

114TH CONGRESS
2D SESSION

S. 3375

To amend the Small Business Investment Act of 1958 to enhance the Small Business Investment Company Program and provide for a small business early-stage investment program.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2016

Ms. BALDWIN (for herself and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Investment Act of 1958 to enhance the Small Business Investment Company Program and provide for a small business early-stage investment program.

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 Inno-
5 vation Act of 2016”.

6 **SEC. 2. PROGRAM AUTHORIZATION.**

7 Section 303(b) of the Small Business Investment Act
8 of 1958 (15 U.S.C. 683(b)) is amended, in the matter pre-

1 ceding paragraph (1), in the first sentence, by inserting
 2 after “issued by such companies” the following: “, in a
 3 total amount that does not exceed \$4,000,000,000 each
 4 fiscal year (adjusted annually to reflect increases in the
 5 Chained Consumer Price Index for All Urban Consumers
 6 (C–CPI–U), as published by the Bureau of Labor Statis-
 7 ties of the Department of Labor)”.

8 **SEC. 3. SMALL BUSINESS EARLY-STAGE INVESTMENT PRO-**
 9 **GRAM.**

10 Title III of the Small Business Investment Act of
 11 1958 (15 U.S.C. 681 et seq.) is amended by adding at
 12 the end the following:

13 **“PART D—SMALL BUSINESS EARLY-STAGE**
 14 **INVESTMENT PROGRAM**

15 **“SEC. 399A. DEFINITIONS.**

16 “In this part:

17 “(1) **EARLY-STAGE SMALL BUSINESS.**—The
 18 term ‘early-stage small business’ means a small busi-
 19 ness concern that—

20 “(A) is domiciled in a State or Indian
 21 country (as defined in section 1151 of title 18,
 22 United States Code); and

23 “(B) has not generated positive cash flow
 24 from operations in any fiscal year before the
 25 date on which a participating investment com-

1 pany makes an initial investment in the small
2 business concern.

3 “(2) ELIGIBLE APPLICANT.—The term ‘eligible
4 applicant’ means a limited liability company or a
5 limited partnership organized and chartered or oth-
6 erwise existing under Federal or State law for the
7 purpose of performing the functions and conducting
8 the activities contemplated under the program, in-
9 cluding those managed by a manager of a small
10 business investment company.

11 “(3) PARTICIPATING INVESTMENT COMPANY.—
12 The term ‘participating investment company’ means
13 an applicant approved under section 399E to partici-
14 pate in the program.

15 “(4) PROGRAM.—The term ‘program’ means
16 the early-stage investment program established
17 under section 399B.

18 “(5) SMALL BUSINESS CONCERN.—The term
19 ‘small business concern’ has the same meaning given
20 that term in section 3(a) of the Small Business Act
21 (15 U.S.C. 632(a)).

22 “(6) SMALL BUSINESS CONCERN IN A TAR-
23 GETED INDUSTRY.—The term ‘small business con-
24 cern in a targeted industry’ means a small business
25 concern that is engaged primarily in researching, de-

1 veloping, manufacturing, producing, or bringing to
2 market goods, products, or services in a targeted in-
3 dustry.

4 “(7) TARGETED INDUSTRY.—The term ‘tar-
5 geted industry’ means any of the following business
6 sectors:

7 “(A) Advanced manufacturing.

8 “(B) Agricultural technology.

9 “(C) Biotechnology.

10 “(D) Clean energy technology.

11 “(E) Digital media.

12 “(F) Environmental technology.

13 “(G) Information technology.

14 “(H) Life sciences.

15 “(I) Water technology.

16 “(8) TEMPORARY DEBT.—The term ‘temporary
17 debt’ means borrowings of a participating invest-
18 ment company—

19 “(A) with a term not to exceed 90 days
20 from a regulated financial institution for the
21 purpose of maintaining operating liquidity of
22 the participating investment company or pro-
23 viding funds for a particular financing of a
24 small business concern; and

1 “(B) that do not exceed 50 percent of the
2 leveraged capital of the participating investment
3 company.

