

How to Make the Washington Crowdfunding Law Better

Washington State passed one of the first state-level equity crowdfunding laws in the nation in 2014, to great fanfare.

The regulations implementing the law went into effect November 1, 2014.

You can find a good summary of the rules at this link: <http://www.dfi.wa.gov/small-business/crowdfunding>

The trouble is--despite the rules being in effect now for almost a year, no one has used the law to raise money for a business.

Why? My belief is the law is too difficult to use. The law contains too many conditions and ongoing requirements.

Of course, the purpose of securities laws is to protect investors, as well as facilitate capital formation. But capital formation is not occurring.

I have some suggestions on how to make the law easier to use, so that it will actually be used. Here they are:

Do away with the escrow requirement for offerings under a certain size. Right now the law requires you to retain an escrow agent. The purpose of this requirement is to ensure that if you need to raise a certain amount of money before you can accomplish a business goal--e.g., buy a food truck--the securities regulators don't want investors who put in money before the minimum is hit to lose their money if the minimum is never hit. This makes sense when there is a true minimum to accomplish something, like buying a food truck.

But what if you are building a software product and you can literally get started building a minimum viable product with as little as \$25,000?

How about we change the law to not require an escrow for small offerings, say, \$250,000 or less?

Right now I believe the escrow requirement is a big impediment to the use of the law.

Oregon's law does not require the use of an escrow at all.

Do not require advance approval for offerings under a certain size. Right now you cannot proceed with your equity crowdfunding offering until the DFI approves your crowdfunding form.

Oregon does not require advance approval of its securities regulator to proceed. In Oregon, you file

your paperwork, and a week later you are ready to go--approved or not.

Why not adopt this approach in Washington for offerings not greater than \$250,000?

Do away with the public reporting of executive officer and director compensation.

Right now the Washington law requires public disclosure of executive officer and director compensation.

For a lot of companies, the idea of having to disclose executive and director compensation to the public at large is a non-starter.

The whole theoretical justification for disclosure like this to the public at large this falls away if you can't publicly advertise your offerings--which you really cannot do under the Washington law except very carefully without violating federal law.

So, I would recommend we require these disclosures to actual shareholders--but not the public at large.

Allow convertible debt to be sold under the law.

Convertible debt is one of the most popular ways for startups to raise capital. Yet the Washington crowdfunding law cannot be used for a convertible debt offering.

I would recommend we change this.

Allow the law to be used for real estate investments.

Wouldn't it be nice if you could buy partial interests in rental properties under the act?

Allow accredited investors to invest an unlimited amount of money.

The per investor limitation under the law makes sense for non-accredited investors, but not for accredited investors. Under the federal law, in Rule 506 offerings, an accredited investor can invest an unlimited amount of money. It seems to me that accredited investors ought to be able to invest any amount under the law.

But the broader point is this--we should take take a look at our crowdfunding law and make some modifications to it so that companies will use it.