

**AEO** Association for  
Enterprise Opportunity  
THE VOICE OF MICROBUSINESS

February 3, 2014

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street NW  
Washington, DC 20549-1090

**RE: File Number S7-09-13**

Dear Ms. Murphy,

The Association for Enterprise Opportunity (AEO) is pleased to submit the following comments to the Securities and Exchange Commission (SEC) in response to the proposed rule concerning Title III of the JOBS Act (P.L. 112-106) published on November 5, 2013 in the Federal Register.

AEO was a strong and early supporter of the crowdfunding exemption created by Title III of the JOBS Act. AEO and its 450 member and partner network of nonprofit lending and business assistance organizations are primarily focused on assisting entrepreneurs – especially in underserved communities – access the skills and capital necessary to start and grow their businesses.

AEO research has shown that microbusinesses that receive capital and business training experience a median annual growth of 38 percent.<sup>1</sup> Furthermore, the U.S. Small Business Administration's Office of Advocacy has found that firms that are adequately capitalized are much more likely to hire their first employee within three years.<sup>2</sup>

---

<sup>1</sup> Association for Enterprise Opportunity, *Bigger than You Think: The Economic Impact of Microbusiness in the U.S.*, November 2013, <http://www.aeoworks.org/pdf/Bigger%20Than%20You%20Think%20-%20The%20Economic%20Impact%20of%20Microbusiness%20in%20the%20United%20States.pdf>

<sup>2</sup> Office of Advocacy, Small Business Research Summary, *Crossing the Employer Threshold: Determinants of Firms Hiring Their First Employee*, December 2013, <http://www.sba.gov/sites/default/files/rs418.pdf>.

As the Commission is surely aware, the driving force behind the enactment of the crowdfunding exemption in the JOBS Act was the belief that the “crowd” would be willing to fill the capital gap – though the sale of securities – that traditional lending institutions have been unable or unwilling to bridge. To put the demand into perspective, Treasury Secretary Jacob Lew noted in June 2013 that an average of 8,000 small business loan applications are denied each and every day.

AEO understands that there are costs associated with starting and operating a business. Businesses must secure capital, hire employees, invest in the research and development of product, acquire retail space and purchase materials and equipment. Regulatory and tax compliance costs add to that burden. These are sunk costs that all businesses incur.

Crowdfunding should be structured so that entrepreneurs can secure capital easily and efficiently while balancing the risks of fraud and malfeasance. With the advent of new internet technology and social media, the era of crowdfunding should enable entrepreneurs to secure small investments efficiently, cost-effectively, and without being judged based on credit history or score.

### **AEO Concerns and Recommendations**

AEO commends the Commission for its efforts to promulgate this rule. However, the proposed rule, as written, will likely pose substantial time and financial burdens on our nation’s smallest businesses, known as microbusinesses with five or fewer employees.

#### **Concerns Regarding Disclosure Requirements**

According to the SEC’s own estimates, the disclosure requirement costs associated with raising capital via crowdfunding range from approximately \$10,000 for those seeking up to \$100,000 to well over \$100,000 for those businesses seeking raise \$500,000 or more.<sup>3</sup> Other industry experts suggest that these costs could be substantially higher than those calculated by the SEC. According to the publication Venture Beat, compliance costs for a capital raise of \$100,000 could reach 39 percent of the total raise (or \$39,000 if \$100,000 were raised).<sup>4</sup>

Although the costs of capital raises as a percentage of total raise decrease in the \$100,000-\$500,000 and \$500,000-\$1,000,000 tiers, the time and costs associated with audited financial statements (on an ongoing annual basis for the \$500,000 and above tier) are likely to serve as a deterrent to these businesses. Considering that capital raises under the Regulation A exemption (up to \$5 million in capital raises

---

<sup>3</sup> Crowdfunding NPRM, 78 Fed. Reg. at 66, 358.

<sup>4</sup> Sherwood Neiss, Venture Beat, January 2, 2014, <http://venturebeat.com/2014/01/02/it-might-cost-you-39k-to-crowdfund-100k-under-the-secs-new-rules>.

through the sale of securities) do not require the same level of compliance and disclosure, the requirements under Title III seem particularly burdensome.

AEO recognizes the SEC's desire to manage the risk of fraud with ease of use. However, these requirements are likely to force those who could benefit the most from crowdfunding to the sidelines. A start-up business with no revenue to date, and raising capital for the first time, will find it difficult, if not impossible, to fund the cost of an audit associated with Title III of the JOBS Act.

Furthermore, as other comments to the SEC have noted, auditors may have trouble completing a financial review for issuers with little or no prior history. Auditors may also be hesitant to affix their approval to those with limited financial statements at the risk of possible future litigation.

Put another way, forcing onerous burdens, like audits, contradicts the premise of crowdfunding. Crowdfunding is intended to make capital available to start-up businesses, which are the very businesses that need capital the most, and are denied access to traditional forms of capital raising markets by this and similar barriers.

#### AEO Recommendation

Crowdfunding offerings will be small by definition. AEO recommends the SEC simplify and streamline the disclosure requirements to the greatest extent possible, while still minimizing risk to potential investors.

Specifically, the SEC should exempt entrepreneurs with little or no on-hand capital from any of the audit requirements. AEO believes that the self-certification requirements, as required by Form C, will serve to mitigate the risk for fraud. Form C, which must be submitted to the SEC's EDGAR system and publicly posted on the crowdfunding intermediary's online portal, should provide enough information to allow potential investors to make informed investment decisions.

#### Concerns Regarding Issuer Target Offering Amount & Deadline

AEO strongly disagrees with the SEC's proposal to require issuers to return to investors their total commitment should the issuer's target raise not be met by the offering deadline.

Given the discussion above regarding the upfront costs associated with preparing an offering, it seems unfair that the SEC would require issuers to return commitments to investors if a target raise is not met. Assume, for example, an entrepreneur wishes to raise \$75,000 under the first tier and completes the required disclosure requirements (between an estimated 12 percent and 39 percent, or \$9,000 and \$29,250 respectively). That entrepreneur then posts an offering on an online portal and by the target deadline has raised \$70,000, or \$5,000 short of the target. Instead

of making due with \$70,000, the offering is canceled and all commitments are returned to investors.

### **AEO Recommendation**

The SEC should remove this provision in its entirety. It is unfair to entrepreneurs to complete the upfront disclosures and risk walking away with nothing

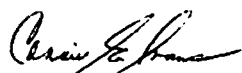
### **Conclusion**

Given the tremendous demand for credit among microbusinesses and entrepreneurs, crowdfunding offers a real promise to jumpstart the flow of capital to our nation's 25.5 million microbusinesses. However, AEO has deep reservations about the proposed rule as written. The proposed rule is complex and creates a number of onerous requirements for businesses seeking capital. The SEC's goal should be to create an efficient, yet safe, regulatory environment that allows this nascent sector to flourish. AEO encourages the Commission to reexamine the proposed rule and identify ways to simplify and streamline the requirements identified in this comment letter.

### **About The Association for Enterprise Opportunity**

AEO is the national member organization and voice of microbusiness in the United States. For more than 22 years, AEO and its 450 member and partner network have helped more than two million entrepreneurs contribute to economic growth as they support themselves, their families, and their communities. For more information, please visit [www.AEOworks.org](http://www.AEOworks.org).

Sincerely,



Connie E. Evans  
President & CEO