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DEPARTMENT OF FINANCIAL INSTITUTIONS
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Small Business Economic Impact Statement

Chapter 460-99C WAC
Crowdfunding

August 12, 2014

Introduction

This Small Business Economic Impact Statement has been prepared in connection with the crowdfunding rules drafted by the Department of Financial Institutions, Securities Division (“Securities Division”) to implement the Washington Jobs Act of 2014 (codified at RCW 21.20.880 through RCW 21.20.886).

The Washington Jobs Act of 2014 (“Washington Jobs Act”) created a new exemption from securities registration designed to assist Washington start-up companies in accessing capital through crowdfunding offerings. A “crowdfunding” offering is an equity offering that raises capital from many investors who contribute relatively small amounts. The exemption will be available for offerings of up to \$1 million in a 12-month period for companies based in Washington and selling to Washington residents. As provided in the Washington Jobs Act, the Director of the Department of Financial Institutions must adopt rules before securities issuers may use the new exemption.

Summary of Cost Reduction Measures

As detailed in this Small Business Economic Impact Statement, the Securities Division gathered information on the possible economic impact of the draft crowdfunding rules. In response to the small business economic impact survey, and in response to comments received from interested persons, the Securities Division made changes to the initial draft of the crowdfunding rules. These changes were designed to reduce costs for securities issuers using the crowdfunding exemption. These changes include the following:

- The Securities Division eliminated the requirement in draft WAC 460-99C-040 that issuers submit a legal opinion letter with the exemption filing made with Division;
- The Securities Division revised draft WAC 460-99C-030 to allow offerings of convertible preferred stock to use the crowdfunding exemption;

- The Securities Division revised the advertising rule in draft WAC 460-99C-250 to state that certain types of advertisements, such as tombstone advertisements, do not need to be filed with the Securities Division;
- The Securities Division revised draft WAC 460-99C-180 to eliminate the requirement that the issuer provide quarterly financial statements prepared in accordance with U.S. GAAP. Instead, the issuer must provide an annual financial statement; and
- The Securities Division revised the investor cancellation provisions in draft WAC 460-99C-120 to remove the requirement that investors reaffirm their investments within seven days of notification of a material change in the issuer. Investors still must be notified of material changes and have the right to cancel their investments until such time as the minimum offering amount has been raised; however, their investments will not be subject to automatic cancellation.

In addition, when the crowdfunding rules are adopted, the Securities Division will take steps to educate the public regarding the exemption. The Securities Division will develop a Frequently Asked Questions (FAQ) publication that will address compliance matters raised during the rulemaking process. The Securities Division may also conduct presentations and provide information on its website concerning the crowdfunding exemption. The Securities Division anticipates that these measures may help reduce compliance costs for issuers and portals. However, as discussed in this Small Business Economic Impact Statement, the Securities Division does not believe that additional cost reduction measures are feasible.

Procedural Background

The Washington Jobs Act was passed by both houses of the legislature in early March 2014 and signed by governor on March 28, 2014. On March 13, 2014, the Washington Securities Division filed a CR-101 Preproposal Statement of Inquiry with the Code Reviser's Office stating that the Securities Division was commencing the process to adopt rules to implement the Washington Jobs Act.

The Securities Division subsequently prepared draft rules and a draft Washington Crowdfunding Form which were distributed to interested persons in a mailing on June 9, 2014. At the same time, the Securities Division conducted an electronic survey of small securities issuers, state registered broker-dealers, Port Districts, Local Associate Development Organizations, and other interested persons located in Washington to determine the potential economic impact of the rulemaking.

Since that time, the Securities Division has made certain changes to the draft rules in response to feedback received from interested persons. The Securities Division now intends to proceed with the rulemaking process by formally proposing the draft crowdfunding rules in a CR-102 filing with the Code Reviser.

Summary of Crowdfunding Rules

The rulemaking would create a new chapter at 460-99C WAC consisting of 25 rules pertaining to the new crowdfunding exemption created by the Washington Jobs Act. At the same time that the Securities Division drafted the crowdfunding rules, the Securities Division developed a draft Washington Crowdfunding Form which will serve as both the exemption application form and the disclosure document for the offering.

The rules define key terms, mandate the use of the Washington Crowdfunding Form, and describe the procedures for making an initial exemption filing, a renewal filing, or an amended filing. In addition, the rules address recordkeeping requirements, the optional role of “portals” in assisting with crowdfunding offering, and the various the restrictions on crowdfunding offerings under the Washington Jobs Act and Section 3(a)(11) of the Securities Act of 1933 and Rule 147 adopted thereunder. Finally, the Securities Division developed certain rules, such as cancellation provisions and bad actor disqualification rules, to ensure a basic level of investor protection. The crowdfunding rules are described in greater detail below.

Filing Procedure

As a preliminary matter, the Securities Division determined that it would be helpful to issuers if the Securities Division drafted self-contained crowdfunding rules. As part of this, the Securities Division created several rules which reiterate key sections of the Washington Job Act so that issuers do not need to refer to both the rules and the Washington Jobs Act. Therefore, at WAC 460-99C-060 the Securities Division restates RCW 21.20.880(1) which provides that a filing must be declared exempt by the director before the issuer can offer or sell securities in reliance on the crowdfunding exemption. In WAC 460-99C-070, the Securities Division specifies that the exemption period will last for one year, at which time the issuer can renew the offering for one additional 12-month period. WAC 460-99C-260 sets the filing fee for an initial filing at \$600 and the renewal filing fee at \$100. These provisions are similar to filing procedures for other registration and exemption options in Washington.

Because the crowdfunding exemption is a new exemption, the Securities Division needed to develop a filing procedure for the exemption. To that end, WAC 460-99C-040 specifies the documents that an issuer must submit with the application, including a completed Washington Crowdfunding Form, financial statements prepared in accordance with U.S. GAAP, the articles of other charter documents for the issuer, the bylaws or operating agreement for the issuer, an escrow agreement for the impound of the minimum offering amount, a filing fee, and a copy of advertisements to be used with the offering.

The Securities Division developed the Washington Crowdfunding Form to serve as the disclosure document for crowdfunding offerings. Pursuant to WAC 460-99C-050, the issuer must provide the most recent version of the Washington Crowdfunding Form to all investors a reasonable time prior to the sale of the securities to that investor. Meanwhile, WAC 460-99C-090 specifies that while the offering is ongoing, the issuer must file an amended Washington Crowdfunding Form with the Securities Division at least annually, and at any time there is a material change that would affect the accuracy of the Form. The amended Washington

Crowdfunding Form must be declared exempt prior to its use. Issuers seeking to renew their exemption must follow the renewal filing procedure outlined in WAC 460-99C-100.

Mechanics and Limitations of the Offering

The Securities Division drafted several rules regarding the mechanics of the crowdfunding exemption. First, the Washington Jobs Act imposed limitations on the amount an investor can invest in crowdfunding offerings, calculated based on either the investor's net worth or annual income. The Securities Division restated these limitations at WAC 460-99C-150, and added information regarding how to determine an investor's net worth or annual income. Second, the legislature designed the Washington Jobs Act crowdfunding exemption to be conducted in conjunction with the federal intrastate offering exemption under Section 3(a)(11) of the Securities Act of 1933 and Rule 147 promulgated thereunder. In accordance with Rule 147, securities offered under the crowdfunding exemption may only be sold to Washington residents and resale is restricted for 9 months following the end of the offering. In addition, the Washington Jobs Act imposes its own restrictions by limiting resale of the securities for one year following the date of sale. These restrictions are incorporated into the rules at WAC 460-99C-170 and WAC 460-99C-160. Finally, the Securities Division drafted an integration provision at WAC 460-99C-200 to provide guidance on when a securities offering may be considered integrated with a prior offering.

