

Frequently Asked Questions about using Oregon's Intrastate Offering (Crowdfunding) Exemption Jan. 23, 2015

Can my business use the crowdfunding rules?

The exemption was designed to allow most Oregon small businesses participate in crowdfunded securities offerings. Your business may qualify to use Oregon's crowdfunding exemption if all of the following apply:

- It is registered with the Oregon Secretary of State as a domestic (Oregon) business and has 50 or fewer employees.
- Its principal place of business is in Oregon.
- It only offers and sells stocks (equity in a business), notes (secured debt), and debentures (unsecured debt).

The exemption is not available for any of the following:

- Blank check companies (i.e., development stage companies with no specific business plan or purpose).
- Companies that are involved in petroleum exploration or production, mining, or any other extractive industries.
- Investment companies under Section 4 of the Investment Company Act of 1940.

These types of companies are more speculative and carry higher risks to investors and therefore require a higher level of review by regulators.

What do I need to do to use the exemption?

Your business must meet the requirements above and those detailed in the [rules](#). Specifically, you need to:

- Meet *in person* with a business technical service provider (BTSP) to review your business plan;
- File a notice with the Division of Finance and Corporate Securities at least seven days before advertising, offering, or selling any security. The notice must include a copy of your disclosure and advertising materials. It must also include specific information about your business, its owners and officers. See [Oregon Administrative Rule 441-035-0110](#) for the specific information needed.
- Offer and sell the securities in accordance with the requirements under Section 3(a)(11) of the Securities Act of 1933.

The division will have a form available soon that you can fill out and file with the division.

Can I still rely on this exemption even if I am not able to meet all of the requirements of this exemption?

No. This exemption is available only if you meet all of the requirements under the exemption. Failure to comply with all of the rules could result in a finding by the division that you sold unregistered securities. Penalties could be as high as \$20,000 per violation and result in you being unable to use the crowdfunding exemption (or other exemption to the securities registration) in the future.

The sale of unregistered securities can also result in sanctions by other criminal, state, or federal agencies, or in an investor lawsuit.

Remember, in a court case, **you** have the burden of proving that you met all of the requirements under the rule. We urge you to keep detailed records related to transactions under these rules.

How much can my business raise?

Businesses can raise up to \$250,000 in total funding under the crowdfunding rules. Businesses cannot raise more than \$2,500 from any one individual. Offers and sales of securities will be considered part of the same securities offering - even if they are not offered and sold explicitly in reliance on these rules - if all of the following apply:

- Sales are part of a single plan of financing.
- Sales involve the issuance of the same type of security.
- Sales are made at or about the same time.
- The sales were made for the same general purpose.

Generally, sales of securities made more than six months before or after sales under the crowdfunding rules will not be considered to be made under the crowdfunding rules.

How does this exemption differ from other ways of raising money?

There are a number of ways for small Oregon businesses to raise money through the offer or sale of securities. Other methods do not have total offering caps, individual investor limits, or restrictions on general advertising or solicitation and might be more suitable for your business. You should carefully consider how much funding you need for a specific product or expansion and whether this exemption is suitable for your needs.

Also remember that if you are trying to raise money through equity shares, you are selling ownership and control of your business. If you are offering a note or a debenture, you are committing to pay back the money with interest and under specific terms.

What is a business technical service provider and what will they do?

BTSPs are organizations that have been specifically organized to provide assistance to small businesses. The division has automatically approved the small business development centers and the economic development districts to act as BTSPs. A listing of small business development centers can be found at <http://www.bizcenter.org>. Oregon economic development districts can be found at <http://www.oedd.org>.

In addition, other nonprofit accelerators and incubators may apply to be BTSPs. So far, the division has not approved any of these entities to act as BTSPs, but anticipates doing so within the next 90 days.

Because the BTSP's mission is to provide assistance to small businesses, the division anticipates that BTSPs will provide guidance regarding business plans and information Oregon small businesses need to succeed. A BTSP is typically not a lawyer, securities broker-dealer, investment adviser, or an expert in securities law. It cannot give advice regarding the securities offering (unless it is specifically licensed to do so).

The rules require a business wanting to use the crowdfunding exemption to certify that a person responsible for the business has met with a BTSP and the BTSP has reviewed its business plan.

What is Section 3(a)(11) of the federal Securities Act of 1933?

Like Oregon securities law, federal securities law requires most investment securities to be registered before they can be offered or sold. And, like Oregon law, the federal securities law creates certain exemptions from registration if the issuer follows all the terms of the exemption.

Section 3(a)(11) of the Securities Act of 1933 is an exemption to the securities registration requirements under the federal securities law for securities sold within a state to residents of that state. This is why the crowdfunding exemption in Oregon is only available to Oregon residents. The Securities and Exchange Commission (SEC) adopted Rule 147, which provides a non-exclusive safe harbor under Section 3(a)(11). Under Rule 147, an Oregon business is "resident and doing business" in Oregon if all of the following apply:

- It is incorporated or organized under Oregon law.
- It derives at least 80 percent of its gross revenues during its most recent fiscal year prior to the offering from the operation of its business in Oregon.
- At least 80 percent of the issuer's assets at the end of its most recent semi-annual period prior to the offering are located in Oregon.
- The issuer intends to use at least 80 percent of the net proceeds of the offering in connection with the operation of its business in Oregon.
- The issuer's principal office is located in Oregon.