4 **“SEC. 399B. ESTABLISHMENT OF PROGRAM.**

5 “The Administrator shall establish and carry out an
6 early-stage investment program to provide equity financ-
7 ing to support early-stage small businesses in accordance
8 with this part.

9 **“SEC. 399C. ADMINISTRATION OF PROGRAM.**

10 “The Administrator, acting through the Associate
11 Administrator described in section 201, shall administer
12 the program.

13 **“SEC. 399D. APPLICATIONS.**

14 “An eligible applicant that desires to participate in
15 the program shall submit to the Administrator an applica-
16 tion that includes—

17 “(1) a business plan describing how the eligible
18 applicant intends to make successful venture capital
19 investments in early-stage small businesses and di-
20 rect capital to small business concerns in targeted
21 industries or other business sectors;

22 “(2) information regarding the relevant venture
23 capital investment qualifications and backgrounds of
24 the individuals responsible for the management of
25 the eligible applicant; and

1 “(3) a description of the extent to which the eli-
2 gible applicant meets the selection criteria and other
3 requirements to participate in the program under
4 section 399E.

5 **“SEC. 399E. SELECTION OF PARTICIPATING INVESTMENT**
6 **COMPANIES.**

7 “(a) IN GENERAL.—Not later than 120 days after
8 the date on which the Administrator receives an applica-
9 tion from an eligible applicant under section 399D, the
10 Administrator shall make a determination to conditionally
11 approve or disapprove the eligible applicant to participate
12 in the program and shall transmit the determination to
13 the eligible applicant electronically and in writing. A deter-
14 mination to conditionally approve an eligible applicant
15 shall identify all conditions the eligible applicant is re-
16 quired to satisfy for the Administrator to provide final ap-
17 proval to the eligible applicant to participate in the pro-
18 gram, and shall provide a period of not less than 1 year
19 for the eligible applicant to satisfy the conditions.

20 “(b) SELECTION CRITERIA.—In making a determina-
21 tion under subsection (a), the Administrator shall con-
22 sider—

23 “(1) the likelihood that the eligible applicant
24 will meet the goals specified in the business plan of
25 the eligible applicant;

1 “(2) the likelihood that the investments of the
2 eligible applicant will create or preserve jobs in the
3 United States, both directly and indirectly;

4 “(3) the character and fitness of the manage-
5 ment of the eligible applicant;

6 “(4) the experience and background of the
7 management of the eligible applicant;

8 “(5) the extent to which the eligible applicant
9 will concentrate investment activities on early-stage
10 small businesses;

11 “(6) the likelihood that the eligible applicant
12 will achieve profitability;

13 “(7) the experience of the management of the
14 eligible applicant with respect to establishing a prof-
15 itable investment track record;

16 “(8) the extent to which the eligible applicant
17 will concentrate investment activities on small busi-
18 ness concerns in targeted industries; and

19 “(9) the extent to which the eligible applicant
20 will concentrate investment activities on small busi-
21 ness concerns in targeted industries that have re-
22 ceived funds from a Federal agency, including—

23 “(A) the National Institutes of Health;

24 “(B) the National Science Foundation; and

1 “(C) funds received from a Federal agency
2 under the Small Business Innovation Research
3 Program or the Small Business Technology
4 Transfer Program, as such terms are defined
5 under section 9 of the Small Business Act (15
6 U.S.C. 638).

7 “(c) REGULATORY CAPITAL REQUIREMENTS.—To
8 participate in the program, an eligible applicant shall have
9 regulatory capital—

10 “(1) in an amount that is not less than
11 \$20,000,000, unless the Administrator determines
12 that the eligible applicant can have long-term finan-
13 cial viability with a lower amount of regulatory cap-
14 ital; and

15 “(2) of which not more than 33 percent is from
16 State or local government entities.