Given the nature of the crowdfunding exemption and its simplified disclosure document, the Securities Division determined that not all types of offerings may be appropriate for the crowdfunding exemption. The Washington Jobs Act states that the crowdfunding exemption is intended "to facilitate investment by Washington residents in Washington start-ups" and "to provide Washington businesses and investors the opportunity to benefit from equity crowdfunding." Because start-up companies typically do not have the past earnings to support a debt offering, the Securities Division drafted WAC 460-99C-030 to state that debt offerings may not use the exemption. The Securities Division also states in WAC 460-99C-030 that the exemption is not available to portfolio companies, blind pools, holding companies, and other types of offerings that would not be able to provide adequate disclosure using the Washington Crowdfunding Form, and would typically not be able to accomplish their purpose in offerings of less than \$1 million.

Under the Washington Jobs Act, a crowdfunding offering must specify a minimum target offering amount which must be met before the escrow agent will release any offering proceeds to the issuer. WAC 460-99C-110 states that the minimum target offering amount must be raised in a period no longer than twelve months from the date the offering is declared exempt by the Securities Division. WAC 460-99C-020 defines who can act as an "escrow agent" and WAC 460-99C-130 specifies the requirements for contents of the agreement with the escrow agent. These requirements are consistent with the requirements for other types of securities offerings.

Recordkeeping Requirements

To help ensure that issuers comply with the limitations under the Washington Jobs Act, the Securities Division drafted WAC 460-99C-140 which requires that the issuer obtain evidence of residency and a signed copy of the Investor Certification and Acknowledgment form from each investor prior to accepting funds. The Investor Certification and Acknowledgment form is a page included in the Washington Crowdfunding Form which outlines the residency requirements, resale restrictions, and aggregate investment restrictions on the securities offered under the crowdfunding exemption. The rule at WAC 460-99C-160 provides a helpful non-exclusive list of documents that will be considered prima facie evidence of residency in Washington.

The Securities Division drafted a rule at WAC 460-99C-190 which requires the filing of a final sales report at the close of the offering. The final sales report must contain the number of securities sold, the dollar amount of securities sold, and the number of investors. This requirement is consistent with sales report requirements for other types of securities offerings.

The Securities Division also drafted a books and records rule at WAC 460-99C-240 which states that issuers using the exemption must keep and maintain physical or electronic records relating to offers and sales of securities under the exemption. The records to be kept include the Washington Crowdfunding Form and exhibits thereto, evidence of residency of investors, the Investor Certification and Acknowledgment form for each investor, a final sales report, and all quarterly reports and communications with investors. The director may access or inspect any of the above records.

Portals

The Washington Jobs Act allows “portals” to assist issuers in preparing and filing the Washington Crowdfunding Form with the Securities Division. The Washington Jobs Act states that Local Associate Development Organizations, Port Districts, and any organization that qualifies under rules adopted by the Securities Division may act as portals. The Securities Division decided to expand who can act as a portal and therefore included broker-dealers registered in the State of Washington in the definition of “portal” in WAC 460-99C-020.

The Securities Division also drafted WAC 460-99C-210 to address the activities of portals. This rule restates provisions from the Washington Jobs Act regarding the services that a portal may provide to an issuer, and the specific information that a portal must obtain from an issuer before providing those services. The rule then creates certain prohibitions on the activities of portals. The prohibited activities include providing investment advice unless registered as an investment adviser, soliciting purchases or sales of securities unless the portal is a registered broker-dealer, providing compensation for the solicitation of sales unless the portal is a registered broker-dealer, handling investor funds or securities or otherwise acting as an escrow agent, or engaging in underwriting or other activity that involves purchasing securities for the purpose of distribution. The prohibited activities rule alerts portals that certain activities related to securities offerings may require registration, and a portal cannot rely on the crowdfunding exemption when acting in those capacities.

Investor Protection

Finally, the Securities Division drafted several rules designed to protect the investing public. The Washington Jobs Act requires that issuers provide quarterly reports to investors for as long as the securities are outstanding. Under the statute, the quarterly reports must include executive officer and director compensation and a brief analysis by the management of the issuer of the business operations and financial condition of the issuer. The Securities Division added in WAC 460-99C-180 that the quarterly report must include the names of the issuer's officers, directors, and managing members, and the owners of twenty percent or more of a class of outstanding securities. In addition, the Securities Division specified that the issuer must provide its annual financial statement prepared in accordance with U.S. GAAP in the quarterly report for the quarter following the end of issuer's fiscal year. This additional information will give investors a better picture of the current financial condition of the company, and will alert them to any changes in management.

The Securities Division added another protection for investors by creating an investor right of cancellation at WAC 460-99C-120. This provision allows investors to cancel their investments until the minimum target offering amount has been raised. The provision also states if there has been a material change to the terms of the offering or to the information provided by the issuer prior to the minimum being raised, the issuer must provide a notice of the change and of the issuer's right to cancel.

As instructed by the Washington Jobs Act, the Securities Division also drafted a bad actor disqualification rule at WAC 460-99C-220 which is substantially similar to the Regulation D Rule 506 bad actor disqualification provisions. These provisions prohibit the issuer from using the crowdfunding exemption if the issuer, or its promoters, officers, and twenty percent or greater owners of the voting equity of the company have engaged in prior bad acts such as violating securities laws.

Finally, the Securities Division drafted WAC 460-99C-230 which states that issuers who have previously used the crowdfunding exemption but who have been non-compliant with the quarterly reporting requirement in the two previous years are ineligible to conduct a new offering under the crowdfunding exemption. This disqualification provision is intended to ensure that issuers using the exemption comply with the quarterly reporting requirements envisioned by the statute.

Need for Economic Impact Statement

The Regulatory Fairness Act at RCW 19.85.030 provides that an agency shall prepare a small business economic impact statement if the rules it is proposing would impose more than minor costs on businesses in an industry. Minor costs are defined by RCW 19.85.020 as a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whatever is greater; or one percent of annual payroll.

The new crowdfunding exemption will be available to issuers as one of many available offering options. Companies choosing to conduct a securities offering might alternately elect to register

the securities, to utilize a federal exemption from registration which preempts state securities laws, or to use other existing state exemptions. Unlike licensed businesses that are subject to ongoing oversight by the Securities Division due to the nature of their business activities, such as investment advisers and broker-dealers, no person will be subject to the costs of the crowdfunding exemption unless he or she elects to use the crowdfunding exemption over other offering options. As such, it is unclear whether the crowdfunding exemption and any costs associated with it can properly be said to be “imposed” on issuers in accordance with RCW 19.85.030.

Regardless, the crowdfunding rules drafted by the Securities Division may create additional costs because certain requirements were added to the requirements set forth in the Washington Jobs Act. Therefore, the Securities Division has determined that a small business economic impact may be required for this rulemaking.

Small Business Economic Impact Survey

In order to gather the information to prepare a Small Business Economic Impact Statement, RCW 19.85.040 provides that an agency may survey a representative sample of affected businesses to assist in the accurate assessment of the costs of a proposed rule. To that end, the Securities Division prepared an electronic Small Business Economic Impact Survey to survey businesses who may be impacted by the rulemaking.

Survey Pool

As indicated above, the crowdfunding exemption is one of numerous exemptions from registration available under the Securities Act of Washington. The Securities Division does not know in advance who might decide to conduct an offering under the crowdfunding exemption. As a result, the Securities Division had some difficulty determining who should be surveyed. Ultimately, the Securities Division compiled a survey pool that is described below.

