

111TH CONGRESS
1ST SESSION

H. R. 3738

To amend the Small Business Investment Act of 1958 to establish a program for the Small Business Administration to provide financing to support early-stage small businesses in targeted industries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Mr. NYE introduced the following bill; which was referred to the Committee on Small Business

A BILL

To amend the Small Business Investment Act of 1958 to establish a program for the Small Business Administration to provide financing to support early-stage small businesses in targeted industries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Early-
5 Stage Investment Act of 2009”.

1 **SEC. 2. SMALL BUSINESS EARLY-STAGE INVESTMENT PRO-**
2 **GRAM.**

3 Title III of the Small Business Investment Act of
4 1958 (15 U.S.C. 681 et seq.) is amended by adding at
5 the end the following:

6 **“PART D—SMALL BUSINESS EARLY-STAGE**
7 **INVESTMENT PROGRAM**

8 **“SEC. 399A. ESTABLISHMENT OF PROGRAM.**

9 “The Administrator shall establish and carry out an
10 early-stage investment program (hereinafter referred to in
11 this part as the ‘program’) to provide equity investment
12 financing to support early-stage small businesses in tar-
13 geted industries in accordance with this part.

14 **“SEC. 399B. ADMINISTRATION OF PROGRAM.**

15 “The program shall be administered by the Adminis-
16 trator acting through the Associate Administrator de-
17 scribed under section 201.

18 **“SEC. 399C. APPLICATIONS.**

19 “(a) IN GENERAL.—Any incorporated body, limited
20 liability company, or limited partnership organized and
21 chartered or otherwise existing under Federal or State law
22 for the purpose of performing the functions and con-
23 ducting the activities contemplated under the program and
24 any small business investment company may submit to the
25 Administrator an application to participate in the pro-
26 gram.

1 “(b) REQUIREMENTS FOR APPLICATION.—An appli-
2 cation to participate in the program shall include the fol-
3 lowing:

4 “(1) A business plan describing how the appli-
5 cant intends to make successful venture capital in-
6 vestments in early-stage small businesses in targeted
7 industries.

8 “(2) Information regarding the relevant venture
9 capital investment qualifications and backgrounds of
10 the individuals responsible for the management of
11 the applicant.

12 “(3) A description of the extent to which the
13 applicant meets the selection criteria under section
14 399D.

15 “(c) APPLICATIONS FROM SMALL BUSINESS INVEST-
16 MENT COMPANIES.—The Administrator shall establish an
17 abbreviated application process for small business invest-
18 ment companies that have received a license under section
19 301 and that are applying to participate in the program.
20 Such abbreviated process shall incorporate a presumption
21 that such small business investment companies satisfac-
22 torily meet the selection criteria under paragraphs (3) and
23 (5) of section 399D(b).

1 **“SEC. 399D. SELECTION OF PARTICIPATING INVESTMENT**
2 **COMPANIES.**

3 “(a) IN GENERAL.—Not later than 90 days after the
4 date on which the Administrator receives an application
5 from an applicant under section 399C, the Administrator
6 shall make a final determination to approve or disapprove
7 such applicant to participate in the program and shall
8 transmit such determination to the applicant in writing.

9 “(b) SELECTION CRITERIA.—In making a determina-
10 tion under subsection (a), the Administrator shall consider
11 each of the following:

12 “(1) The likelihood that the applicant will meet
13 the goals specified in the business plan of the appli-
14 cant.

15 “(2) The likelihood that the investments of the
16 applicant will create or preserve jobs, both directly
17 and indirectly.

18 “(3) The character and fitness of the manage-
19 ment of the applicant.

20 “(4) The experience and background of the
21 management of the applicant.

22 “(5) The extent to which the applicant will con-
23 centrate investment activities on early-stage small
24 businesses in targeted industries.

25 “(6) The likelihood that the applicant will
26 achieve profitability.

1 “(7) The experience of the management of the
2 applicant with respect to establishing a profitable in-
3 vestment track record.

4 **“SEC. 399E. GRANTS.**

5 “(a) IN GENERAL.—The Administrator may make
6 one or more grants to a participating investment company.

7 “(b) GRANT AMOUNTS.—

8 “(1) NON-FEDERAL CAPITAL.—A grant made
9 to a participating investment company under the
10 program may not be in an amount that exceeds the
11 amount of the capital of such company that is not
12 from a Federal source and that is available for in-
13 vestment on or before the date on which a grant is
14 drawn upon. Such capital may include legally bind-
15 ing commitments with respect to capital for invest-
16 ment.

17 “(2) LIMITATION ON AGGREGATE AMOUNT.—
18 The aggregate amount of all grants made to a par-
19 ticipating investment company under the program
20 may not exceed \$100,000,000.

