



The President's Jobs Council Has Some Good Ideas For Startups!

By StartUpAdmin

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Jobs, jobs, jobs! From Wall Street to the main street, people are rattling the rafters of the attic of the American economic pyramid, screaming for something to stimulate job growth. Among them the President's Jobs Council, which has made some great suggestions on changes that can be made in the law to create those jobs.

Although the Jobs Council is made up mostly of leaders from America's largest corporations and unions, in its interim report, the Council had some great recommendations for how to amp up the funding environment for startups.

The Interim Report provides a little bit of a breath of fresh air. I cheered when I read on page 2: "We need a sense of urgency and a bias for action." I couldn't agree more.

Reports, Bills, And Speeches

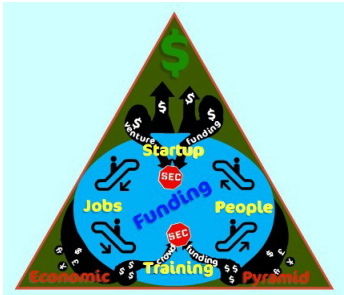
On September 8th of this year, [President Obama](#) stood in front of the Congress and made the plea for his jobs bill. He mentioned many facets:

- Boosting access to capital for high-growth companies
- Turning job-seekers into job-creators
- Unleashing innovation in wireless high-speed Internet
- Modernizing schools



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On October 10th, the President's Council on Jobs & Competitiveness issued an interim report on how to boost jobs. You can find the report on the Jobs Council's web site at www.jobs-council.com.

When it comes to startups, the Jobs Council had some key recommendations that I agree with (and have been an advocate of for some time). There were three recommendations in the Interim Report, in particular, that struck me as powerful for the startup community.

The Three Key Recommendations

In the words of the reports:

1. **Simplification** – “Clarifying that experienced and active seed and angel investors (and their meeting venues) should not be subject to the regulations that were designed to protect inexperienced investors.”
2. **Crowd funding** - “smaller investors be allowed to use ‘crowd-funding’ platforms to invest small amounts in early-stage companies.”
3. **Tax Credit** - “accredited angel group investors receive a 30% refundable tax credit.”

These are all wonderful recommendations. I think I have made them all on my blog from one time to another.

How to Make It Even Better

The Interim Report is off to a good start with the above three recommendations, but I think each needs to have some detail added so that it is better understood exactly what is being advocated.

The point that most intrigued me was point number one, although all of the points are extremely important to boosting investment into the startup community. When the Council states that it recommends clarifying that experienced and active seed and angel investors (and their meeting venues) should not be subject to the regulations that were designed to protect inexperienced investors, I hope they are saying that we should expand the definition of accredited investor and revise the general solicitation rules.

Accredited Investor Rules – The current definition of “accredited investor” for individuals includes either an income test or a net worth test for qualifying. Unfortunately, Dodd-Frank made the net worth standard harder to meet by not allowing the equity in a primary residence to count toward net worth. I welcome the Council's recommendation that the definition be revised to include a person who is experienced, despite



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not meeting the income or net worth qualifications. It will be key for implementation purposes that the state of being “experienced” be easily quantifiable or objectively determinable, because startup companies will not want to be in a position where someone claims they are “experienced” but, in hindsight, the company ends up being second-guessed in a lawsuit as to whether the investor’s original claim was well-founded because there is no statutory or regulatory presumption in the company’s favor. Of course, another helpful step would be to repeal Section 413 of Dodd-Frank, which made it harder to meet the net worth test.

General Solicitation Rules - I would also clarify point 1 by allowing “general solicitation” in all accredited investor offerings. There is a House Bill, HB 2490, under consideration that would do just this.

I believe this is what point 1 in the report is driving at. I believe the “regulations” referred to are the “accredited investor” definition and “general solicitation” prohibitions. However, I hope that the Jobs Council will revise and update these recommendations to make these points clear. I would also encourage the Council to recommend the repeal of Section 413 of Dodd-Frank.

Tax Credits — I have written about my agreement with point 3 before. The trouble with investing in startups is that when you buy stock, you can’t recover your basis in that stock until you dispose of it (or it becomes completely and totally worthless). This is the worst possible basis recovery mechanism available.

Crowd funding – The Council recommended that smaller investors be allowed to use crowd funding. This makes sense, as a practical matter, because at some level small amounts of money should not trigger onerous SEC rules and regulations. If the law opens up and allows crowd funding, it will probably prove to be a very powerful fund-raising tool for small businesses.

Crowd funding has been frowned upon by the SEC because it violates current rules, which the SEC is still enforcing. Yet, SEC Chair Mary Schapiro did suggest that crowd funding with limits of \$100 investments per investor up to \$100,000 would be acceptable. The President has suggested that a more appropriate amount would be as high as \$1,000,000. The U.S. House of Representatives has taken this further and proposed up to \$5M be allowed to be raised in less than \$10,000 increments. See Bill Carleton’s great blog post, at <http://www.wac6.com/wac6/2011/10/crowding-out-venture-with-crowdfunding.html>.

While it would be exciting to see crowd funding implemented in any form, I believe more powerful than allowing crowd funding would be to ease accredited investor definitions, allow “experienced” investors to qualify as accredited even if they don’t meet the financial requirements, and allow general solicitation in all accredited investor offerings.

Jobs-Bill and Startups

My hat is off to the Jobs Council in its recommendations. I hope that they update their Interim Report to add more specificity around some of their recommendations, however, so that it will be more likely these recommendations will become law.

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