Following the passage of the Washington Jobs Act, the Securities Division began maintaining a list of persons who had contacted the Division and expressed interest in receiving updates regarding the crowdfunding exemption. At least some of these persons had expressed an interest in using the exemption. The 25 persons on this list were included in the survey pool. Next, the Securities Division ran a search of its database to compile a list of companies that made registration filings during the past five years for offerings of securities of not more than \$1 million. The Securities Division also ran a search to identify issuers based in Washington who had made exemption filings for offering of \$1 million or less in the past year. The Securities Division reasoned that these groups of issuers might be likely to raise funds using the crowdfunding exemption (which is limited to offerings of not more than \$1 million) and therefore included them in the survey pool. Altogether, these two groups consisted of 313 issuers.

In addition, because the Washington Jobs Act stated that Local Associate Development Organizations and Port Districts could act as portals, the Securities Division included all 36 Local Associate Development Organizations and 75 Port Districts in Washington in the survey

pool. The Securities Division expanded the definition of portal in the draft rules by stating that registered broker-dealers could also act as portals. Therefore, the Securities Division included in the survey pool all broker-dealers registered and located in Washington, plus 10% of broker-dealers registered in Washington but located out of state. At the time of the survey, the Securities Division had 1922 registered broker-dealers, of which 50 were located in Washington. Finally, the Securities Division posted a link to the electronic survey in the crowdfunding section of our rulemaking website (<http://dfi.wa.gov/sd/rulemaking.htm>) so that any interested persons who did not otherwise receive the survey could take the survey.

Description of Survey Process

On June 9, 2014, the Securities Division sent a letter by e-mail to every person in the above-described survey pool. If a person or entity in the survey pool did not have an email address on file, the Securities Division sent a hard copy of the letter by regular mail. The letter contained a link to an online survey, and included a copy of the draft rules and the draft Washington Crowdfunding Form. The letter explained the reasons for conducting the survey and requested that recipients complete the survey by accessing the link provided.

The online survey consisted of 31 questions. Each substantive question in the survey focused on a draft rule and provided a background statement briefly explaining the rule. The survey asked whether a particular rule would cause increased costs. The survey then requested information on the increased costs of professional services, equipment, supplies, labor, and administrative expenses associated with that rule. Each question also allowed a free form response for survey takers to explain any additional costs. In addition, the survey gathered data on the number of employees each survey respondent had, and asked whether the rulemaking as a whole would cause a loss of revenue or the loss or addition of any jobs.

The survey period lasted from June 9, 2014 until July 5, 2014. The Securities Division received 64 unique responses, however not every person who began the survey completed the survey. Of the respondents, 56 were small businesses as defined by RCW 19.85.020(3) of the Regulatory Fairness Act because they had less than 50 employees.

At the same time that the survey was sent to the survey pool, the Securities Division sent the draft rules and draft Washington Crowdfunding Form to the 361 persons on its interested persons list for securities rulemakings. The Securities Division considered comments received from this group along with the survey results in evaluating whether to make changes to the initial rules draft.

The results of the survey are discussed below.

REQUIRED ELEMENTS OF SMALL BUSINESS ECONOMIC IMPACT STATEMENT

A brief description of the reporting, record keeping, and other compliance requirements of the proposed rules and of the kinds of professional services that a small business is likely to need in order to comply with the requirements. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, and increased administrative costs.

The draft rules cover a variety of topics concerning reporting, recordkeeping, and other compliance requirements pertaining to the crowdfunding exemption. The rules create recordkeeping requirements; establish the procedures for making an initial exemption filing, a renewal filing, or an amendment filing with the Securities Division; and specify that financial statements must be prepared in accordance with U.S. GAAP.

The rules create a requirement to retain certain records relating to the offering for at least six years following the termination of the offering. These records may be retained in paper or electronic format, and issuers may incur expenses relating to the storage of these records. In addition, the rules expand the quarterly reporting requirements envisioned by the Washington Jobs Act by providing that an annual financial statement prepared in U.S. GAAP format must be provided to investors at least once per year. Issuers may incur expenses in the preparation, review, and distribution of the financial statements.

The rules specify the materials that must be included with the initial application for the exemption, including the completed Washington Crowdfunding Form and exhibits. In addition, the issuer must file an amendment of the Washington Crowdfunding Form whenever there are material changes in the company that would render the disclosures in the form inaccurate. Issuers will be required to spend time carefully completing the Washington Crowdfunding Form and reviewing it on a regular basis to ensure that it is accurate and not misleading. The issuer may incur expenses relating to the preparation, review, filing, and distribution of Washington Crowdfunding Form.

Though not required by the rules, issuers may choose to hire professional accounting services for assistance with preparing their financial statements in accordance with U.S. GAAP to comply with the filing requirements. In addition, issuers may choose to hire legal or other professional services to create or revise the Washington Crowdfunding Form, the exhibits to the Form, quarterly reports, a final sales report, advertisements, and other documents and agreements needed in connection with the offering. Issuers may also consult professional services for advice on establishing systems or methods to ensure compliance with the reporting and disclosure requirements of the crowdfunding rules.

In addition, the rulemaking may have an economic impact on issuers using the exemption in the form of increased equipment, supplies, labor, and administrative costs. These costs may relate to postage and other mailing costs, copying expenses, computer or software expenses, and expenses associated with recordkeeping and record retention. The rulemaking may result in issuers hiring additional employees to ensure compliance. Portals that choose to assist issuers with crowdfunding offerings may also incur expenses relating to the services they provide and may

subsequently elect to hire additional employees. Issuers who choose to use the services of portals may be required to pay service fees charges by the portals.

Survey Results

The Securities Division surveyed interested persons to determine whether the requirements added in the rulemaking would add costs to their business. The survey provided a summary of each rule that created additional requirements, and asked whether the requirements would create any additional costs. The following chart provides the results to these initial questions.

Whether Rule Will Create Additional Costs		
<u>Rule Provision</u>	<u>Yes</u>	<u>No</u>
WAC 460-99C-020 – Definitions	35%	65%
WAC 460-99C-030 – Availability	11%	89%
WAC 460-99C-040 – Filing Requirements	43%	57%
WAC 460-99C-050 – Information Requirements	31%	69%
WAC 460-99C-090 – Amendments/Material Changes	30%	70%
WAC 460-99C-100 – Renewal Filing Requirements	22%	78%
WAC 460-99C-110 – Minimum Offering Amount	18%	82%
WAC 460-99C-120 – Cancellation	22%	78%
WAC 460-99C-130 – Escrow Agreement	21%	79%
WAC 460-99C-140 – Issuer Compliance with Investment Limitations	24%	76%
WAC 460-99C-150 – Aggregate Investment Limitations	23%	78%
WAC 460-99C-180 – Quarterly Reporting Requirements	33%	68%
WAC 460-99C-190 – Final Sales Report	23%	78%
WAC 460-99C-200 – Integration	18%	83%
WAC 460-99C-210 – Activities of Portals	15%	85%
WAC 460-99C-220 – Bad Actor Disqualification	5%	95%
WAC 460-99C-230 – Disqualification Based on Reporting Failures	5%	95%
WAC 460-99C-240 – Books and Records	21%	79%
WAC 460-99C-250 – Advertising	23%	77%
WAC 460-99C-260 – Filing Fees	36%	64%

Where the survey takers indicated that a draft rule would create additional costs, the survey requested information regarding the increased costs of professional services, equipment, supplies, labor, and administrative expenses attributable to each rule. Each survey taker provided information regarding its number of employees, which allowed the Securities Division to calculate the average cost per employee for each survey respondent. The costs per employee were then averaged together to provide an average cost increase per employee for each rule.

The following chart provides the average cost increase per employee for each rule for all survey respondents.

