

When Can I Crowdfund?

by [BRIAN LEBRECHT](#) on JUNE 29, 2012

The JOBS Act was approved in March, and signed into law in April 2012. In early April, I [posted a blog](#) outlining what I thought was the most interesting part of the Act, that being the ability to solicit investors in a 506 offering.

The SEC has created a page to collect comments on the various provisions of the Act, which can be [found here](#). I am pleased to see that the [provision drawing the most comments](#) is, in fact, the changes regarding solicitation in 506 offerings.

Just yesterday, [Chairman Shapiro announced](#) that the SEC would not be able to meet the 90 day deadline imposed by Congress for rulemaking regarding Rule 506 solicitations.

Without a doubt, however, the provision drawing the most public attention, and the most phone calls from clients, is that relating to crowdfunding. Thus far, I have resisted the temptation to join a large number of my colleagues in blogging about crowdfunding, in large part because there isn't much guidance available from the SEC yet. In fact, the most prominent publication from the SEC is a [warning on its home page](#) that crowdfunding is not yet allowed, as follows:

“On April 5, 2012, the Jumpstart Our Business Startups (JOBS) Act was signed into law. The Act requires the Commission to adopt rules to implement a new exemption that will allow crowdfunding. Until then, we are reminding issuers that any offers or sales of securities purporting to rely on the crowdfunding exemption would be unlawful under the federal securities laws.”

So when will crowdfunding be allowed to start? There is no definite answer, but at the last state bar luncheon I attended on the topic, the panelists speculated that it would be at least January 1, 2013 before the SEC published enough guidance for crowdfunding offerings to start. By the way, that same panel suggested that, as the SEC is not fan of crowdfunding, by the time they finished with their rulemaking, it will be watered-down to the point that it will be difficult, if not impossible, to practically implement. I guess we can only wait and see.

Given that the SEC missed its first deadline for rulemaking under the Act, its anybody's guess.