Oregon's Intrastate Offering Exemption was designed to promote compliance with the federal Securities Act, and specifically Section 3(a)(11). The rules require that the offer and sale of crowdfunding securities be conducted in accordance with the requirements under Section 3(a)(11). Because of the federal requirements, strict compliance with the state rules is important.

Can I engage in general advertising or solicitation of my securities?

Under SEC interpretations of Rule 147, the issuer of a security may engage in general advertising, or solicitation, if it is made only to residents of Oregon.

In order to ensure that businesses comply with that requirement, Oregon's crowdfunding rules require that before engaging in any general advertising or solicitation, an issuer (or a third-party platform advertising on behalf of an issuer) ***obtain an "affirmative declaration" from an interested investor that the investor is an Oregon resident.*** Such "affirmative declaration" can be accomplished by requiring an interested person provide his or her ZIP code or check a box on a webpage stating "I am an Oregon resident" before viewing any advertising materials.

Advertising under the rules is limited to no more than the following information:

- The name and contact information for the issuer.
- A brief description of the general type of business of the issuer.
- Whether the securities being offered are stock, notes, debentures, or a combination.
- The total offering amount.
- A brief description of how the issuer will use the funds.
- The duration of the crowdfunding offering and the funding deadline.

- The issuer's logo.
- A link to the issuer's website or third-party platform in which the securities will be offered or sold and required disclosures made available.

The definition of "offer" under the federal and Oregon securities law is broad. Offers can include statements meant to "condition the public mind" or "arouse public interest in" a securities offering. In other words, promoting investment in your business, even if you are not expressly "offering" your securities. Be careful about what public statements you make during the period you are offering and selling securities in reliance on this exemption.

Can I use the Internet to advertise, offer, and sell my securities?

Securities can be advertised on an issuer's website or through a third-party platform's website. The circumstances under which an issuer or third party may advertise through the Internet are specific. Because federal securities law governs registration and sales of securities, issuers must make sure to sell their securities in accordance with the requirements of the crowdfunding rules **and** Section 3(a) (11) of the Securities Act. We urge you to read the rules carefully before advertising, offering, or selling securities over the Internet.

Businesses that want to offer securities through their website must remember that the offer and sale can only be made to Oregon residents and that a prospective investor must make an "affirmative declaration" before viewing any advertising or offering materials. This means that businesses cannot advertise or offer securities on webpages that can be viewed by everyone around the world. Businesses must use a separate webpage on their website that requires interested people to affirmatively declare that they are an Oregon resident before being able to view the page with the material that advertises or offers the security. A business can include a link to the Oregon-only webpage on its general website for interested Oregonians to follow to "learn more about supporting this business" or "to learn more about investing in this business."

Because of the definition of "offer" is broad, businesses are encouraged to include only factual information about themselves on the generally accessible sections of their website. Under state and federal law, "forward looking statements," such as talking about future development, product lines, or long-range plans, could be considered an offer to sell securities under Section (3)(a)(11) and should be made only to Oregonians if you are seeking to use the crowdfunding exemption.

Businesses can also post their advertising and offering materials on a website that is hosted by a third-party platform provider. Such third-party platforms may be used to post disclosures and advertisements, but they may not act as investment advisors or broker-dealers (unless they are specifically licensed to do so). This means that they cannot endorse specific businesses or securities offerings on their platform. The third-party platform provider must also ensure that prospective investors have provided some sort of affirmative declaration that they are an Oregon resident before viewing any advertising or offering materials. Third-party platforms may charge issuers a nominal fee for hosting a platform.

While an individual business can sell its securities on an "Oregon only" portion of its website, a third-party platform cannot sell securities unless it is a licensed broker-dealer.

If a website collects financial or personal information about prospective investors, it must take steps to ensure that information is kept secure and private.

How can I receive payment from investors for securities I am offering?

There are a number of options for selling crowdfunded securities over the Internet (you can also sell your securities in person). An issuer can use its own website to sell its own securities under the exemption or it can use a third-party licensed money transmitter to accept payment. While a BTSP cannot handle investor funds (unless it is a licensed money transmitter), a BTSP can also redirect investor funds through a licensed money transmitter.

The rules require that an issuer of a crowdfunded security have a reasonable basis for believing that a purchaser is an Oregon resident. If you use the Internet to sell your securities, you will need to be able to accommodate investors uploading or otherwise sending you documentation demonstrating that they are an Oregon resident before a sale.

Remember, if you accept payment or collect personal information over the Internet, you have a duty to take steps to make sure the information is kept private and secure.