Average Cost Increase Per Employee (All Respondents)					
Rule Provision	Prof'l Services	Equipment	Supplies	Labor	Admin
WAC 460-99C-020	\$ 506.19	\$ 3.10	\$ 1.61	\$ 250.82	\$ 277.25
WAC 460-99C-030	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-040	\$ 176.74	\$ -	\$ 1.23	\$ 54.99	\$ 61.52
WAC 460-99C-050	\$ 56.58	\$ 0.14	\$ 5.44	\$ 5.44	\$ 35.95
WAC 460-99C-090	\$ 101.40	\$ -	\$ 1.10	\$ 4.76	\$ 73.36
WAC 460-99C-100	\$ 18.93	\$ -	\$ 1.09	\$ 9.50	\$ 3.80
WAC 460-99C-110	\$ 14.64	\$ -	\$ 1.43	\$ 6.87	\$ 3.56
WAC 460-99C-120	\$ 16.22	\$ -	\$ 1.97	\$ 9.18	\$ 4.25
WAC 460-99C-130	\$ 35.02	\$ -	\$ -	\$ 2.33	\$ 5.65
WAC 460-99C-140	\$ 141.85	\$ -	\$ 2.56	\$ 5.68	\$ 98.53
WAC 460-99C-150	\$ 29.81	\$ -	\$ 0.75	\$ 14.37	\$ 2.50
WAC 460-99C-180	\$ 205.97	\$ -	\$ 6.44	\$ 30.94	\$ 121.92
WAC 460-99C-190	\$ 39.89	\$ -	\$ 1.46	\$ 3.64	\$ 13.93
WAC 460-99C-200	\$ 13.94	\$ -	\$ 1.25	\$ 7.61	\$ 4.17
WAC 460-99C-210	\$ 19.58	\$ -	\$ -	\$ 12.61	\$ 7.08
WAC 460-99C-220	\$ -	\$ -	\$ -	\$ 0.02	\$ -
WAC 460-99C-230	\$ -	\$ -	\$ -	\$ 0.02	\$ -
WAC 460-99C-240	\$ 57.16	\$ -	\$ 1.28	\$ 10.29	\$ 31.15
WAC 460-99C-250	\$ 7.45	\$ -	\$ 1.28	\$ 2.56	\$ 5.29

The following chart provides the average cost increase per employee as a result of the draft rule setting an initial filing fee and a renewal filing fee.

Average Cost Increase Per Employee (All Respondents)		
Filing Fees	For Initial Filings	For Renewal Filings
WAC 460-99C-260	\$ 158.67	\$ 22.21

The following chart provides the average cost increase per employee only for those survey respondents who indicated that a particular rule would create additional costs, and who provided information on the amount of the cost increase.

Average Cost Increase Per Employee (Respondents With Increased Costs Only)					
Rule Provision	Prof'l Services	Equipment	Supplies	Labor	Admin
WAC 460-99C-020	\$ 2,414.14	\$ 192.31	\$ 100.00	\$ 2,221.56	\$ 1,718.97
WAC 460-99C-030	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-040	\$ 636.26	\$ -	\$ 33.33	\$ 424.23	\$ 301.98
WAC 460-99C-050	\$ 462.07	\$ 6.67	\$ 66.67	\$ 133.33	\$ 251.62
WAC 460-99C-090	\$ 476.57	\$ -	\$ 25.83	\$ 55.95	\$ 492.59

WAC 460-99C-100	\$ 217.72	\$ -	\$ 50.00	\$ 109.23	\$ 87.50
WAC 460-99C-110	\$ 219.66	\$ -	\$ 32.18	\$ 102.99	\$ 53.42
WAC 460-99C-120	\$ 182.51	\$ -	\$ 44.23	\$ 137.71	\$ 63.68
WAC 460-99C-130	\$ 301.17	\$ -	\$ -	\$ 100.00	\$ 121.43
WAC 460-99C-140	\$ 1,191.58	\$ -	\$ 53.85	\$ 119.23	\$ 1,379.49
WAC 460-99C-150	\$ 596.15	\$ -	\$ 30.00	\$ 191.56	\$ 100.00
WAC 460-99C-180	\$ 1,029.83	\$ -	\$ 128.85	\$ 412.59	\$ 812.79
WAC 460-99C-190	\$ 265.96	\$ -	\$ 29.23	\$ 72.73	\$ 139.29
WAC 460-99C-200	\$ 278.85	\$ -	\$ 50.00	\$ 152.27	\$ 83.33
WAC 460-99C-210	\$ 391.67	\$ -	\$ -	\$ 252.27	\$ 141.67
WAC 460-99C-220	\$ -	\$ -	\$ -	\$ 0.91	\$ -
WAC 460-99C-230	\$ -	\$ -	\$ -	\$ 0.91	\$ -
WAC 460-99C-240	\$ 445.82	\$ -	\$ 50.00	\$ 133.80	\$ 303.71
WAC 460-99C-250	\$ 72.66	\$ -	\$ 50.00	\$ 100.00	\$ 41.29

The following chart provides the average cost increase per employee as a result of the draft rule setting an initial filing fee and a renewal filing fee, but only for those survey respondents who indicated that a particular rule would create additional costs, and who provided information on the amount of the cost increase.

Average Cost Increase Per Employee (Respondents With Increased Costs Only)		
	For Initial Filings	For Renewal Filings
WAC 460-99C-260	\$ 412.55	\$ 108.27

Analysis of Increased Costs

The survey results indicated that certain draft rules might create greater costs than others. These were the draft rules regarding the definitions for the chapter, filing requirements, information requirements, cancellation provisions, amendments, advertising, quarterly reports, final sales reports, books and records, advertising, and filing fees. The survey results are described in further detail below.

WAC 460-99C-020 – Definitions

The Securities Division created a definition in WAC 460-99C-020 for “escrow agent.” The escrow agent who serves as agent for the impoundment of the proceeds of the offering must be independent of the issuer and be independently audited or examined on a regular basis. It should be noted that the need for escrow of minimum target offering proceeds is a requirement under the Washington Jobs Act, and such requirement would provide insufficient protection to the public if the escrow agent was not independent.

The Securities Division also created a definition in WAC 460-99C-020 for “portal.” In addition to the Local Associate Development Organizations and Port Districts specified in the

Washington Jobs Act, the Securities Division expanded the definition of “portal” to include broker-dealers registered in Washington. However, it should be noted that no Local Association Development Organization, Port District, or broker-dealer is required to provide assistance with crowdfunding offerings. They may decline to participate in crowdfunding even if they meet the definition of “portal.”

Approximately 35% of survey respondents indicated that the draft rule at WAC 460-99C-020 would increase costs. The responses indicated an average cost per employee of \$506.19 for professional services, \$250.82 for labor, and \$277.25 for increased administrative costs. Of the 35% who indicated that the rule would increase costs, those costs included an average cost increase per employee of \$2,414.14 for professional services, \$192.31 for equipment, \$100.00 for supplies, \$2,221.56 for labor, and \$1,718.97 for increased administrative costs.

In their response to this question, several survey respondents submitted free form comments in addition to their estimates of increased expenses. Several comments focused on the expenses portals will occur due to the new crowdfunding exemption. Some comments expressed that expenses would result from insurance, bookkeeping, and accounting expenses for portals. They also stated that portals would not receive any particular funding for crowdfunding assistance, and expressed uncertainty regarding whether they could charge a fee for crowdfunding services. One commenter discussed that there will be expenses associated with a Port District needing to familiarize itself with the crowdfunding rules even if it chooses not to participate.

The survey question regarding the draft definitions rule at WAC 460-99C-020 was the first substantive question of the survey. Based on the free form answers to the survey question, it appears that some of the respondents may have been providing comments relating to the rules as a whole. For instance, one survey respondent expressed that the regulatory burdens might knock potential investors out of the market. This comment does not appear related to the draft definition rule. Therefore, it is not clear whether some survey respondents may have provided dollar figures in response to this question that were intended to apply to the rulemaking as a whole. It may be that some of the expenses reported in response to this survey question refer to costs associated with other sections of the rules. Otherwise, it is unclear why the definitions rule would create such increased costs.

