



# Intrastate Crowdfunding

## 2014 National Conference of State Legislatures (NCSL) Legislative Summit

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# What is crowdfunding?

**KICKSTARTER**



**indiegogo**

**go fund me**



**ROCKETHUB**

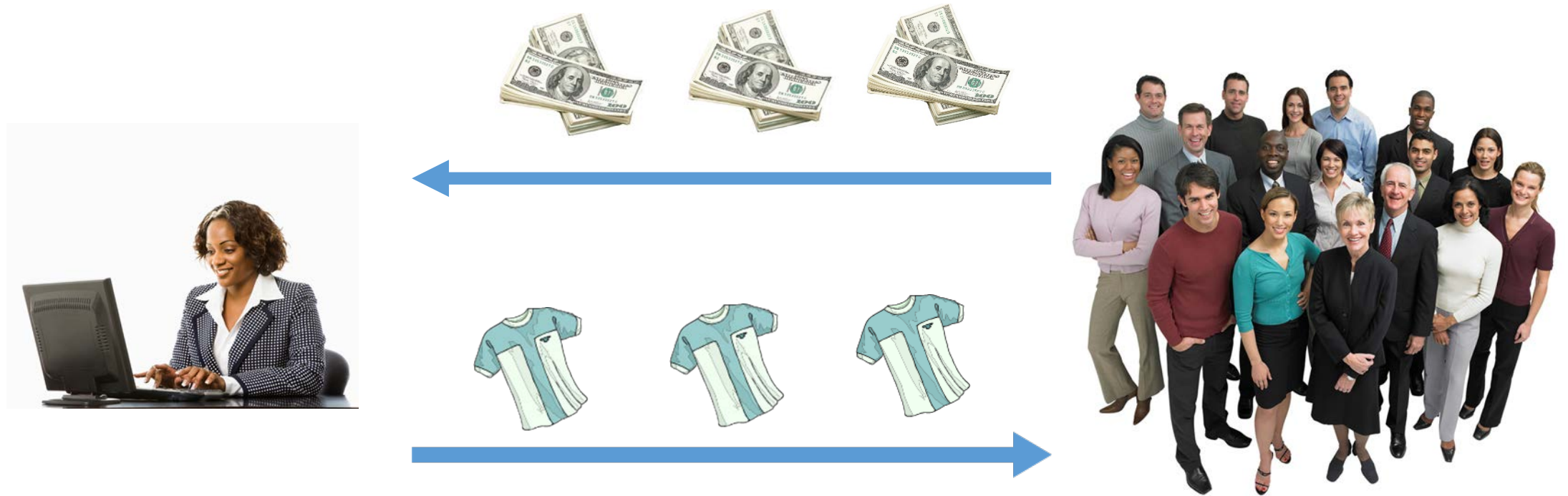
*The world's crowdfunding machine.*



**ROCK  
THE POST**

**KIVA**

# “Wisdom of the Crowd”



“Crowdfunding” is the collection of small amounts of money from a large number of people, and typically done online.

# You can give to your favorite cause and get a tee-shirt, but you cannot get a share of stock

- Why? Securities laws govern the issuance of stock. You can't invest in a company that hasn't registered their stock, or qualified for an exemption.
- Registration is designed to protect both investors and legitimate issuers. The challenge is balancing the interests of small businesses and entrepreneurs with investor protection.

*Thanks to a new federal law, this is changing...*

# Jumpstart Our Business Startups (JOBS) Act

Enacted on April 5, 2012

Title III: “Crowdfund Act”

*equity-based crowdfunding*

# Title III – Crowdfund Act

- A company can raise \$1 million during a 12 month period.
- An investor can invest up to \$2,000 in a 12-month period but no greater than \$100,000.
  - *The exact amount is determined by an investor's income and net worth.*
  - *Any person can invest; not limited to accredited investors.*
- Must be conducted through an intermediary, or website platform.
  - The platforms must be registered broker-dealers or a newly created entity call a “funding portal.”
  - A funding portal must register with the SEC and FINRA and cannot offer investment advice, solicit purchases, pay employees transaction-based compensation, or handle investor funds.
- Additional provisions: (i) 1 year limit on resale; (ii) restricted to U.S. based private companies; (iii) disqualifications for “bad actors”; and (iv) disclosure and reporting requirements for issuers and intermediaries.

# Can I invest in equity crowdfunding today?

Not yet, unless you invest on a local, or intrastate, basis.

States are finding creative ways to work within existing federal exemptions to create or expand state level exemptions that allow for intrastate crowdfunding.

Existing federal exemptions—Securities Act Section 3(a)(11) & Rule 147 (intrastate offerings), and Rule 504 of Regulation D.



# This all began in Kansas





## *Two Cases*

- 1) A local movie theatre needed funding, and a local business put up a sign that blew their exemption.
  - 2) A family-owned dairy farm sent an email to their local customers that blew their exemption.
- *In both cases the motives for investment were beyond profit.*
  - *Customers wanted to support a local business and receive a return.*
  - *Not unlike “crowdfunding.”*

# What is intrastate crowdfunding?

## ***Before the JOBS Act – IKE (Invest Kansas Exemption)***

- Purpose of Exemption: Accommodate community-based offerings, not broad-based internet offerings.
- The Challenge: Allow general solicitation without violating federal law.
- The Method: Build state crowdfunding exemption to coordinate with federal intrastate offering exemption.

# Conditions of Early Exemptions

- Tied to federal intrastate exemption; issuers and investors must be in-state.
- Offering cap of \$1 million per year.
- Investment limits of \$2,000 to \$10,000.
- Notice filing required, but no specific disclosure document mandated.
- No compensation of intermediaries unless registered as broker-dealers.
- Bad actor disqualification.

# *After the JOBS Act: Conditions of Exemptions*

- *New Feature in Exemptions: Internet!*
  - Internet-based offerings are allowed (and mandated in some states).
  - Compensation of internet platforms is allowed.
  - The platforms must notice file or are subject to “registration lite.”
  - Issuers must give short quarterly reports to investors.

# Potential Challenges for State Legislatures

1. If a state allows compensation of the internet platform, is federal broker-dealer registration required?
2. If an offering is conducted over the internet, will the SEC consider it to be an “intrastate” offering even if all purchasers reside in one state?
3. What types of notice filings and disclosure documents should be provided to investors?
4. What individual and total offering investment limits should apply?

# Takeaway?

If you are considering a state crowdfunding exemption, talk to your state securities regulator to craft a workable exemption.

