



Is Regulation D helping the 1%, but punishing the 99%?

Is Regulation D archaic? Is it an obstacle to investment? Or worse, is Regulation D helping the 1%, but punishing the 99%? Proposed changes to Regulation D under H.R. 2940 the Access to Capital for Job Creators Act (not to be confused with H.R. 2930's crowdfunding bill: Equal Access to Capital for America's Job Creators), would make key changes to how entrepreneurs can solicit investors. Unfortunately, H.R. 2940 does nothing about the real challenge: it fails to give no-accredited investors the opportunity to invest in new ventures.

H.R. 2940 would fundamentally alter how federal law governs small private offerings. Presently, federal law requires that any offer to sell securities in a company must either be registered with the SEC or fall under an exemption. Regulation D provides one of the most common mechanisms for companies to raise capital through a private offering to accredited investors. One important condition is Rule 506 which prohibits companies from "general solicitation or advertising to market the securities" for private offerings. Practically speaking, this means that a startup seeking angel investors or venture capital cannot actively advertise that fact on the Internet.

H.R. 2940 applies to a small minority

As proposed, H.R. 2940 removes current limitations on general solicitation by small private companies for private offerings. If passed, H.R. 2940 would allow a new startup to post their need for investment on the Internet and announce that they are looking

for investors, essentially to solicit financing.

The impact of H.R. 2940 is pretty simple: it would ease communication between startups and potential investors, increasing the ability of startups to raise money from a wider pool of accredited investors.

What is not so obvious is what H.R. 2940 fails to do: it does not increase the pool of investors to *non-accredited investors*. And, the difference between an accredited and non-accredited investor is stark. The SEC defines an accredited investor (in part) as a natural person with a net worth of more than \$1 million or with income “exceeding \$200,000 in each of the two most recent years” or having “a trust with assets in excess of \$5 million.” Yet the changes proposed by H.R. 2940 would continue to restrict the types of investors that are allowed to invest in a company to the most wealthy. Consequently, H.R. 2940 is good for the wealthiest investors because it expands their ability to invest without less constraint, but H.R. 2940 does not create new opportunities for the rest of society.

Fixing H.R. 2940 -opening up opportunity

The real challenge is not that accredited investors can't find out about offerings -the issue H.R. 2940 seems designed to address -because there are plenty of people chasing the 1%. Rather, the real challenge is that other 99% should have the same ability to have conversations about investing in new companies as the 1%.

A true solution for fixing Regulation D is to keep the process in place, but open it up to *non-accredited investors*. Is it time to do away with the ban on general solicitation? With the decrease in friction in the flow of information, maybe it is time to rethink Regulation D all together? Only by giving non-accredited investors the opportunity to invest in new startups will all of society benefit, not just the wealthiest.