WAC 460-99C-040 – Filing Requirements

WAC 460-99C-040 lists the items that must be submitted with the exemption application, including the Washington Crowdfunding Form. This is a multi-page form designed to serve as the disclosure document for offerings using the crowdfunding exemption. In addition to spending their own time, issuers may elect to pay for legal or consulting services to assist with the preparation of the Washington Crowdfunding Form. WAC 460-99C-040 also requires that the Washington Crowdfunding Form contain exhibits including operating agreements, charter documents, and corporate resolutions authorizing the sale of securities, most of which likely already exist and should not increase expenses. However, the issuer also must submit financial statements prepared in accordance with GAAP. While the financial statements do not need to be audited, issuers may choose to use the services of a CPA or other accounting professional for assistance in putting their financials in GAAP format. This may increase costs.

The survey results indicated that approximately 43% of survey respondents believed that the rule specifying the items to be submitted when applying to use the crowdfunding exemption would result in increased expenses. These expenses would include an average of \$176.74 per employee for professional services, \$54.99 per employee for labor, and \$61.52 per employee for increased administrative costs. Of the 43% who indicated that the rule would increase costs, those costs included an average cost increase per employee of \$636.26 for professional services, \$424.23 for labor, and \$301.98 for increased administrative costs.

We note that under state and federal securities laws, securities issuers must disclose all material information concerning an offering and must not make any misleading statements or omissions. Regardless of whether an offering is registered or exempt, all securities issuers must provide disclosure of the same type of information that is disclosed in the Washington Crowdfunding Form. As a result, any preparation costs related to disclosure materials cannot properly be said to be imposed by the crowdfunding rules, but rather by long-standing securities laws designed to prevent fraud.

In the initial draft of WAC 460-99C-040, the Securities Division required issuers to submit a legal opinion letter regarding the securities to be issued in the offering. To comply with this requirement, issuers would need to hire the services of an attorney. The Securities Division received several comments indicating that this particular requirement would increase costs and was unnecessary. In an effort to reduce costs for issuers, the Securities Division decided to remove the legal opinion letter requirement. However, the Securities Division does not believe any of the other filing requirements in WAC 460-99C-040 can be eliminated.

WAC 460-99C-050 – Information Requirements

The draft rule at WAC 460-99C-050 states that the issuer must provide the most recent version of the Washington Crowdfunding Form and exhibits to prospective investors at a reasonable time prior to the sale of securities.

The survey results indicated that approximately 31% of survey respondents believed that this would result in increased expenses. These expenses would include an average of \$56.58 per employee for professional services and \$35.95 for increased administrative costs. Of the 31% who indicated that the rule would increase costs, those costs included an average cost increase per employee of \$452.08 for professional services, \$133.33 for labor and \$251.62 for increased administrative costs.

Under securities laws, securities issuers generally must disclose all material information concerning the offering. This applies whether an offering is registered or qualifies for an exemption. It is common practice that this disclosure is provided in writing. Therefore, it is unclear how WAC 460-99C-050 would create increased expenses for a securities offering using the crowdfunding exemption as compared to another exemption or registration option.

Regardless, there may be some expenses associated with providing the Washington Crowdfunding Form to investors. Securities issuers may incur copying and mailing expenses if

they elect to provide the form non-electronically, and may incur administrative expenses due to time spent distributing the Washington Crowdfunding Form.

WAC 460-99C-090 – Amendments and Material Changes

The draft rule at WAC 460-99C-090 requires issuers using the crowdfunding exemption to amend the Washington Crowdfunding Form during the offering period if there is a material change that would affect the accuracy of the information in the Form. The Form must be updated at least once every twelve months. WAC 460-99C-090 is consistent with the requirement to disclose material information which arises under RCW 21.20.010 and applies to every securities offering. These requirements exist so that prospective investors are fully informed.

The survey results indicated that approximately 30% of survey respondents believed that this would result in increased expenses. These expenses would include an average of \$101.40 per employee for professional services and \$73.36 for increased administrative costs. Of the 30% who indicated that the changes would increase costs, those costs included an average cost increase per employee of \$476.57 for professional services, \$424.23 for labor and \$301.98 for increased administrative costs.

Issuers must take the time to update the Washington Crowdfunding Form when there has been a material change in the information provided in the Form. On a regular basis, issuers will need to assess whether an amendment to the Form is needed, draft the amendment, and file it with the Securities Division. If the offering has not yet met its minimum target offering amount, the issuer must distribute the amended Washington Crowdfunding Form to investors in the offering. While not required, issuers may choose to hire professional services to assist with the drafting of the amended Form. This may increase costs, but the Securities Division believes these costs are justified because they serve an investor protection purpose.

WAC 460-99C-100 – Renewal Filing Requirements

WAC 460-99C-100 specifies that a renewal application must be filed at least 30 days prior to the expiration of the exemption, and must include an updated Washington Crowdfunding Form, sales report for sales to date, a filing fee of \$100, and financial statements as of the issuer's last fiscal year, including an interim financial statement if the fiscal year ended more than 90 days ago.

The survey results indicated that approximately 22% of survey respondents believed that the renewal filing requirements rule would result in increased expenses. These expenses would include an average of \$18.93 per employee for professional services. Of the 22% who indicated that the rule would increase costs, those costs included an average cost increase per employee of \$217.72 for professional services and \$109.23 for labor costs.

Issuers applying for renewal of the crowdfunding exemption will need to spend time updating the Washington Crowdfunding Form and preparing financial statements. Issuers may decide to use professional services for these tasks, which may increase expenses. There may be postage,

copying, and other costs related to filing the renewal application with the Securities Division. Finally, the renewal fee will increase issuer's administrative expenses. However, the Securities Division believes the renewal fee is necessary because of the Division's own administrative expenses incurred in the review and processing of renewal filings.

WAC 460-99C-120 – Investor Right to Cancellation

WAC 460-99C-120 states that investors have a right to cancel their investments at any time prior to the minimum target offering amount being raised. In addition, this rule also requires issuers to notify investors prior to the target minimum offering deadline of any material changes in the information provided in the Washington Crowdfunding Form. In the initial draft of the rules circulated with the survey, the rule also included a provision stating that if investors do not reconfirm their investment in writing within seven days of receiving notification of material changes, the investment would be automatically cancelled and the investor's funds returned from escrow.

The survey results indicated that approximately 22% of survey respondents believed that cancellation provisions would increase expenses, but failed to provide data on the amount of increased expenses. The free form comments to this survey question suggested it would be difficult for issuers to know how much money they had raised, because it would be subject to automatic cancellation if investors did not respond to the seven-day notices. In addition, if investments were cancelled under the provisions of this rule, it might take the issuer longer to raise funds and would delay the implementation of the issuer's business plan. Finally, the rule might cause issuers to incur administrative expenses relating to sending out notices to investors.

After evaluating the survey results, the Securities Division decided to remove the seven-day cancellation provision in an effort to reduce compliance costs for issuers. Issuers still must notify investors of material changes, and investors still have the ability to cancel their investments. However, the administrative costs to issuers have been reduced.

WAC 460-99C-140 – Issuer Compliance with Investor Limitations

The draft rule at WAC 460-99C-140 requires that prior to accepting investor funds, issuers must obtain evidence of the Washington residency of the investor and a signed copy of the Investor Certifications and Acknowledgements page from the Washington Crowdfunding Form. The Securities Division drafted this rule to ensure that issuers comply with the restrictions of the Washington crowdfunding exemption and the federal intrastate offering exemption. If the issuer fails to meet these restrictions, the issuer may be offering securities in violation of the registration provisions of both the Securities Act of Washington and the Securities Act of 1933.

