

Union Calendar No. 311

114TH CONGRESS
2^D SESSION

H. R. 3784

[Report No. 114-408]

To amend the Securities Exchange Act of 1934 to establish an Office of the Advocate for Small Business Capital Formation and a Small Business Capital Formation Advisory Committee, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2015

Mr. CARNEY (for himself, Mr. DUFFY, Mr. QUIGLEY, and Mr. CRENSHAW) introduced the following bill; which was referred to the Committee on Financial Services

FEBRUARY 1, 2016

Additional sponsors: Mr. SHERMAN, Mr. FINCHER, Mrs. CAROLYN B. MALONEY of New York, Miss RICE of New York, Mr. KILDEE, and Ms. VELÁZQUEZ

FEBRUARY 1, 2016

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on October 21, 2015]

A BILL

To amend the Securities Exchange Act of 1934 to establish an Office of the Advocate for Small Business Capital Formation and a Small Business Capital Formation Advisory Committee, 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 “SEC Small Business*
5 *Advocate Act of 2015”.*

6 **SEC. 2. ESTABLISHMENT OF OFFICE OF THE ADVOCATE**
7 **FOR SMALL BUSINESS CAPITAL FORMATION**
8 **AND SMALL BUSINESS CAPITAL FORMATION**
9 **ADVISORY COMMITTEE.**

10 *(a) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS*
11 *CAPITAL FORMATION.—Section 4 of the Securities Ex-*
12 *change Act of 1934 (15 U.S.C. 78d) is amended by adding*
13 *at the end the following:*

14 *“(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS*
15 *CAPITAL FORMATION.—*

16 *“(1) OFFICE ESTABLISHED.—There is established*
17 *within the Commission the Office of the Advocate for*
18 *Small Business Capital Formation (hereafter in this*
19 *subsection referred to as the ‘Office’).*

20 *“(2) ADVOCATE FOR SMALL BUSINESS CAPITAL*
21 *FORMATION.—*

22 *“(A) IN GENERAL.—The head of the Office*
23 *shall be the Advocate for Small Business Capital*
24 *Formation, who shall—*

1 “(i) report directly to the Commission;
2 and

3 “(ii) be appointed by the Commission,
4 from among individuals having experience
5 in advocating for the interests of small busi-
6 nesses and encouraging small business cap-
7 ital formation.

8 “(B) COMPENSATION.—The annual rate of
9 pay for the Advocate for Small Business Capital
10 Formation shall be equal to the highest rate of
11 annual pay for other senior executives who re-
12 port directly to the Commission.

13 “(C) NO CURRENT EMPLOYEE OF THE COM-
14 MISSION.—An individual may not be appointed
15 as the Advocate for Small Business Capital For-
16 mation if the individual is currently employed
17 by the Commission.

18 “(3) STAFF OF OFFICE.—The Advocate for Small
19 Business Capital Formation, after consultation with
20 the Commission, may retain or employ independent
21 counsel, research staff, and service staff, as the Advo-
22 cate for Small Business Capital Formation deter-
23 mines to be necessary to carry out the functions of the
24 Office.

1 “(4) *FUNCTIONS OF THE ADVOCATE FOR SMALL*
2 *BUSINESS CAPITAL FORMATION.—The Advocate for*
3 *Small Business Capital Formation shall—*

4 “(A) *assist small businesses and small busi-*
5 *ness investors in resolving significant problems*
6 *such businesses and investors may have with the*
7 *Commission or with self-regulatory organiza-*
8 *tions;*

9 “(B) *identify areas in which small busi-*
10 *nesses and small business investors would benefit*
11 *from changes in the regulations of the Commis-*
12 *sion or the rules of self-regulatory organizations;*

13 “(C) *identify problems that small businesses*
14 *have with securing access to capital, including*
15 *any unique challenges to minority-owned and*
16 *women-owned small businesses;*

17 “(D) *analyze the potential impact on small*
18 *businesses and small business investors of—*

