



INVEST IN AMERICA'S ENTREPRENEURS

Statutory and regulatory barriers prevent investors from supporting startups, small businesses, and entrepreneurs across the United States. Congress must support legislation creating greater access to open capital markets.

BACKGROUND

Capital markets are segments of the financial system which provide funding through equity or debt instruments that companies need to fund their growth. They are “considered the largest source of financing for U.S. nonfinancial companies,” significantly outpacing “bank loans and other forms of financing.”¹ The U.S. Securities Exchange Commission (SEC) serves as the primary regulator of capital markets.

Small businesses and startups are the engine of the U.S. economy. 2016 Census Bureau data found that small employer enterprises, or businesses with less than 500 employees, provided 47.3 percent, or nearly half, of all jobs.²

According to FreshBooks’s annual 2019 report on self-employment, an estimated 24 million U.S. workers considered leaving full-time jobs in favor of self-employment, yet only about 2 million followed through. Survey respondents cited numerous barriers discouraging their entrepreneurial ambitions, such as inconsistent income and earnings, access to capital and investment, burdensome debt, and costs of education and training.³ A 2019 report by the Congressional Research Service (CRS) found that less than half of all “high-impact” startups remain in business after five years.⁴

Unfortunately, entrepreneurs across the U.S. experience disproportionately high barriers to capital funding. Statutory limitations in securities laws prohibit many average Americans from investing in private market funding opportunities. These markets are limited to “accredited investors,” those who have made over \$250,000 for the last two years or have net worth of over \$1 million. These limits prevent hard-working, enterprising families from securing financing opportunities to fund growth and innovation for their businesses.

Currently, three states – California, Massachusetts, and New York – consistently receive nearly 80 percent of all financing for venture-capital backed companies.⁵ Comparatively, only about four percent of venture capital investment made it to the Midwest.⁶

In 2012, the Jumpstart Our Business Startups (“JOBS”) Act was signed into law, creating a streamlined regulatory framework for America’s small businesses to seek capital from average investors.⁷ As a result, small businesses have more options to reach investors through fundraising mechanisms like investment

Quick Take

Small businesses and startups represent the engine of the U.S. economy. Unfortunately, securities laws currently favor investment opportunities for the elite, preventing many U.S. entrepreneurs from accessing necessary capital.

Congress must support legislation that ensures greater access to investment opportunities.

crowdfunding. Since Regulation Crowdfunding was finalized by the SEC, small businesses have conducted over 900 offerings that reported raising more than \$90 million in investment.⁸

In 2019, the SEC issued a concept release on harmonizing private market activity with the public markets to allow for greater small business capital investment from Main Street investors.⁹

CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution authorizes Congress to modernize our securities laws as a matter of interstate commerce¹⁰ since many investment offerings operate across state lines. Republicans should support legislation that empowers consumers to have more control over their personal finances.

POLICY SOLUTIONS

Congress should pass H.R. 4860, the Crowdfunding Amendment Act, which would expand permissible uses of crowdfunding to allow more Americans to invest in small businesses. Congress should also pass H.R. 4762, the Fair Investment Opportunities for Professional Experts Act, which would expand the definition of eligible “accredited investors” to allow more Americans to participate in the private capital markets.

Please contact Cameron Smith or Kelsey Wall with the Republican Policy Committee at (202) 225-4921 with any questions.

¹ Eva Su, Congressional Research Service, (R45308), *JOBS and Investor Confidence Act (House-Amended S. 4888): Capital Markets Provisions*, Sept. 7, 2018, available at

<https://www.crs.gov/Reports/R45308?source=search&guid=0c37bc7eba574e33891bd587b0a7d1c4&index=0>

² U.S. Census Bureau, “Statistics of U.S. Businesses: U.S. & States, totals,” at

<https://www.census.gov/data/tables/2016/econ/susb/2016-susb-annual.html>; and U.S. Census Bureau, “Nonemployer Statistics: Geographic Area Series: Nonemployer Statistics by Legal Form of Organization for the U.S. and States: 2016,” at <https://www.census.gov/data/tables/2016/econ/nonemployer-statistics/2016-nonemployer.html>.

³ FreshBooks, 2019: FreshBooks Third Annual Self-Employment in America Report, Apr. 10, 2019, at <https://www.freshbooks.com/press/annualreport>

⁴ Congressional Research Service, *Small Business Administration and Job Creation*, (R41523), Sept. 11, 2019, available at <https://fas.org/sgp/crs/misc/R41523.pdf>

⁵ MoneyTree Report Q1 2018, PwC/CB Insights, at

https://www.pwc.com/us/en/technology/assets/MoneyTree_Report_2018_Q1_FINAL.pdf.

⁶ Representatives Tim Ryan and Ro Khanna, Vox, “A whopping 80 percent of all venture capital investment goes to just three states. That has to change.” Mar. 20, 2018, <https://www.vox.com/2018/3/20/17136652/comeback-cities-tour-bus-midwest-investment-incubation-local-youngstown-detroit-flint-ryan-khanna>

⁷ Pub. L. No. 112-106

⁸ Remarks by SEC Chairman Jay Clayton, based on data from the Electronic Data, Gathering, Analysis, and Retrieval (EDGAR) system as of June 30, 2018. U.S. Securities and Exchange Commission, *Remarks on Capital Formation at the Nashville 36/86 Entrepreneurship Festival*, Aug. 29, 2018, available at https://www.sec.gov/news/speech/speech-clayton-082918#_ftn29

⁹ U.S. Securities and Exchange Commission, *Press Release: SEC Proposes to Update Accredited Investor Definition to Increase Access to Investments*, Dec. 18, 2019, available at <https://www.sec.gov/news/press-release/2019-265> and Federal Register, 17 CFR, *Concept Release on Harmonization of Securities Offering*, available at <https://www.sec.gov/rules/concept/2019/33-10649.pdf>

¹⁰ U.S. Const. art. I, § 8, cl. 3.