

Why GAO Did This Study

Businesses seeking to use public offerings of securities to raise capital must comply with federal and state securities laws. Businesses must register offerings with SEC unless they qualify for an exemption. Regulation A exempts a securities offering that does not exceed \$5 million from SEC registration if certain requirements are met. However, businesses still must file an offering statement that includes an offering circular and financial statements with SEC, and SEC staff review filings for consistency with applicable rules and accounting standards. In addition, Regulation A does not exempt offerings from states' registration requirements, which are also intended to protect investors. Concerned about the decline in the number of public offerings, the JOBS Act requires SEC to amend Regulation A (or to adopt a new regulation) to raise the threshold for use of that registration exemption from \$5 million to \$50 million, and requires GAO to study the impact of state securities laws on Regulation A offerings. This report examines (1) trends in Regulation A filings, (2) how states register Regulation A filings, and, (3) factors affecting the number of Regulation A filings and how the number of filings may change in the future. GAO analyzed SEC data related to financial regulatory filings, reviewed published research, and interviewed academics, SEC staff, state securities regulators, and small businesses. SEC and NASAA provided technical comments on a draft copy of this report, which GAO incorporated as appropriate. In its letter, NASAA concurred with our finding that multiple factors have influenced the use of Regulation A.

View [GAO-12-839](#). For more information, contact A. Nicole Clowers at (202) 512-8678 or clowersa@gao.gov

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SECURITIES REGULATION

Factors That May Affect Trends in Regulation A Offerings

What GAO Found

The number of Regulation A offerings filed and qualified (that is, cleared) by the Securities and Exchange Commission (SEC) has declined significantly after peaking in fiscal years 1997 and 1998, respectively. In particular, offerings filed since 1997 decreased from 116 in 1997 to 19 in 2011. Similarly, the number of qualified offerings dropped from 57 in 1998 to 1 in 2011. Securities attorneys GAO interviewed suggested that the decrease in filings after 1997 could be attributed to a number of factors, including the increased attractiveness of Regulation D. The National Securities Markets Improvement Act of 1996 preempted state registration requirements for other categories of securities including certain Regulation D offerings, which are also exempt from SEC registration. In contrast, Regulation A offerings are generally subject to state securities laws and must go through a federal filing and review process. In recent years, businesses have used Regulation D and registered public offerings to a greater extent than Regulation A.

States' methods for registering and reviewing securities vary. One method used by states is "registration by qualification," which is similar to registering securities with SEC, as issuers are required to submit certain documents to the responsible state securities agency for review and approval. All states conduct disclosure reviews of the Regulation A offerings, meaning that they ensure that all material information is disclosed in the offering. According to the North American Securities Administrators Association (NASAA) officials, most states additionally conduct a merit review—an analysis of the fairness of the offering to investors—although some states use stricter standards in their merit reviews than others. NASAA officials have encouraged states to take steps to streamline their requirements and make them more uniform, including adopting a standard form for registering securities. NASAA plans to work with states to determine what changes in their registration methods will be needed in light of the Jumpstart Our Business Startups Act (JOBS Act).

Multiple factors appear to have influenced the use of Regulation A and views vary on whether raising the offering threshold will increase its use. The factors included the type of investors businesses sought to attract, the process of filing the offering with SEC, state securities laws, and the cost-effectiveness of Regulation A relative to other SEC exemptions. For example, identifying and addressing individual state's securities registration requirements can be both costly and time-consuming for small businesses, according to research, an organization that advocates for small businesses, and securities attorneys that GAO interviewed. Additionally, another SEC exemption is viewed by securities attorneys that GAO met with as more cost-effective for small businesses. For example, through certain Regulation D filings small businesses can raise equity capital without registering securities in individual states, as long as other requirements are met. State securities administrators, a small business advocate, and securities attorneys with whom GAO met had mixed views on whether the higher maximum offering amount (\$50 million) under the JOBS Act would lead to increased use of Regulation A. For example, some thought that the higher threshold could encourage greater use of Regulation A, while others told us that many of the factors that have deterred its use in the past likely will continue to make other options more attractive.