19 “(i) *proposed regulations of the Com-*
20 *mission that are likely to have a significant*
21 *economic impact on small businesses and*
22 *small business capital formation; and*

23 “(ii) *proposed rules that are likely to*
24 *have a significant economic impact on*
25 *small businesses and small business capital*

1 *formation of self-regulatory organizations*
2 *registered under this title;*

3 “(E) *conduct outreach to small businesses*
4 *and small business investors, including through*
5 *regional roundtables, in order to solicit views on*
6 *relevant capital formation issues;*

7 “(F) *to the extent practicable, propose to the*
8 *Commission changes in the regulations or orders*
9 *of the Commission and to Congress any legisla-*
10 *tive, administrative, or personnel changes that*
11 *may be appropriate to mitigate problems identi-*
12 *fied under this paragraph and to promote the in-*
13 *terests of small businesses and small business in-*
14 *vestors;*

15 “(G) *consult with the Investor Advocate on*
16 *proposed recommendations made under subpara-*
17 *graph (F); and*

18 “(H) *advise the Investor Advocate on issues*
19 *related to small businesses and small business in-*
20 *vestors.*

21 “(5) *ACCESS TO DOCUMENTS.—The Commission*
22 *shall ensure that the Advocate for Small Business*
23 *Capital Formation has full access to the documents*
24 *and information of the Commission and any self-reg-*

1 *ulatory organization, as necessary to carry out the*
2 *functions of the Office.*

3 “(6) *ANNUAL REPORT ON ACTIVITIES.*—

4 “(A) *IN GENERAL.*—*Not later than Decem-*
5 *ber 31 of each year after 2015, the Advocate for*
6 *Small Business Capital Formation shall submit*
7 *to the Committee on Banking, Housing, and*
8 *Urban Affairs of the Senate and the Committee*
9 *on Financial Services of the House of Represent-*
10 *atives a report on the activities of the Advocate*
11 *for Small Business Capital Formation during*
12 *the immediately preceding fiscal year.*

13 “(B) *CONTENTS.*—*Each report required*
14 *under subparagraph (A) shall include—*

15 “(i) *appropriate statistical informa-*
16 *tion and full and substantive analysis;*

17 “(ii) *information on steps that the Ad-*
18 *vocate for Small Business Capital Forma-*
19 *tion has taken during the reporting period*
20 *to improve small business services and the*
21 *responsiveness of the Commission and self-*
22 *regulatory organizations to small business*
23 *and small business investor concerns;*

24 “(iii) *a summary of the most serious*
25 *issues encountered by small businesses and*

1 *small business investors, including any*
2 *unique issues encountered by minority-*
3 *owned and women-owned small businesses*
4 *and their investors, during the reporting pe-*
5 *riod;*

6 “(iv) *an inventory of the items sum-*
7 *marized under clause (iii) (including items*
8 *summarized under such clause for any prior*
9 *reporting period on which no action has*
10 *been taken or that have not been resolved to*
11 *the satisfaction of the Advocate for Small*
12 *Business Capital Formation as of the begin-*
13 *ning of the reporting period covered by the*
14 *report) that includes—*

15 “(I) *identification of any action*
16 *taken by the Commission or the self-*
17 *regulatory organization and the result*
18 *of such action;*

19 “(II) *the length of time that each*
20 *item has remained on such inventory;*
21 *and*

22 “(III) *for items on which no ac-*
23 *tion has been taken, the reasons for in-*
24 *action, and an identification of any of-*

1 *ficial who is responsible for such ac-*
2 *tion;*

3 *“(v) recommendations for such changes*
4 *to the regulations, guidance and orders of*
5 *the Commission and such legislative actions*
6 *as may be appropriate to resolve problems*
7 *with the Commission and self-regulatory or-*
8 *ganizations encountered by small businesses*
9 *and small business investors and to encour-*
10 *age small business capital formation; and*

11 *“(vi) any other information, as deter-*
12 *mined appropriate by the Advocate for*
13 *Small Business Capital Formation.*

