



Rule 506/Section 4(a)(6)/Regulation A comparison

Rule 506(b) offerings (traditional Regulation D)	Regulation D New Rule 506(c) offerings	Regulation CF Section 4(a)(6) crowdfunding	Regulation A Tier 1 (old Reg A as changed)	Regulation A Tier 2 (new)
Solicitation: Limited marketing directly to known investors without “general solicitation”; no internet solicitation (although online intermediaries may be used)	No limitations on solicitation, can be marketed over the internet; TV, advertisements and solicitation on social media permitted	Marketed over the internet, but primary solicitation and disclosure happens on “funding portal”; publicity anywhere else (including social media) is restricted	Public offering; can be marketed anywhere	Public offering; can be marketed anywhere
Eligible issuers: Both SEC-registered and private companies can use exemption (U.S. and foreign)	Both SEC-registered and private companies can use exemption (U.S. and foreign)	Only U.S. companies not registered with the SEC can issue; no investment companies; restrictions on investment companies and blank check companies	U.S. and Canadian; no SEC-registered companies; no blank check companies; companies that have failed to make previous required filings excluded	U.S. and Canadian; no SEC-registered companies; no blank check companies; companies that have failed to make previous required filings excluded
Offering size: No dollar limit on offering size	No dollar limit on offering size	\$1m limit on offering size but contemporaneous Rule 506 offerings permitted	\$20 million annual limit (can include \$6 m by selling shareholders)	\$50 million annual limit (can include \$15m by selling shareholders)
Eligible investors: Up to 35 non-accredited investors permitted; no limits on accredited investors	Only accredited investors may buy	No restrictions on type of investors but they must show they understand their investment and are limited in dollar amount	All investors	All investors

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Ascertaining investors' status: Accredited investors typically self-certify accredited status	Issuers must take reasonable steps to "verify" accredited status; may use various methods; non-exclusive list of methods that may be relied on as meeting requirements	Self-certification as to investment limits and whether those limits are reached	Not required	Self-certification as to investment limits, providing issuer has no knowledge to the contrary
Offering size: No dollar limit on offering size	No dollar limit on offering size	\$1m limit on offering size but contemporaneous Rule 506 offerings permitted	\$20 million annual limit (can include \$6 m by selling shareholders)	\$50 million annual limit (can include \$15m by selling shareholders)
Limits on investment amount: None	None	Annual limits: 5% of net worth or income below \$100k; 10% above \$100k; floor of \$2k and ceiling of \$100k	None	Limited to 10% of income or net worth per offering; no limit on accredited investors
Types of security: No limitations	No limitations	No limitations	"Ordinary" debt and equity; no asset-backed securities	"Ordinary" debt and equity; no asset-backed securities
Structure of investment: SPVs can be used as intermediary for holdings by accredited investors, but not non-accredited investors	SPVs can be used as intermediary for holdings by accredited investors	No SPVs allowed; all investors appear in cap table	No SPVs allowed; all investors appear in cap table	No SPVs allowed; all investors appear in cap table

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Disclosure: Private Placement Memorandum typically used although not required if all investors are accredited; online offerings typically more flexible	Disclosure driven by market demands and liability concerns	Disclosure (including reviewed or audited financial statements) mandated by statute and regulation	Offering Circular containing mandated disclosure must be filed with SEC	Offering Circular containing mandated disclosure must be filed with SEC
Use of offering materials outside mandated disclosure: Mandated disclosure only if non-accredited investors involved (but same disclosure should be given to all investors)	No mandated disclosure	Can only use offering materials that are on platform and filed with SEC; no “test the waters” permitted although very limited notices of offering are allowed	“Test the waters” material permitted; must be filed with SEC and must also comply with state requirements, which may require registration at state level prior to use	“Test the waters” material permitted; all solicitation material must be filed with SEC
Financial statements: Financial statements required if non-accredited investors: Offerings to \$2m: audited balance sheet Offerings to \$7.5m: f/s for smaller reporting companies, audited unless unreasonable expense (in which case balance sheet must be audited) Offerings above \$7.5m: f/s mandated for reporting companies, audited unless	Not required	Offerings to \$100k: self-certified f/s and issuer tax returns Offerings to \$500k or first-time offerings: CPA-reviewed f/s Offerings to \$1m: CPA-audited f/s	US GAAP financials required but need not be audited (under SEC requirements) unless already produced; many states require audited financials	US GAAP audited financial statements