17 “(d) NON-AFFILIATION REQUIREMENT.—To partici-
18 pate in the program, not less than 30 percent of the regu-
19 latory and leverageable capital of an eligible applicant
20 shall come from 3 persons unaffiliated with the manage-
21 ment of the fund and unaffiliated with each other.

22 “(e) THIRD-PARTY DEBT.—To participate in the
23 program, an eligible applicant may not incur debt, other
24 than leverage, unless the debt is temporary debt.

1 **“SEC. 399F. EQUITY FINANCINGS.**

2 “(a) IN GENERAL.—The Administrator may make
3 one or more equity financings to a participating invest-
4 ment company.

5 “(b) EQUITY FINANCING AMOUNTS.—

6 “(1) NON-FEDERAL CAPITAL.—An equity fi-
7 nancing made to a participating investment company
8 under the program may not be in an amount that
9 exceeds the amount of the capital of the partici-
10 pating investment company that is not from a Fed-
11 eral source and that is available for investment on
12 or before the date on which an equity financing is
13 drawn upon by the participating investment com-
14 pany. The capital of the participating investment
15 company may include legally binding commitments
16 with respect to capital for investment.

17 “(2) LIMITATION ON AGGREGATE AMOUNT.—

18 The aggregate amount of all equity financings made
19 to a participating investment company under the
20 program may not exceed \$100,000,000.

21 “(c) EQUITY FINANCING PROCESS.—In making an
22 equity financing under the program, the Administrator
23 shall commit an equity financing amount to a partici-
24 pating investment company, and the amount of each com-
25 mitment shall remain available to be drawn upon by a par-
26 ticipating investment company—

1 “(b) EVALUATION OF COMPLIANCE.—After a partici-
2 pating investment company has expended not less than 50
3 percent of the amount of an equity financing commitment
4 made under section 399F, the Administrator shall evalu-
5 ate the compliance of the participating investment com-
6 pany with the requirements under subsection (a).

7 “(c) WAIVER.—The Administrator may waive the re-
8 quirements for a participating investment company under
9 subsection (a) if the Administrator determines that it is
10 in the best interest of the long term solvency of the fund
11 established in section 399J.

12 **“SEC. 399H. PRO RATA INVESTMENT SHARES.**

13 “Each investment made by a participating invest-
14 ment company under the program shall be treated as com-
15 prised of capital from equity financings under the program
16 according to the ratio that capital from equity financings
17 under the program bears to all capital available to the par-
18 ticipating investment company for investment.

19 **“SEC. 399I. EQUITY FINANCING INTEREST.**

20 “(a) EQUITY FINANCING INTEREST.—

21 “(1) IN GENERAL.—As a condition of receiving
22 an equity financing under the program, a partici-
23 pating investment company shall convey an equity fi-
24 nancing interest to the Administrator in accordance
25 with paragraph (2).

1 “(2) EFFECT OF CONVEYANCE.—The equity fi-
2 nancing interest conveyed under paragraph (1)—

3 “(A) shall have all the rights and at-
4 tributes of other investors attributable to their
5 interests in the participating investment com-
6 pany;

7 “(B) shall not denote control or voting
8 rights to the Administrator; and

9 “(C) shall entitle the Administrator to a
10 pro rata portion of any distributions made by
11 the participating investment company equal to
12 the percentage of capital in the participating in-
13 vestment company that the equity financing
14 comprises, which shall be made at the same
15 times and in the same amounts as any other in-
16 vestor in the participating investment company
17 with a similar interest.

18 “(3) ALLOCATIONS.—A participating invest-
19 ment company shall make allocations of income,
20 gain, loss, deduction, and credit to the Adminis-
21 trator with respect to the equity financing interest
22 as if the Administrator were an investor.

