Commercial / Crowdfunding

NAR Committee:

Commercial Federal Policy Committee

What is the fundamental issue?

The Jumpstart Our Business Startups (JOBS) Act of 2012 eased various securities regulations to encourage more investment, including allowing non-accredited investors to engage in “crowdfunding” activities, and ultimately to increase opportunities for small businesses and startups.

"Crowdfunding" refers to the financing of an activity through the collective cooperation of people who pool their money or other resources, sometimes through a networking site on the internet. Crowdfunding has been in practice for some time before the JOBS Act was enacted, but now there are federal guidelines in place for many aspects of crowdfunding, including individual investment limits and controlling the way the funds are managed through a third-party platform. Crowdfunding is seen as a way to raise money for commercial real estate developments and many platforms have been created to allow accredited and non-accredited investors alike access to this.

I am a real estate professional. What does this mean for my business?

Crowdfunding could present an alternative funding stream to traditional lending sources for both residential and commercial buyers and sellers.

NAR Policy:

NAR policy support laws and regulations that ensure an adequate flow of capital for real estate purposes. NAR has no policy specific to crowdfunding at this time.

Opposition Arguments:

Opponents of proposed rules to implement the JOBS Act are split between whether the regulations were too relaxed or too restrictive in the balance between protecting the individual investor and creating a positive regulatory environment for crowdfunding to occur. Some critics argue that there is not enough federal oversight of the crowdfunding platforms and that the scheme is ripe for fraud, while others are concerned that too tight registration will stymie the development of crowdfunding as a source of funding for real estate projects.

Legislative/Regulatory Status/Outlook

Regulation A+, or Title III of the JOBS Act took effect in 2015. It is designed to increase capital-raising opportunities for small businessesby making it easier for small businesses to raise capital by removing many of the regulatory compliance hurdles previously in place. The new rules allow companies to raise up to $50 million under Regulation A, which is a less-complicated route in terms of compliance and administration, as the previous limit was $5 million.

The rule exempts companies using Regulation A from registration with state securities administrations. It also establishes two tiers of fundraising:

---Tier 1: up $20 million in a 12-month period, with not more than $6 million in offers by selling security-holders that are affiliates of the issuer

--- Tier 2: $20-$50 million - for offerings of securities of up to $50 million in a 12-month period, with not more than $15 million in offers by selling security-holders that are affiliates of the issue. Also subject to ongoing review.

Title IV of the JOBS Act was finalized in October 2015, effective January 2016. The highlights of the rule for Title IV include:

1. Investor/Investment Limits
    - Permit a company to raise a maximum aggregate amount of $1 million through crowdfunding offerings in a 12-month period;
    - Permit individual investors, over a 12-month period, to invest in the aggregate across all crowdfunding offerings up to:
      ---If either their annual income or net worth is less than $100,000, than the greater of: $2,000 or 5 percent of the lesser of their annual income or net worth.
      ---If both their annual income and net worth are equal to or more than $100,000, 10 percent of the lesser of their annual income or net worth; and
    - During the 12-month period, the aggregate amount of securities sold to an investor through all crowdfunding offerings may not exceed $100,000.
2. Companies that use a crowdfunding platform – Companies that rely on the recommended rules to conduct a crowdfunding offering must file certain information with the Commission and provide information to investors and the intermediary facilitating the offering. The information required is defined in the rule and is similar to what would be necessary for an audit or other financial reporting. There are ongoing reporting requirements for companies that have used a crowdfunding platform to complete a capital raise.
3. Crowdfunding Platforms - A funding portal would be required to register with the Commission on new Form Funding Portal, and become a member of a national securities association (currently, FINRA). A company relying on the rules would be required to conduct its offering exclusively through one intermediary platform at a time.

Current Legislation/Regulation (bill number or regulation)

None at this time.

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