14 *“(C) CONFIDENTIALITY.—No report re-*
15 *quired by subparagraph (A) may contain con-*
16 *fidential information.*

17 *“(D) INDEPENDENCE.—Each report re-*
18 *quired under subparagraph (A) shall be provided*
19 *directly to the committees of Congress listed in*
20 *such subparagraph without any prior review or*
21 *comment from the Commission, any commis-*
22 *sioner, any other officer or employee of the Com-*
23 *mission, or the Office of Management and Budg-*
24 *et.*

1 “(1) *ESTABLISHMENT.*—*There is established*
2 *within the Commission the Small Business Capital*
3 *Formation Advisory Committee (hereafter in this sec-*
4 *tion referred to as the ‘Committee’).*

5 “(2) *FUNCTIONS.*—

6 “(A) *IN GENERAL.*—*The Committee shall*
7 *provide the Commission with advice on the Com-*
8 *mission’s rules, regulations, and policies with re-*
9 *gard to the Commission’s mission of protecting*
10 *investors, maintaining fair, orderly, and effi-*
11 *cient markets, and facilitating capital forma-*
12 *tion, as such rules, regulations, and policies re-*
13 *late to—*

14 “(i) *capital raising by emerging, pri-*
15 *vately held small businesses (‘emerging com-*
16 *panies’) and publicly traded companies*
17 *with less than \$250,000,000 in public mar-*
18 *ket capitalization (‘smaller public compa-*
19 *nies’) through securities offerings, including*
20 *private and limited offerings and initial*
21 *and other public offerings;*

22 “(ii) *trading in the securities of emerg-*
23 *ing companies and smaller public compa-*
24 *nies; and*

1 “(iii) *public reporting and corporate*
2 *governance requirements of emerging com-*
3 *panies and smaller public companies.*

4 “(B) *LIMITATION.—The Committee shall*
5 *not provide any advice with respect to any poli-*
6 *cies, practices, actions, or decisions concerning*
7 *the Commission’s enforcement program.*

8 “(b) *MEMBERSHIP.—*

9 “(1) *IN GENERAL.—The members of the Com-*
10 *mittee shall be—*

11 “(A) *the Advocate for Small Business Cap-*
12 *ital Formation;*

13 “(B) *not fewer than 10, and not more than*
14 *20, members appointed by the Commission, from*
15 *among individuals—*

16 “(i) *who represent—*

17 “(I) *emerging companies engaging*
18 *in private and limited securities offer-*
19 *ings or considering initial public offer-*
20 *ings (‘IPO’) (including the companies’*
21 *officers and directors);*

22 “(II) *the professional advisors of*
23 *such companies (including attorneys,*
24 *accountants, investment bankers, and*
25 *financial advisors); and*

1 “(III) the investors in such com-
2 panies (including angel investors, ven-
3 ture capital funds, and family offices);

4 “(ii) who are officers or directors of
5 minority-owned small businesses and
6 women-owned small businesses;

7 “(iii) who represent—

8 “(I) smaller public companies (in-
9 cluding the companies’ officers and di-
10 rectors);

11 “(II) the professional advisors of
12 such companies (including attorneys,
13 auditors, underwriters, and financial
14 advisors); and

15 “(III) the pre-IPO and post-IPO
16 investors in such companies (both in-
17 stitutional, such as venture capital
18 funds, and individual, such as angel
19 investors); and

20 “(iv) who represent participants in the
21 marketplace for the securities of emerging
22 companies and smaller public companies,
23 such as securities exchanges, alternative
24 trading systems, analysts, information proc-
25 essors, and transfer agents; and

1 “(C) 3 non-voting members—

2 “(i) 1 of whom shall be appointed by
3 the Investor Advocate;

4 “(ii) 1 of whom shall be appointed by
5 the North American Securities Administra-
6 tors Association; and

7 “(iii) 1 of whom shall be appointed by
8 the Administrator of the Small Business
9 Administration.

