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THE EXPANDING ACCESS TO CAPITAL FOR ENTREPRENEURIAL LEADERS (EXCEL) ACT OF 2013

SEPTEMBER 10, 2013.—Ordered to be printed

Ms. LANDRIEU, from the Committee on Small Business and
Entrepreneurship, submitted the following

R E P O R T

[To accompany S. 511]

The Committee on Small Business and Entrepreneurship, having considered the bill (S. 511), to amend the Small Business Investment Act of 1958 to enhance the Small Business Investment Company Program, and for other purposes, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

I. INTRODUCTION

The EXCEL Act (S. 511) was introduced by the Committee's Chair, Senator Mary L. Landrieu, on March 11, 2013. The bill's other co-sponsors include Committee members Senator Benjamin L. Cardin and Senator William M. Cowan.

The EXCEL Act improves and enhances the Small Business Administration's (SBA) Small Business Investment Company (SBIC) program at no cost to taxpayers. The bill raises the SBIC program's authorization level to meet growing demand and will make improvements to increase small businesses' access to capital.

During markup of the bill, the Risch-Landrieu amendment to the bill, which struck sections 4–7 of the underlying EXCEL Act, was approved unanimously by voice vote. The bill, as amended, was also approved by voice vote.

II. HISTORY (PURPOSE & NEED FOR LEGISLATION)

The Small Business Investment Company program is one of several capital access programs administered by the Small Business Administration designed to bridge the gap between small busi-

nesses' need for capital and traditional financing sources. The SBA runs this private equity program by guaranteeing money borrowed by qualified investment funds who invest in small businesses. The qualified funds, or SBICs, are privately owned and operated, but licensed and regulated by the SBA. Using a combination of private investments and the debt guaranteed by the SBA, typically at a ratio of \$2 in guaranteed funds for every \$1 of private capital, SBICs make long-term investments in American small businesses. In order to participate in the program, funds pay licensing fees which serve to cover all SBIC program costs. As a result, the core SBIC program (Debenture SBICs) not only boasts a strong success rate, but also incurs no cost to the U.S. government.

The Small Business Investment Company program was established by the Investment Company Act of 1958, which was co-sponsored by then-Majority Leader Lyndon B. Johnson and signed into law by President Dwight Eisenhower. Since the program's inception, SBICs have invested over \$56 billion in over 100,000 small businesses. Companies that have received SBIC funding include Apple Computer, AOL, Callaway Golf, Costco, Outback Steakhouse, Jenny Craig, and Center Rock of Berlin, Pennsylvania, the manufacturer of the drill bit that saved the Chilean miners in October, 2010.

The purpose of the EXCEL Act is to make necessary and timely improvements to the already successful SBIC program to increase the availability of capital for small businesses. Over the past few years, the SBIC program has seen strong growth. For example, in Fiscal Year 2011 alone, the program grew by 50 percent. In Fiscal Year 2012, the third consecutive record year for the SBIC program, SBA-guaranteed leverage commitments totaled nearly \$2 billion, and the SBA expects demand to continue to grow. However, despite this impressive growth, the program's authorization level, currently capped at \$3 billion per year, has not been permanently raised since 2003. The EXCEL Act contains a provision to raise the SBIC program authorization level from \$3 billion to \$4 billion. In order to meet growing demand, the program needs room to grow.

The second major provision of the EXCEL Act relates to "families of funds." A family of funds refers to a group of several licensed funds operated by a team of SBIC fund managers. These funds under common control are currently limited to \$225 million of SBA-guaranteed debt, and several teams of fund managers have already bumped against this cap. The EXCEL Act would increase the family of funds limit from \$225 million to \$350 million. Since SBIC fund managers who manage more than one fund generally see better investment results, the EXCEL Act should encourage continued and responsible investments in American small businesses at no cost to the taxpayer.

During the 112th Congress, Small Business Committee Chair Landrieu and former Ranking Member Olympia Snowe filed S. 3253, the EXCEL Act of 2012, on May 24, 2012. The bill included the program authorization level increase and the increase in the family of funds leverage limit, as well as a number of other program enhancements. While the standalone bill was not acted upon further by the Committee, Senator Landrieu included the EXCEL Act provisions in several other pieces of legislation during the 112th Congress.

Senate Amendment 1833 (S. Amdt. 1833), an amendment in the nature of a substitute to the Jumpstart Our Business Startups (JOBS) Act of 2012 (H.R. 3606), contained language to raise the family of funds limit to \$350 million from \$225 million and to increase the SBIC program's authorization level to \$4 billion. S. Amdt. 1833, the Invigorate New Ventures and Entrepreneurs to Succeed Today (INVEST) in America Act of 2012, was introduced on March 15, 2012 by Senator Jack Reed along with Chair Landrieu and Senators Levin, Scott Brown, Merkley, Akaka, Whitehouse, Franken, Harkin, and Durbin. S. Amdt. 1833 was ultimately not included in the final version of H.R. 3606.

Additionally, Senator Landrieu included SBIC program enhancements in Senate Amendment 2521 (S. Amdt. 2521), which she filed to S. 2237, the Small Business Jobs and Tax Relief Act of 2012, on July 11, 2012. Division B of S. Amdt. 2521, entitled the Success Ultimately Comes from Capital, Contracting, Education, Strategic Partnerships, and Smart Regulations (SUCCESS) Act, included the EXCEL Act of 2012 as a portion of Title II. Although it came up short of the 60 votes needed to end debate, the amendment received a strong 57 bipartisan votes, including five Republicans, when it received a vote on the Senate floor on July 12, 2012. Shortly thereafter, Chair Landrieu filed the SUCCESS Act as a stand-alone bill. On July 25, 2012, Chair Landrieu introduced S. 3442, the SUCCESS Act of 2012, with eight co-sponsors including Committee members Senator Cardin and Senator Shaheen, as well as Senators Blumenthal, Boxer, Gillibrand, Lieberman, Merkley, and Whitehouse.