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unreasonable expense (in which case balance sheet must be audited)				
Filing Requirements: Form D (very short form with issuer and intermediary identity and offering description but no substantive disclosure) filed after offering starts	<u>Proposals</u> by SEC would require earlier filing of Form D and additional amendment after closing; general solicitation materials proposed to be submitted informally to SEC	Filing with SEC on Form C: XML-fillable form with attachments; all material on intermediary site must be filed	Filing of Form 1-A with SEC: XML-fillable form with text file attachments	Filing of Form 1-A with SEC: XML-fillable form with text file attachments
Review: No review by SEC	No review by SEC	No review by SEC; any marketing prior to SEC filing is prohibited	SEC must review, comment and declare “qualified” before sale; state review also required	SEC must review, comment and declare “qualified” before sale
Ongoing disclosure: None	None	Same information as in initial filing to be filed yearly	Exit report required	Annual, semi-annual and current reports required
State law: Registration preempted; notice filings permitted	Registration preempted; notice filings permitted	Registration preempted; notice filings permitted (no fees)	State registration provisions apply	State registration preempted; notice filing and fees permitted
Liability: Liability under general Section 17/Rule 10b-5 anti-fraud provisions for any person making untrue statements; state law liability; potential “willful participant” liability for intermediary	Liability under general Section 17/Rule 10b-5 anti-fraud provisions for any person making untrue statements; potential state law liability; potential “willful participant” liability for intermediary	Rule 10b-5 liability plus new Section 4A(c) liability for issuer, its officers and directors and anyone “selling” (including promoting) the offering; state law liability; potential “willful participant” liability for intermediary	Section 12(a)(2) liability (which extends to platforms); Section 17/10b-5 liability; state law liability; potential “willful participant” liability for intermediary	Section 12(a)(2) liability (which extends to platforms); Section 17/10b-5 liability; state law liability; potential “willful participant” liability for intermediary

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Resales: Securities are “restricted”; cannot be freely resold	Securities are “restricted”; cannot be freely resold	Very limited resales permitted for one year	Freely tradable	Freely tradable
Registration under 34 Act: Registration required if 2,000 holders of record of equity securities or 500 non-accredited holders	Registration required if 2,000 holders of record of equity securities or 500 non-accredited holders	4(a)(6) securities not included in calculating 34 Act triggers; this exemption is conditional upon annual filings and not exceeding asset test	Conditional exemption from 34 Act registration for smaller companies if registered transfer agent used	Conditional exemption from 34 Act registration for smaller companies if registered transfer agent used
Intermediaries: Intermediaries not required; any intermediaries used must be registered broker-dealers or entities exempt from B/D registration (such as VC Funds or bulletin boards)	Intermediaries not required; any intermediaries used must be registered broker-dealers or entities exempt from B/D registration (such as VC Funds or bulletin boards)	Intermediaries are compulsory; can only be funding portals or broker-dealers	Intermediaries are not required; any intermediaries used must be registered broker-dealers or entities exempt from B/D registration (such as VC Funds or bulletin boards)	Intermediaries are not required; any intermediaries used must be registered broker-dealers or entities exempt from B/D registration (such as VC Funds or bulletin boards)
“Bad Actor” rules: Offering cannot be made if “Bad Actor” involved; issuer must take “reasonable care” to exclude Bad Actors, may use questionnaires	Offering cannot be made if “Bad Actor” involved; issuer must take “reasonable care” to exclude Bad Actors, may use questionnaires	Offering cannot be made if “Bad Actor” involved; intermediaries must make background checks	Offering cannot be made if “Bad Actor” involved; issuer must take “reasonable care” to exclude Bad Actors, may use questionnaires	Offering cannot be made if “Bad Actor” involved; issuer must take “reasonable care” to exclude Bad Actors, may use questionnaires

This is only a summary of complex requirements. Not legal advice. Consult an attorney before making any offerings of securities.

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