with Sarbanes-Oxley requirements on reporting on internal control audits.

Section 104 – Auditing Standards

This section amends 15 U.S.C. § 7213(a)(3) to exempt emerging growth companies from certain auditing requirements.

Section 105 – Availability of Information about Emerging Growth Companies

This section amends 15 U.S.C. § 77b(a)(3) to deem research reports on emerging growth companies as not an offer for sale. It also amends 15 U.S.C. §§ 77o-6, 77e to allow

communications about initial public offerings by emerging growth companies as well as post-offering communications.

Section 106 – Other Matters

This section amends 15 U.S.C. § 77f to allow emerging growth companies to confidentially submit a draft registration statement to the SEC. It also amends 15 U.S.C. § 78k-1(c) to require the SEC to conduct a study to examine the transition to trading and quoting securities in penny increments and to report to Congress on the study.

Section 107 – Opt-in Right for Emerging Growth Companies

This section allows an emerging growth company to choose to forgo the exemption provided in this title and to comply with requirements of an issuer that is not an emerging growth company.

Section 108 – Review of Regulation S-K

This section requires the SEC to conduct a review of its Regulation S-K to comprehensively analyze current registration requirements and how to modernize and simplify the registration process, and to report to Congress on the review.

Title II – Access to Capital for Job Creators

Section 201 – Modification of Exemption

This section requires the SEC to modify its rules in 17 C.F.R. § 230.506 to make clear that the prohibition on solicitation and general advertising does not apply to securities sold through private offerings to accredited investors under Regulation D.

This title also passed the House on November 3, 2011, as H.R. 2940 by a [vote](#) of 413-11.

Title III – Entrepreneur Access to Capital

Section 301 – Crowdfunding Exemption

This section amends 15 U.S.C. § 77d to exempt from registration with the SEC securities when the aggregate amount sold in the previous 12-month period is less than \$1 million (or \$2 million if the issuer provides investors with audited financial statements) and each individual investor does not invest in that 12-month period more than \$10,000 or 10 percent of the investor's annual income. Additionally, the issuer or an intermediary must provide certain information and risk disclosures under this section. Finally, this section authorizes rulemaking by the SEC to implement this section.

Section 302 – Exclusion of Crowdfunding Investors from Shareholder Cap

This section amends the definitions in 15 U.S.C. § 78l(g)(5) to make clear that securities held by individuals who purchased them under this title are not to be deemed "held of record".

Section 303 – Preemption of State Law

This section amends 15 U.S.C. § 77r(b)(4) to make clear that states still have enforcement authority under state law.

This title also passed the House on November 3, 2011, as H.R. 2930 by a [vote](#) of 407-17.

Title IV – Small Company Capital Formation

Section 401 – Authority to Exempt Certain Securities

This section amends 15 U.S.C. § 77c(b) to exempt from regulation securities that have an aggregate offering amount in the preceding 12 months of \$50 million or less if specific conditions are met.

Section 402 – Study on the Impact of State Blue Sky Laws on Regulation A Offerings

This section requires the Comptroller General to study the impact of state blue sky laws on offerings made under regulation A, and to report the findings to Congress.

This title also passed the House on November 2, 2011, as H.R. 1070 by a [vote](#) of 421-1.

Title V – Private Company Flexibility and Growth

Section 501 – Threshold for Registration

This section amends 15 U.S.C. § 78l(g)(1)(A) to increase the threshold for mandatory registration to assets exceeding \$10 million and securities held by either 2,000 persons or 500 persons who are not accredited investors.

Section 502 – Employees

This section amends 15 U.S.C. § 77l(g)(5) to exclude from registration calculations securities held by employees received through an employee compensation plan.

Section 503 – Commission Rulemaking

This section requires the SEC to engage in rulemaking to implement section 502 and to adopt safe harbor provisions for issuers to follow.

Section 504 – Commission Study of Enforcement Authority under Rule 12g5-1

This section requires the SEC to examine its authority to enforce Rule 12g5-1 to determine if new enforcement tools are necessary to enforce the Rule's anti-evasion provision and to report on this examination to Congress.

Title VI – Capital Expansion

Section 601 – Shareholder Threshold for Registration

This section amends 15 U.S.C. § 78l(g) to increase total assets from \$1 million to \$10 million and the number of shareholders to 2,000 before a bank or bank holding company must register with the SEC, and to provide for removal from registration if the number of shareholders falls below 1,200. It also amends 15 U.S.C. § 78o(d) to provide for the suspension of supplementary reporting requirements for a bank or bank holding company whose number of shareholders falls below 1,200.

Section 602 – Rulemaking

This section requires the SEC to issue final regulations to implement this title within one year of enactment.

This title also passed the House on November 2, 2011, as H.R. 1965 by a [vote](#) of 420-2.

Title VII – Outreach on Changes to the Law

Section 701 – Outreach by Commission

This section requires the SEC to provide online information and to conduct outreach to small and medium sized businesses, women-owned businesses, veteran-owned businesses, and minority-owned businesses about changes made by this bill.

Administration Position

On March 6, 2012, the Obama Administration issued a Statement of Administration Policy supporting passage of H.R. 3606.

Cost

The Congressional Budget Office issued a cost estimate of the bill on March 2, 2012. According to CBO, the bill would cost about \$50 million from 2012-2017. However, as the SEC is authorized to collect fees to offset the cost of its annual appropriations, CBO estimates that the net cost would not be significant.

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