The survey results indicated that approximately 24% of survey respondents believed that this rule would increase costs. These expenses would include an average of \$141.85 per employee for professional services and \$98.53 in increased administrative expenses. Of the 24% who indicated that the rule would increase costs, those costs included an average cost increase per employee of \$1,191.58 for professional services, \$119.23 for labor costs, and \$1,379.49 for increased administrative expenses.

This rule may create administrative expenses in connection with obtaining and then storing the specified records. There also may be labor expended in reviewing the documents to ensure that investors are Washington residents and have properly signed the Investor Certifications and Acknowledgements page. However, the rule will help issuers remain compliant with Washington crowdfunding exemption and the federal intrastate offering exemption.

WAC 460-99C-180 – Quarterly Reporting Requirements

The Washington Jobs Act mandates that issuers provide quarterly reports for as long as the securities issued in the crowdfunding offering are outstanding. The quarterly report must include a discussion of the issuer's financial condition and operations. In the initial draft of the rules distributed with the economic impact survey, the Securities Division added a requirement that the quarterly reports include quarterly financial statements prepared in accordance with U.S. GAAP.

The survey results indicated that approximately 33% of survey respondents believed this rule would increase expenses. These expenses would include an average of \$205.97 per employee for professional services and \$121.92 in increased administrative expenses. Of the 33% who indicated that the rule would increase costs, those costs included an average cost increase per employee of \$1,029.83 for professional services, \$412.59 for labor costs, and \$812.79 in increased administrative expenses.

Many issuers are not experienced in preparing financial statements in accordance with U.S. GAAP and may incur increased expenses from the need to hire professional services for assistance. In recognition of this, the Securities Division revised its initial draft of WAC 460-99C-180 to remove the requirement for financial statements each quarter. Instead, the Securities Division will require that the issuer provide its annual financial statement to investors once a year in the quarterly report following the end of the issuer's fiscal year. Investors will still receive regular information on the financial condition of the company in the form of a narrative discussion in the quarterly report, but the change will reduce costs for issuers.

WAC 460-99C-190 – Final Sales Report

The draft rule at WAC 460-99C-190 requires issuers using the crowdfunding exemption to file a final sales report with the Securities Division at the conclusion of the offering. The final sales report must state the time period the offering was open, the number of shares or units sold, the number of investors that purchased shares or units, and the dollar amount sold.

The survey results indicated that approximately 23% of survey respondents believed that the final sales report requirement would increase expenses. These expenses would include an average of \$39.89 per employee for professional services and \$13.93 in increased administrative expenses. Of the 23% who indicated that the changes would increase costs, those costs included an average cost per employee of \$265.92 for professional services and \$139.29 per employee in increased administrative expenses.

All registered offerings and certain exempt offerings must file a final sales report in Washington. Among other things, this allows the Securities Division to monitor that issuers have not exceeded the registered amount of securities. Because the crowdfunding exemption has an offering amount limitation of \$1 million, the Securities Division feels it is essential that issuers file final sales reports. In addition, the final sales report will provide useful information to the Securities Division regarding the effectiveness of the new crowdfunding exemption as a tool for raising capital for small businesses. However, issuers may incur administrative expenses relating to the preparation of the final sales report and the filing of the report with the Securities Division.

WAC 460-99C-240 – Books and Records

WAC 460-99C-240 specifies that the issuer must keep records relating to the crowdfunding offering for at least six years following the termination of the offering. The records the issuer must keep, in either physical or electronic format, include the Washington Crowdfunding Form and exhibits thereto, evidence of residency of investors, the Investor Certification and Acknowledgment form for each investor, final sales report, and all quarterly reports and communications with investors. Issuers may incur expenses relating to the physical or digital storage of these items.

The survey results indicated that approximately 21% of survey respondents believed that the rule requiring issuers keep books and records relating to the offering would increase expenses. These expenses would include an average of \$57.16 per employee for professional services and \$31.15 in increased administrative expenses. Of the 21% who indicated that the rule would increase costs, those costs included an average cost increase per employee of \$445.82 for professional services, \$133.80 for labor, and \$303.71 in increased administrative expenses. The Securities Division believes that recordkeeping is essential in order to demonstrate compliance with the crowdfunding exemption. Therefore, costs cannot be further reduced.

WAC 460-99C-250 – Advertising

WAC 460-99C-250 requires issuers to file advertising for a crowdfunding offering with the Securities Division at least seven days prior to its distribution. The survey results indicated that approximately 23% of survey respondents believed that this rule would increase costs. Of the 23% who indicated that the rule would increase costs, those costs included an average cost increase per employee of \$72.66 for professional services and \$100.00 per employee in increased administrative expenses.

Unlike other state offering exemptions, the crowdfunding exemption allows general solicitation and advertising. The Securities Division reviews advertisements for registered offerings, and a similar review is appropriate for the crowdfunding exemption because of the presence of general solicitation. The Securities Division believes it is important to review advertisements prior to dissemination to ensure that misleading statements are not made to the public, and to ensure that such advertising is limited to Washington residents in compliance with federal law. Issuers may incur expenses relating to filing the advertisements with the Securities Division, including the need to wait at least seven days before disseminating advertisements to the public. In addition, certain issuers may incur expenses if they engage professional services to review the

advertisements prior to submitting them to the Division. In an attempt to reduce costs, the Securities Division revised the draft rule to state that certain types of documents, such as “tombstone” advertisements and periodic financial reports, do not need to be submitted for review.

WAC 460-99C-260 – Filing Fees

Finally, the survey results indicated that approximately 36% of the survey respondents believed the filings fees associated with initial and renewal applications would increase their expenses. The Washington Jobs Act permits the Securities Division to charge a fee to cover the expenses of administering the crowdfunding exemption. The Securities Division drafted a rule proposing a flat fee of \$600 for initial crowdfunding exemption applications. This is the same as the filing fee for an initial application for franchise registration, and is similar to the filing fees for other exempt offerings and for registered offerings of \$1 million or less. The Securities Division believes the \$600 filing fee is therefore reasonable.

Whether compliance with the proposed rule will cause businesses to lose sales or revenue.

The rulemaking may result in lost sales or revenue for issuers and portals participating in crowdfunding. The Securities Division’s survey revealed that 13% of survey respondents believed that compliance with the draft rules would result in lost sales or revenue. In contrast, 87% of survey respondents did not believe the draft rules would cause lost sales or revenue. The 13% who believed the draft rules would lead to lost sales or revenue estimated that they would lose \$5,833 in revenue per employee.

The survey requested a free form answer regarding which specific provisions in the draft rules would cause the lost sales or revenue. Most of the survey respondents did not provide any comments; however, one person mentioned that there would be increased costs in terms of time spent on the offering.

An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule

The Securities Division surveyed the survey pool specified earlier in this Small Business Economic Impact Statement in order to determine whether the crowdfunding rulemaking might result in the addition or elimination of any jobs.

Approximately 6% of survey respondents anticipated that the rulemaking would cause them to eliminate jobs. None of these 6% provided an estimate of the number of jobs that would be eliminated. Approximately 94% of survey takers did not anticipate that they would eliminate any jobs.

Approximately 17% of survey respondents indicated that the rulemaking would cause them to add jobs. These 17% provided estimates ranging from the addition of 0.5 jobs to 5 jobs each. Approximately 83% of survey takers did not anticipate adding any jobs.

Based on the survey results, the Securities Division estimates that the average issuer or portal will not eliminate any jobs as a result of the draft crowdfunding rules. However, there may be a few issuers or portals who add jobs.

A comparison of compliance costs for the small business segment and the large business segment of the affected industries, and whether the impact on small business is disproportionate.

RCW 19.85.040 requires that the Securities Division determine whether compliance with the proposed rules will have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the costs of compliance for the ten percent of businesses that are the largest businesses required to comply with the rules.