Ultimately, however, none of the bills or amendments made it to the President's desk during the 112th Congress.

III. HEARINGS & ROUNDTABLES

In preparing to draft and introduce the EXCEL Act, the Committee held a number of hearings and roundtables analyzing the SBA's Small Business Investment Company program. Committee staff and members heard from a wide range of stakeholders from the SBIC community, including small businesses, fund managers, and government officials, on the effectiveness of the program and how to improve upon its successes.

In the 112th Congress:

On March 22, 2012, the Committee held a roundtable entitled, "A Spotlight on Small Business Investment Companies and their Role in the Entrepreneurial Ecosystem." The fourteen roundtable participants included representatives from the SBA, SBICs, SBIC investors, and small businesses. It was during this roundtable that the Committee elicited suggestions on enhancing the SBIC program that would later comprise the key provisions of the EXCEL Act.

On November 29, 2012, the Committee held a hearing entitled, "Creating Jobs and Growing the Economy: Legislative Proposals to Strengthen the Entrepreneurial Ecosystem." The purpose of the hearing was to discuss the legislative proposals included in the "Success Ultimately Comes from Capital, Contracting, Education, Strategic Partnerships, and Smart Regulation (SUCCESS) Act of 2012" (S. 3442), which was the result of recommendations gathered during a series of three Committee roundtables examining the en-

trepreneurial ecosystem during the 112th Congress. Among the provisions that the Committee examined during the hearing were those included in the version of the EXCEL Act that Chair Landrieu and former Ranking Member Snowe introduced during the 112th Congress.

In the 113th Congress:

On March 14, 2013, the Committee held a roundtable entitled “Helping Small Businesses Weather Economic Challenges & Natural Disasters: Review of Legislative Proposals on Access to Capital and Disaster Recovery.” The purpose of the roundtable was to discuss four legislative proposals on small business access to capital and disaster recovery on which the Committee would focus during the beginning of the 113th Congress, including the EXCEL Act. Participants included a wide range of small business owners, investors, and stakeholders, and SBA representatives, including the Associate Administrator for the SBA’s Office of Capital Access. The roundtable followed up on previous Committee roundtables and legislative hearings held during the 112th Congress and provided an opportunity for Committee members to highlight their relevant priorities ahead of an upcoming markup on access to capital and disaster recovery legislation.

IV. DESCRIPTION OF BILL

The purpose of S. 511, the Expanding Access to Capital for Entrepreneurial Leaders (EXCEL) Act, is to make necessary and timely improvements to the already successful SBIC program to increase the availability of equity capital for small businesses. The bill, as amended by the Risch-Landrieu amendment, which struck sections 4–7 of the underlying EXCEL Act, contains two major provisions to enhance the program, both of which come at no cost to the taxpayer:

Section 2 of the bill raises the amount of SBIC debt that the Small Business Administration (SBA) can guarantee from \$3 billion to \$4 billion, indexed to inflation. Despite inflation and the impressive growth that the program has seen over the past few years, the program’s authorization level has not been permanently raised since 2003.

Section 3 of the bill would increase the amount of leverage available to SBIC licensees under common control—also known as a “family of funds”—from \$225 million to \$350 million. Fund managers who manage more than one fund generally see better investment results, and this provision will continue supporting successful fund managers, thereby deploying more capital to America’s small businesses.

V. COMMITTEE VOTE

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following vote was recorded on June 17, 2013.

A motion to adopt the Expanding Access to Capital for Entrepreneurial Leaders (EXCEL) Act of 2013, to amend the Small Business Investment Act of 1958 to enhance the Small Business Investment Company Program, as amended by the Risch-Landrieu amendment, was approved by a voice vote, with the following Senator voting in the negative: Scott.

VI. COST ESTIMATE

In compliance with rule XXVI(11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will be equal to the amounts discussed in the following letter from the Congressional Budget Office:

AUGUST 2, 2013.

Hon. MARY L. LANDRIEU,
Chair, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIR: The Congressional Budget Office has prepared the enclosed cost estimate for S. 511, the Expanding Access to Capital for Entrepreneurial Leaders Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 511—Expanding Access to Capital for Entrepreneurial Leaders Act

S. 511 would set the maximum amount of debt that the Small Business Administration (SBA) can guarantee under the Small Business Investment Company (SBIC) program at \$4 billion per year, adjusted annually for inflation. Further, the bill would raise the maximum amount of debt that the SBA can guarantee for a group of companies participating in the program that are operated together (“a family of funds”) from \$225 million to \$350 million.

Under current law, businesses participating in the SBIC program are required to pay various fees that are sufficient to offset the program’s estimated subsidy cost—that is, the estimated long-term cost to the government of a loan guarantee, calculated on a net-present-value basis. Based on information from SBA, CBO expects that increasing the loan levels for the program and for a family of funds would not affect the estimated subsidy cost, nor would the changes increase the cost to administer the program (which is recorded on a cash basis). Therefore, CBO estimates that implementing S. 511 would not affect discretionary spending. Enacting S. 511 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 511 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

VIII. SECTION-BY-SECTION ANALYSIS*Sec. 1. Title*

This section provides the title of the bill. The Act may be cited as the “Expanding Access to Capital for Entrepreneurial Leaders Act” or the “EXCEL Act”.

Sec. 2. Program authorization

This section raises the program authorization level to \$4,000,000,000. That limit will be indexed for inflation.

Sec. 3. Family of funds

This section raises from \$225,000,000 to \$350,000,000 the maximum amount of outstanding leverage available to two or more funds under common control.