23 “(b) MANAGER PROFITS.—As a condition of receiv-
24 ing an equity financing under the program, the manager
25 profits interest payable to the managers of a participating

1 investment company under the program shall not exceed
2 20 percent of profits, exclusive of any profits that may
3 accrue as a result of the capital contributions of any such
4 managers with respect to the participating investment
5 company. Any excess of manager profits interest, less
6 taxes payable thereon, shall be returned by the managers
7 and paid to the investors and the Administrator in propor-
8 tion to the capital contributions and equity financings paid
9 in. No manager profits interest (other than a tax distribu-
10 tion) shall be paid before the repayment to the investors
11 and the Administrator of all contributed capital and equity
12 financings made.

13 “(c) DISTRIBUTION REQUIREMENTS.—As a condition
14 of receiving an equity financing under the program, a par-
15 ticipating investment company shall make all distributions
16 to all investors in cash and shall make distributions within
17 a reasonable time after exiting investments, including fol-
18 lowing a public offering or market sale of underlying in-
19 vestments.

20 “(d) RESERVE REQUIREMENTS.—

21 “(1) IN GENERAL.—A participating investment
22 company with an outstanding equity financing under
23 the program shall, during the first 5 years of the
24 term of each debenture which requires periodic inter-
25 est payments to Administration, maintain a reserve

1 sufficient to pay the interest and charges on the de-
2 benture for the first 21 payments due after the date
3 of issuance.

4 “(2) FORM.—The reserve required under this
5 subsection may consist of any combination of—

6 “(A) binding unfunded commitments from
7 institutional investors of the participating in-
8 vestment company that may only be called for
9 the purpose of—

10 “(i) the payment of interest and
11 charges to the Administration; or

12 “(ii) the payment of any other
13 amounts due to the Administration; and

14 “(B) cash maintained in a separate bank
15 account or separate investment account per-
16 mitted by the Administration by regulation and
17 separately identified in the financial statements
18 of the participating investment company as ‘re-
19 stricted cash’ available only for the purpose
20 of—

21 “(i) paying interest and charges to the
22 Administration; or

23 “(ii) the payment of any other
24 amounts due to the Administration.

25 “(3) REDUCTION OF REQUIRED AMOUNT.—

1 “(A) IN GENERAL.—The required reserve
2 associated with a debenture shall be reduced on
3 each payment date upon payment of the re-
4 quired interest and charges to the Administra-
5 tion.

6 “(B) ELIMINATION.—If a participating in-
7 vestment company prepays a debenture before
8 the due date for the twenty-first payment after
9 the date on which the debenture is issued, the
10 reserve requirement with respect to the deben-
11 ture shall be eliminated.

12 “(4) INCLUSION IN FORMATION DOCUMENTS.—
13 The formation documents for a participating invest-
14 ment company shall incorporate the reserve require-
15 ments under this subsection.

16 **“SEC. 399J. FUND.**

17 “(a) IN GENERAL.—There is established in the
18 Treasury a separate account (in this section referred to
19 as ‘the fund’) for equity financings which shall be available
20 to the Administrator, subject to annual appropriations, as
21 a revolving fund to be used for the purposes of the pro-
22 gram. All amounts received by the Administrator under
23 the program, including any moneys, property, or assets
24 derived by the Administrator from operations in connec-
25 tion with the program, shall be deposited in the fund.

1 “(b) FUNDS ADMINISTRATION.—Not more than 1
2 percent of the total amount made available for the fund
3 in a fiscal year may be used for funds administration.

4 **“SEC. 399K. APPLICATION OF OTHER SECTIONS.**

5 “To the extent not inconsistent with requirements
6 under this part, the Administrator may apply sections
7 309, 311, 312, 313, and 314 to activities under this part,
8 and an officer, director, employee, agent, or other partici-
9 pant in a participating investment company shall be sub-
10 ject to the requirements under such sections.

11 **“SEC. 399L. ANNUAL REPORTING.**

12 “The Administrator shall include information on the
13 performance of the program in the annual performance
14 report of the Administration required to be submitted
15 under section 10(a) of the Small Business Act (15 U.S.C.
16 639(a)).”.

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