21 “(c) GRANT PROCESS.—In making a grant under the
22 program, the Administrator shall commit a grant amount
23 to a participating investment company and the amount of
24 each such commitment shall remain available to be drawn
25 upon by such company—

1 prised of capital from grants under the program according
2 to the ratio that capital from grants under the program
3 bears to all capital available to such company for invest-
4 ment.

5 **“SEC. 399H. GRANT INTEREST.**

6 “(a) GRANT INTEREST.—

7 “(1) IN GENERAL.—As a condition of receiving
8 a grant under the program, a participating invest-
9 ment company shall convey a grant interest to the
10 Administrator in accordance with paragraph (2).

11 “(2) EFFECT OF CONVEYANCE.—The grant in-
12 terest conveyed under paragraph (1) shall have all
13 the rights and attributes of other investors attrib-
14 utable to their interests in the participating invest-
15 ment company, but shall not denote control or vot-
16 ing rights to the Administrator. The grant interest
17 shall entitle the Administrator to a pro rata portion
18 of any distributions made by the participating in-
19 vestment company equal to the percentage of capital
20 in the participating investment company that the
21 grant comprises. The Administrator shall receive dis-
22 tributions from the participating investment com-
23 pany at the same times and in the same amounts as
24 any other investor in the company with a similar in-
25 terest. The investment company shall make alloca-

1 tions of income, gain, loss, deduction, and credit to
2 the Administrator with respect to the grant interest
3 as if the Administrator were an investor.

4 “(b) **MANAGER PROFITS.**—As a condition of receiv-
5 ing a grant under the program, the manager profits inter-
6 est payable to the managers of a participating investment
7 company under the program shall not exceed 20 percent
8 of profits, exclusive of any profits that may accrue as a
9 result of the capital contributions of any such managers
10 with respect to such company. Any excess of this amount,
11 less taxes payable thereon, shall be returned by the man-
12 agers and paid to the investors and the Administrator in
13 proportion to the capital contributions and grants paid in.
14 No manager profits interest (other than a tax distribution)
15 shall be paid prior to the repayment to the investors and
16 the Administrator of all contributed capital and grants
17 made.

18 “(c) **DISTRIBUTION REQUIREMENTS.**—As a condition
19 of receiving a grant under the program, a participating
20 investment company shall make all distributions to all in-
21 vestors in cash and shall make distributions within a rea-
22 sonable time after exiting investments, including following
23 a public offering or market sale of underlying investments.

1 **“SEC. 399I. FUND.**

2 “There is hereby created within the Treasury a sepa-
3 rate fund for grants which shall be available to the Admin-
4 istrator subject to annual appropriations as a revolving
5 fund to be used for the purposes of the program. All
6 amounts received by the Administrator, including any
7 moneys, property, or assets derived by the Administrator
8 from operations in connection with the program, shall be
9 deposited in the fund. All expenses and payments, exclud-
10 ing administrative expenses, pursuant to the operations of
11 the Administrator under the program shall be paid from
12 the fund.

13 **“SEC. 399J. APPLICATION OF OTHER SECTIONS.**

14 “To the extent not inconsistent with requirements
15 under this part, the Administrator may apply sections
16 309, 311, 312, 313, and 314 to activities under this part
17 and an officer, director, employee, agent, or other partici-
18 pant in a participating investment company shall be sub-
19 ject to the requirements under such sections.

20 **“SEC. 399K. DEFINITIONS.**

21 “In this part, the following definitions apply:

22 “(1) EARLY-STAGE SMALL BUSINESS IN A TAR-
23 GETED INDUSTRY.—The term ‘early-stage small
24 business in a targeted industry’ means a small busi-
25 ness concern that—

26 “(A) is domiciled in a State;

1 “(B) has not generated gross annual reve-
2 nues exceeding \$15,000,000 in any of the pre-
3 vious 3 years; and

4 “(C) is engaged primarily in researching,
5 developing, manufacturing, producing, or bring-
6 ing to market goods, products, or services with
7 respect to any of the following business sectors:

8 “(i) Agricultural technology.

9 “(ii) Energy technology.

10 “(iii) Environmental technology.

11 “(iv) Life science.

12 “(v) Information technology.

13 “(vi) Digital media.

14 “(vii) Clean technology.

15 “(viii) Defense technology.

16 “(2) PARTICIPATING INVESTMENT COMPANY.—

17 The term ‘participating investment company’ means
18 an applicant approved under section 399D to par-
19 ticipate in the program.

20 “(3) SMALL BUSINESS CONCERN.—The term
21 ‘small business concern’ has the same meaning given
22 such term under section 3(a) of the Small Business
23 Act (15 U.S.C. 632(a)).

1 **“SEC. 399L. AUTHORIZATION OF APPROPRIATIONS.**

2 “There is authorized to be appropriated to carry out
3 the program \$250,000,000 for the first full fiscal year be-
4 ginning after the date of the enactment of this part.”.

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