

Comparison of Crowdfunding Bills 112th Congress (as of Jan. 16, 2012)

Bill Number	H.R.2930	S.1791	S.1970
Bill Name	Entrepreneur Access to Capital Act	Democratizing Access to Capital Act of 2011	Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2011
Lead Sponsor	Rep. Patrick McHenry (NC)	Sen. Scott Brown (MA)	Sen. Jeff Merkley (OR)
Cosponsors	n.a.	(2) Ayotte (NH); Chambliss (GA).	(2) Bennet (CO); Landrieu (LA).
Status	Passed the House (413-11) on November 3, 2011. Click here to access bill text.	Introduced in Senate November 2, 2011. Click here to access bill text.	Introduced in Senate December 8, 2011. Click here to access bill text.
White House Position	The President formally supports H.R. 2930. Click here for more details.	No stated position.	No stated position.
Committee Reports/Hearings/Status	Favorable Report of Committee on Financial Services; referred to the Senate Committee on Banking, Housing, and Urban Affairs; Hearing Held December 1, 2011. No further Senate Committee action. Click here for details.	Referred to the Senate Committee on Banking, Housing, and Urban Affairs; Hearing Held December 1, 2011. No further Senate Committee action.	Referred to the Senate Committee on Banking, Housing, and Urban Affairs; Hearing Held December 14, 2011. No further Senate Committee action.
Summary	Creates a “crowdfunding” exemption to the registration requirements of the Securities Act of 1933. Issuers would be able to sell up to \$1 million of securities provided that the aggregate amount sold to any investor in reliance on the exemption within the previous 12-month period did not exceed the lesser of \$10,000 or 10 percent of the investor's annual income subject to certain additional requirements. The amount that would be sold is increased to \$2 million if the issuer provides audited financial statements.	Creates a “crowdfunding” exemption to the registration requirements of the Securities Act of 1933. Issuers would be able to sell up to \$1 million of securities provided that the aggregate amount sold to any investor in reliance on the exemption within the previous 12-month period did not exceed \$1,000 per investor subject to certain additional requirements.	Creates a “crowdfunding” exemption to the registration requirements of the Securities Act of 1933. Issuers would be able to sell up to \$1 million of securities provided that the aggregate amount sold to any investor in reliance on the exemption within the previous 12-month period did not exceed the greater of \$500 or one percent of such investor's annual income for investors with incomes between \$50,000 and \$100,000 and two percent for investors with incomes over \$100,000 subject to certain additional requirements. Moreover, an investor’s total investments in crowdfunding investments would be limited to four times these amounts (apparently over any period of time).
Maximum Raise	\$2 million	\$1 million	\$1 million
Maximum Investment Per	\$10,000 or 10 percent of the investor’s income (whichever is less).	\$1,000	\$500, in general. One percent of income for those with incomes

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Investor			between \$50,000 and \$100,000 and two percent of income for those with incomes over \$100,000. Subject also to overall limits of \$2,000, four percent for those with incomes between \$50,000 and \$100,000 and 8 percent of income for those with incomes over \$100,000.
Holding Period	The holding period on resale would be set at one year.	The holding period on resale would be set at one year.	The holding period on resale would be set at two years.
Pre-emption	Securities sold pursuant to the crowdfunding exemption would be a covered security and therefore not subject to state registration requirements. State laws relating to fraud or other unlawful conduct by an issuer or intermediary would continue to apply. Thus the various state blue sky laws relating to the registration of securities would not apply.	Securities sold pursuant to the crowdfunding exemption would be a covered security and therefore not subject to state registration requirements. State laws relating to fraud or other unlawful conduct by an issuer or intermediary would continue to apply. Thus the various state blue sky laws relating to the registration of securities would not apply. However, the State of the issuer's State of organization, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents may require filing and filing fees.	No preemption. Thus current state laws apply, including each state's blue sky securities laws. Therefore crowdfunding issuers would be required to comply with and make filings in 50 states and the District of Columbia (or simply not offer securities to investors in certain states).
Escrow Provisions	The issuer must state a target offering amount and a deadline to reach the target offering amount and ensure the third party custodian withholds offering proceeds until aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount.	The issuer must state a target offering amount and a deadline to reach the target offering amount and ensure the third party custodian withholds offering proceeds until aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount.	The issuer must state a target offering amount, the deadline to reach the target offering amount, and provide regular updates regarding the progress of the issuer in meeting the target offering amount. The issuer must ensure the third party custodian withholds capital formation proceeds until aggregate capital raised from investors other than the issuer is not less than 100 percent of the target offering amount.
Litigation Cause of Action	Not applicable.	Not applicable.	Provides a new cause of action against issuers for any untrue statement of a material fact or omission to state a material fact required to be stated in connection with any offering.