The Securities Division categorized each survey response based on whether it came from a small business or whether it represented the ten percent of businesses that were the largest businesses that responded. The two categories were then compared to each other. The survey results tended to show that the increased costs per employee of small businesses were disproportionately greater than the increased costs per employee of the largest businesses.

The results may be impacted by the fact that the survey pool included both portals and potential securities issuers. The majority of issuers who responded to the survey are small businesses who have only a handful of employees. Meanwhile, the majority of the largest ten percent of businesses surveyed were portals. The expenses relating to the crowdfunding exemption would naturally tend to be higher for an issuer, who must prepare the application materials and may need to pay for legal and accounting services, than it would be for a portal that is merely assisting the issuer in preparing or filing the application.

Portals are also not required to provide assistance under the Washington Jobs Act, and several survey respondents expressed that they did not intend to provide assistance with these offerings. Furthermore, portals that choose to participate may elect to limit the types of services they provide. In contrast, any issuer that wishes to conduct an offering under the crowdfunding exemption must meet all the requirements of the statute and rules. Ultimately, we believe that the issuers who were motivated to respond to the survey may be more likely than portals to actually engage in crowdfunding, and answered the survey questions accordingly.

The Securities Division examined the data to determine whether it would be appropriate to conduct separate economic impact analyses for issuers and portals. However, based on the relatively small number of respondents to the survey, and the fact that many respondents failed to provide data on costs increases, the Securities Division determined that further bisecting the data would not result in a more reliable analysis.

The following chart compares the average cost increase per employee associated with the draft rules for both the largest 10% of businesses required to comply and small businesses. Small businesses are defined as 50 or fewer employees. The largest 10% of business were likewise determined by the number of employees.

Average Cost Increase Per Employee – Comparison of Small Business and Largest 10% of Businesses					
Rule Provision	Prof'l Services	Equipment	Supplies	Labor	Admin
WAC 460-99C-020					
Small Businesses	\$ 579.50	\$ 3.56	\$ 1.85	\$ 287.14	\$ 318.33
Largest 10%	\$ 15.15	\$ -	\$ -	\$ 7.58	\$ -
WAC 460-99C-030					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-040					
Small Businesses	\$ 206.57	\$ -	\$ 1.45	\$ 64.29	\$ 71.58
Largest 10%	\$ 6.94	\$ -	\$ -	\$ 2.08	\$ 4.86
WAC 460-99C-050					
Small Businesses	\$ 65.02	\$ 0.16	\$ 6.31	\$ 5.95	\$ 41.38
Largest 10%	\$ 6.94	\$ -	\$ 0.28	\$ 2.78	\$ 3.89
WAC 460-99C-090					
Small Businesses	\$ 113.82	\$ -	\$ 1.22	\$ 4.27	\$ 84.06
Largest 10%	\$ 16.54	\$ -	\$ 0.28	\$ 8.13	\$ 0.28
WAC 460-99C-100					
Small Businesses	\$ 22.92	\$ -	\$ 1.32	\$ 11.50	\$ 4.61
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-110					
Small Businesses	\$ 17.81	\$ -	\$ 1.74	\$ 8.35	\$ 4.33
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-120					
Small Businesses	\$ 19.73	\$ -	\$ 2.39	\$ 11.17	\$ 5.16
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-130					
Small Businesses	\$ 43.02	\$ -	\$ -	\$ 2.86	\$ 6.94
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-140					
Small Businesses	\$ 170.23	\$ -	\$ 3.08	\$ 6.81	\$ 118.24
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-150					
Small Businesses	\$ 35.07	\$ -	\$ 0.88	\$ 16.90	\$ 2.94
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-180					
Small Businesses	\$ 242.31	\$ -	\$ 7.58	\$ 35.07	\$ 143.43
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-190					
Small Businesses	\$ 46.93	\$ -	\$ 1.72	\$ 2.94	\$ 16.39

Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-99C-200					
Small Businesses	\$ 16.40	\$ -	\$ 1.47	\$ 8.82	\$ 4.90
Largest 10%	\$ -	\$ -	\$ -	\$ 0.91	\$ -
WAC 460-99C-210					
Small Businesses	\$ 23.04	\$ -	\$ -	\$ 14.71	\$ 8.33
Largest 10%	\$ -	\$ -	\$ -	\$ 0.91	\$ -
WAC 460-99C-220					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ 0.18	\$ -
WAC 460-99C-230					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ 0.18	\$ -
WAC 460-99C-240					
Small Businesses	\$ 65.56	\$ -	\$ 1.47	\$ 11.54	\$ 35.73
Largest 10%	\$ -	\$ -	\$ -	\$ 1.82	\$ -
WAC 460-99C-250					
Small Businesses	\$ 8.55	\$ -	\$ 1.47	\$ 2.94	\$ 5.40
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ 4.55

The following chart compares the average cost increase associated with the draft rule regarding filing fees for both the largest 10% of businesses required to comply and small businesses.

Increased Cost Per Employee		
WAC 460-99C-260 – Filing Fees		
	Initial Filings	Renewal Filings
Small Businesses	\$ 181.86	\$ 25.45
Largest 10%	\$ 1.00	\$ 0.17

Comparison of lost sales or revenue

In their survey responses, the largest 10% of businesses did not indicate that they that they would lose any sales or revenue as a result of the draft rules. In contrast, five small businesses indicated that they would loses sales or revenue, although only two small businesses provided data regarding the amount they expected to lose in revenue because of the draft rules. These two small businesses estimated that they would lose an average of \$5,833 in revenue per employee.

Comparison of addition or elimination of jobs

Approximately 17% of survey respondents indicated that the rule changes would cause them to add jobs. This figure represented 6 small businesses and no businesses that were in the 10% of the largest businesses. Approximately 6% of respondents indicated that the rule changes would cause them to eliminate jobs. These responses represented 2 small businesses. None of the 10% of the largest business indicated that jobs would be eliminated because of the rule changes.

Steps taken by the Department under RCW 19.85.030(2) to reduce the costs of the proposed rule on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.

Investor Protection Purpose

In drafting the crowdfunding rules, the Securities Division attempted to balance its mission to protect the investing public and promote confidence in the capital markets with the business concerns of startup companies seeking to raise capital using the crowdfunding exemption. The crowdfunding rules may increase certain costs; however, the Securities Division believes the costs are justified by the need to ensure protection for the investing public.

As a result of feedback received from affected businesses, the Securities Division made certain changes to the initial draft of the rules that had been circulated to interested persons. These changes, described below, were made in order to reduce the costs of compliance for small businesses. The Securities Division also considered outreach actions that might address concerns raised during the rulemaking and possibly reduce costs to businesses. Other than as described below, the Securities Division does not believe that it can reduce costs further and provide appropriate protection to the investing public in Washington.

Reducing, modifying, or eliminating substantive regulatory requirements

The survey responses indicated that the filing requirements rule at WAC 460-99C-040 had the highest likelihood of all the draft rules of increasing costs for businesses. Therefore, the Securities Division examined whether there were any filing requirements that could be eliminated. The Securities Division received several comments regarding the requirement that issuers provide a legal opinion letter with their application for the crowdfunding exemption. A legal opinion letter must be prepared by an attorney and provides an opinion on whether the securities to be issued in the offering will be legally and validly issued, fully paid and non-assessable and binding on the issuer. The commenters indicated that a legal opinion letter would be costly, burdensome, and unnecessary. In an effort to reduce costs to issuers, the Securities Division eliminated the requirement for a legal opinion letter.

The Securities Division also received comments regarding WAC 460-99C-030, which limits the availability of the crowdfunding exemption to certain types of issuers and offerings. Commenters suggested that the exemption should allow business to raise funds through debt securities or convertible securities. After evaluating the comments received, the Securities Division decided to expressly allow offerings of convertible preferred stock to use the crowdfunding exemption. This change will provide issuers with more options for structuring their offerings.