10 “(2) *TERM.*—Each member of the Committee ap-
11 pointed under subparagraph (B), (C)(ii), or (C)(iii)
12 of paragraph (1) shall serve for a term of 4 years.

13 “(3) *MEMBERS NOT COMMISSION EMPLOYEES.*—
14 Members appointed under subparagraph (B), (C)(ii),
15 or (C)(iii) of paragraph (1) shall not be treated as
16 employees or agents of the Commission solely because
17 of membership on the Committee.

18 “(c) *CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-*
19 *SISTANT SECRETARY.*—

20 “(1) *IN GENERAL.*—The members of the Com-
21 mittee shall elect, from among the members of the
22 Committee—

23 “(A) a chairman;

24 “(B) a vice chairman;

25 “(C) a secretary; and

1 “(D) *an assistant secretary.*

2 “(2) *TERM.—Each member elected under para-*
3 *graph (1) shall serve for a term of 3 years in the ca-*
4 *capacity for which the member was elected under para-*
5 *graph (1).*

6 “(d) *MEETINGS.—*

7 “(1) *FREQUENCY OF MEETINGS.—The Committee*
8 *shall meet—*

9 “(A) *not less frequently than four times an-*
10 *nually, at the call of the chairman of the Com-*
11 *mittee; and*

12 “(B) *from time to time, at the call of the*
13 *Commission.*

14 “(2) *NOTICE.—The chairman of the Committee*
15 *shall give the members of the Committee written no-*
16 *tice of each meeting, not later than 2 weeks before the*
17 *date of the meeting.*

18 “(e) *COMPENSATION AND TRAVEL EXPENSES.—Each*
19 *member of the Committee who is not a full-time employee*
20 *of the United States shall—*

21 “(1) *be entitled to receive compensation at a rate*
22 *not to exceed the daily equivalent of the annual rate*
23 *of basic pay in effect for a position at level V of the*
24 *Executive Schedule under section 5316 of title 5,*
25 *United States Code, for each day during which the*

1 *member is engaged in the actual performance of the*
2 *duties of the Committee; and*

3 *“(2) while away from the home or regular place*
4 *of business of the member in the performance of serv-*
5 *ices for the Committee, be allowed travel expenses, in-*
6 *cluding per diem in lieu of subsistence, in the same*
7 *manner as persons employed intermittently in the*
8 *Government service are allowed expenses under sec-*
9 *tion 5703 of title 5, United States Code.*

10 *“(f) STAFF.—The Commission shall make available to*
11 *the Committee such staff as the chairman of the Committee*
12 *determines are necessary to carry out this section.*

13 *“(g) REVIEW BY COMMISSION.—The Commission*
14 *shall—*

15 *“(1) review the findings and recommendations of*
16 *the Committee; and*

17 *“(2) each time the Committee submits a finding*
18 *or recommendation to the Commission, promptly*
19 *issue a public statement—*

20 *“(A) assessing the finding or recommenda-*
21 *tion of the Committee; and*

22 *“(B) disclosing the action, if any, the Com-*
23 *mission intends to take with respect to the find-*
24 *ing or recommendation.*

1 “(h) *FEDERAL ADVISORY COMMITTEE ACT.*—*The Fed-*
2 *eral Advisory Committee Act (5 U.S.C. App.) shall not*
3 *apply with respect to the Committee and its activities.*”.

4 (c) *ANNUAL GOVERNMENT-BUSINESS FORUM ON*
5 *SMALL BUSINESS CAPITAL FORMATION.*—*Section 503(a) of*
6 *the Small Business Investment Incentive Act of 1980 (15*
7 *U.S.C. 80c–1(a)) is amended by inserting “(acting through*
8 *the Office of the Advocate for Small Business Capital For-*
9 *mation and in consultation with the Small Business Cap-*
10 *ital Formation Advisory Committee)” after “Securities and*
11 *Exchange Commission”.*

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