Crowdfunding…not everyone's a fan.

Crowdfunding legislation has received a lot of support in Washington. Indeed, it might be the only thing that has united both political parties, the White House, and Congress. But is the legislation actually any good? Professor John C. Coffee of Columbia says no. The crowdfunding legislation passed by the House, he argues, is flawed and based on faulty understandings. Unfortunately, the Professor's arguments, while well reasoned, fails to take into account the reality entrepreneurs face, especially those seeking to raise money in their local community.

Is crowdfunding legislation a bunch of politician hot air?

Proposed crowdfunding legislation in the House and Senate are based around the expansion of the exemptions found in Regulation D and Regulation A. By expanding the exemptions, Congress and the White House hope to increase the ability of small companies to access capital. This is important because current regulations preclude many smaller companies from initial public offerings ("IPOs") to raise capital, making it more difficult for them to grow and hire new employees.

In spite of this wide spread support, Professor Coffee says the proposed legislation fails to achieve it's underlying goal to make capital accessible to drive job growth. Distilled to its core, Professor Coffee argues that "*even if these proposed exemptions are enacted, it is not clear that they will be extensively used*." And, it naturally follows, that if the exemptions are not used by companies, the legislation will fail to fuel job growth.

Where the Prof sees problems

The entire testimony by Professor Coffee can be read here. It's not too long, 15-pages, 18-pages with endnotes. To summarize Professor Coffee, however, there are two key arguments. First, the Professor Coffee argues that the small companies do not use or need to IPO below a certain amount ($50 million) because of a variety of factors unrelated to government regulations*; rather, systemic and economic factors are barriers to capital. Thus, legislation to decrease regulation fails to address the core problems.**

Professor Coffee then goes on to dissect H.R. 1070, H.R. 2930, H.R. 2940, highlighting what he believes will be their likely impact given the failure to address the real obstacles to capital. For instance, he is concerned that H.R. 1070 would eventually force the SEC to increase current ceilings under Rules 505 and 504, e.g. possibly allowing issuers to sell up to $50 million to unsophisticated investors; that because H.R. 2930 "expressly provides that securities could be sold by intermediaries who were not registered brokers-dealers, every barroom in America might come to be populated by a character, looking something like Danny DeVito, obnoxiously trying to sell securities to his fellow patrons"; and, H.R. 2940 is just badly written and open to an interpretation that would " permit the general solicitation of any person, not just accredited investors, who qualified as a purchaser under Section 4(2)."

Too much time in the classroom?

Professor Coffee raises some valid points, especially with respect to the misplaced rationale for crowdfunding initiatives. His critique of the House's proposed legislation, however, misses one crucial point: the need for issuers to offer securities to their local community in an efficient, economical, and confident manner. Presently, an issuer lacks any confidence under federal or state laws to offer securities. As a result, entrepreneurs are unable to leverage their own community to raise capital. Thus, while the legislation might not be perfect, the Professor appears to have missed the greatest opportunity, empowering communities to empower their own entrepreneurs. The proposed legislation creates a transparent system for entrepreneurs to go directly to their community to raise securities.

* Vanishing IPOs for companies raising less than $50 million, from 80% of all IPOs from 1991- 1997 to 18% in 2010.

**Professor Coffee, however, argues that overregulation, is not the problem. Rather, he cites four more plausible causes based on actual research, (1) "small IPOs have high fixed costs that make