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Income certification	An issuer or intermediary may rely on certifications as to annual income provided by the person to whom the securities are sold to verify the investor's income.	Not applicable (no income based limit).	An issuer or intermediary may rely on certifications as to annual income provided by the person to whom the securities are sold to verify the investor's income.
Broker-Dealers	An intermediary need not be a registered broker-dealer.	An intermediary need not be a registered broker-dealer.	An intermediary must be either a registered broker-dealer or a registered funding portal (a new type of regulated entity) and register with the applicable self-regulatory organization.
Holder of Record	A crowdfunding investor is not deemed a holder of record for purposes of the 500 shareholder registration requirement threshold.	A crowdfunding investor is not deemed a holder of record for purposes of the 500 shareholder registration requirement threshold.	A crowdfunding investor is not deemed a holder of record for purposes of the 500 shareholder registration requirement threshold.
Other Requirements	<p>In the case of a transaction involving an intermediary between the issuer and the investor, the intermediary must warn investors of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers and that they are subject to the restriction on sales rules. The intermediary must take reasonable measures to reduce the risk of fraud and require each potential investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers; an understanding of the risk of illiquidity; and such other areas as the Commission may determine appropriate by rule or regulation.</p> <p>The intermediary must carry out a background check on the issuer's principals; make available on the</p>	<p>A crowdfunding issuer would be required (1) to disclose to investors all rights of investors, including complete information about the risks, obligations, benefits, history, and costs of offering; (2) to be an incorporated entity formed under and subject to the law of a State; and (3) to file such notice with the Commission as the Commission shall prescribe.</p> <p>The Commission would be required to establish disqualification provisions under which a person shall not be eligible to utilize the exemption.</p> <p>A crowdfunding intermediary would have to be open to and accessible by the general public, warn investors of the speculative nature of investments in startups, emerging businesses, and small issuers, warn investors that they are subject to a 1-year restriction on the sale of securities issued; take reasonable measures to reduce the</p>	<p>Intermediaries would be required to register with the Commission as a broker or a regulated funding portal and to register with any applicable self-regulatory organization (e.g. FINRA). It would be required to provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate. It must ensure that each potential investor reviews investor-education information, in line with standards established by the Commission, by rule; positively affirms that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and answers questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers; and an understanding of the risk of illiquidity. It must take such measures to reduce the risk of fraud with respect to such transactions, as established by rule of the Commission, including obtaining a criminal background check and securities enforcement regulatory history check on each</p>

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<p>Other Requirements (continued)</p>	<p>intermediary's website a method of communication that permits the issuer and investors to communicate with one another;</p> <p>Similar requirements are imposed on issuers that do not use an intermediary.</p>	<p>risk of fraud; and prohibit its employees from investing in the offerings made through the crowdfunding intermediary, or to have any financial interest in the companies posting offerings through the crowdfunding intermediary.</p>	<p>officer, director, and person holding more than 20 percent of the shares of every issuer whose securities are offered by such person. It must prohibit its directors, officers, partners, or employees (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services.</p> <p>Issuers must be organized under and subject to the laws of a State; file with the Commission and provide to actual and potential investors and the relevant broker or funding portal--</p> <p style="padding-left: 40px;">(A) the name, legal status, physical address, and website address of the issuer;</p> <p style="padding-left: 40px;">(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;</p> <p style="padding-left: 40px;">(C) a description of the business of the issuer and the anticipated business plan of the issuer;</p> <p style="padding-left: 40px;">(D) a description of the financial condition of the issuer, including--</p> <p style="padding-left: 80px;">(i) financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by rule of the Commission for such purpose; or</p> <p style="padding-left: 80px;">(ii) for offerings seeking to raise more than \$500,000 (or such other amount as may be established by the Commission, by rule), audited financial statements;</p> <p style="padding-left: 40px;">(E) a description of the stated purpose and intended use of the proceeds of the offering</p>

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<p>Other Requirements (continued)</p>			<p>sought by the issuer;</p> <p> `F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;</p> <p> `G) the price at which the securities will be offered for a given ownership stake;</p> <p> `H) a description of the ownership and capital structure of the issuer, how the securities being offered are being valued, what the rights of the securities are, and how rights may be exercised by the issuer and shareholders; and</p> <p> `I) such other information as the Commission may, by rule, prescribe;</p> <p>An issuer must not advertise the specific details of the offering, except for notices which direct investors to the funding portal or broker and must file with the Commission and provide to investors quarterly reports of the results of operations and financial statements, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule.</p>