The Securities Division also received feedback in the survey regarding the requirement in WAC 460-99C-250 to file advertisements with the Securities Division prior to use. Commenters expressed that this requirement would limit the ability of issuers to act quickly and could impact the ability to raise funds. The Securities Division believes that it is essential that issuers file advertisements so that they do not make misleading statements to the public and inadvertently

violate RCW 21.20.010. The Securities Division has an existing chapter at 460-28A WAC concerning advertisements in registered offerings. In order to ease the filing burden on crowdfunding issuers, the Securities Division imported some language from WAC 460-28A-025 into WAC 460-99C-250 regarding types of advertisements that do not need to be filed with the Division. These include “tombstone” advertisements, dividend notices, proxy statements, and reports to shareholders, including periodic financial reports.

Simplifying, reducing or eliminating record keeping and reporting requirements

The Securities Division received several comments regarding the quarterly reports requirement in WAC 460-99C-180. The Washington Jobs Act mandates that crowdfunding issuers provide quarterly reports to investors that contain information about executive compensation and a brief management analysis of the issuer’s business operations and financial condition. In the draft rules, the Securities Division had specified that each quarterly report should also contain a quarterly financial statement prepared in accordance with U.S. GAAP. The purpose of this was to provide information on the financial condition of the company. However, the Securities Division received feedback which indicated that providing financial statements with the quarterly report would increase costs for investors. Many small companies do not have the expertise to prepare financials in GAAP format, and would need to hire professional accounting services to assist them. In an effort to reduce costs for issuers, the Securities revised the quarterly reports rule WAC 460-99C-180 to remove the requirement for quarterly financial statements. Instead, the Securities Division will require that the issuer provide its annual financial statement to investors once a year in the quarterly report following the end of the issuer’s fiscal year.

Based on feedback received in the survey, the Securities Division also reexamined the cancellation provisions at WAC 460-99C-120. Commenters indicated that the provisions would create expenses and administrative difficulties for issuers. In response, the Securities Division simplified the cancellation requirements by eliminating the requirement that investors reaffirm their investment within 7 days of receiving a notice of a material change in the issuer. Investors still have the right to cancel at any time up until the minimum offering amount is raised. However, the revised rule removes the risk of passive cancellation of investments.

Other mitigation techniques

The Securities Division will develop a Frequently Asked Questions (“FAQ”) publication for distribution when the rules are adopted. The Securities Division intends to provide guidance through the FAQ to address questions and ease concerns raised during the rulemaking process.

The Securities Division intends to address the following topics in the FAQ:

- The Securities Division will provide information regarding the timeframe for the review and approval of the Washington Crowdfunding Form. The Securities Division endeavors to review the Washington Crowdfunding Form and any amendments thereto within three weeks of filing. If the Securities Division does not approve a filing, it will issue a

comment letter. The comment letter process provides issuers with the opportunity to address any deficiencies raised.

- The Securities Division will clarify the procedure for filing of advertisements with the Securities Division. Advertisements must be filed with the Securities Division at least seven days prior to use. The Securities Division will review advertisements for content to ensure that issuers are not making misleading statements to the public. Issuers may disseminate their advertisements after seven days have passed, unless the Securities Division has disallowed the dissemination of the advertisement by written notice.
- The Securities Division will clarify that nothing in the Securities Division's crowdfunding rules prevents a portal from charging a fee for services the portal provides in connection with crowdfunding.
- The Securities Division will clarify that Local Association Development Organizations, Port Districts, and broker-dealers are not required to act as portals for crowdfunding offerings, nor is a crowdfunding issuer required to use the services of a portal. In addition, the Securities Division will clarify that nothing prohibits crowdfunding issuers from receiving assistance from attorneys, consultants, or other professionals in connection with their offerings.
- The Securities Division will address the extent to which portals providing crowdfunding assistance will be exempt from broker-dealer registration. Portals providing the services permitted under RCW 21.20.883 and WAC 460-99C-210 in connection with crowdfunding offerings exempt under RCW 21.20.880(1) will be exempt from the state broker-dealer registration requirements at RCW 21.20.040(1). However, portals would not necessarily be exempt from federal broker-dealer registration requirements.
- The Securities Division will provide guidance regarding when an issuer is required to amend the Washington Crowdfunding Form pursuant to WAC 460-99C-090. Amendments are required when there has been a material change that would render the information in the Washington Crowdfunding Form inaccurate or incomplete. In order to understand the information that may be considered material, issuers may wish to consult existing resources such as Regulation S-K to the Securities Act of 1933 and the Securities Division's publication "The Role of Disclosure."
- The Securities Division will address the concerns of broker-dealers whose customers who may choose to invest in crowdfunding or who may seek to liquidate holdings to invest in crowdfunding. Broker-dealers with these concerns may want to consider providing written information to customers regarding crowdfunding offerings and the extent or limits of the broker-dealer's liability.
- The Securities Division will clarify that it has the right to revoke the crowdfunding exemption at any time if the Securities Division has concerns that a crowdfunding issuer is committing fraud.

In addition to the assistance provided in the anticipated FAQ, the Securities Division may conduct informational sessions or develop an informational website to provide portals and issuers with information about the crowdfunding exemption and securities laws generally. In addition, the Securities Division will provide the public the ability to search the Securities Division's online licensing database to determine who has filed an application for the crowdfunding exemption.

How the Department will involve small business in rule development

Since the beginning of the rulemaking process, the Securities Division has involved interested persons in the development of the crowdfunding rules.

On March 13, 2014, the Securities Division filed a Preproposal Statement of Inquiry (CR-101) concerning the rulemaking. The Securities Division distributed the CR-101 notice to its interested persons list for securities registration matters and to individuals who had specifically expressed interest in the crowdfunding rulemaking. This group of recipients included many small businesses and those that advise small businesses.

The CR-101 notice invited interested persons to participate in the rulemaking process by submitting comments to the Securities Division. The Securities Division took the feedback received into account when preparing the initial draft of the rules. Once a draft was prepared, it was distributed on or about June 9, 2014 to the interested persons list, Port Districts, Local Associate Development Organizations, and broker-dealers registered in Washington.

The Securities Division next prepared a survey to determine the economic impact of the crowdfunding rules. The survey, along with a copy of the draft rules and draft Washington Crowdfunding Form, was sent to a survey pool consisting of persons interested in crowdfunding; issuers who had made a registration filing with the Securities Division in the last five years for an offering of less than \$1 million; issuers located in Washington who had made an exemption notice filing with the Securities Division for an offering of less than \$1 million within the last year; all Port Districts and Local Associate Development Organizations located in Washington; all broker-dealers registered and located in Washington; and 10% of broker-dealers registered in Washington but located out of state. Most of the survey respondents were small businesses. Based on the information received from the survey, the Securities Division made changes to its initial draft of the rules in an effort to reduce costs for small businesses.

The Securities Division also met with small business owners and attorneys in Washington who expressed interest in the development of the crowdfunding exemption and the rules to be adopted thereunder. The Securities Division took the feedback received at the meetings into consideration when drafting the crowdfunding rules. The Securities Division will continue to seek the feedback of interested parties as the rulemaking process continues.

A list of the industries that will be required to comply with the rule

Companies electing to conduct a securities offering pursuant to the new crowdfunding exemption at RCW 21.20.880 will be required to comply with the rules in Chapter 460-99C WAC. Portals

(Local Associate Development Organizations, Port Districts, and broker-dealers registered in Washington) who elect to assist issuers with crowdfunding offerings under the exemption will likewise be required to comply with the rules in Chapter 460-99C WAC.