114TH CONGRESS
*1st Session*
HOUSE OF REPRESENTATIVES
REPORT
114–189

# SMALL BUSINESS INVESTMENT COMPANY CAPITAL ACT OF 2015

JUNE 25, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHABOT, from the Committee on Small Business, submitted the following

# R E P O R T

together with

## ADDITIONAL VIEWS

[To accompany H.R. 1023]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 1023) to amend the Small Business Investment Act of 1958 to provide for increased limitations on leverage for multiple licenses under common control, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS



49–006

## I. BILL TEXT

The bill text is as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Small Business Investment Company Capital Act of 2015".

**SEC. 2. INCREASED LIMITATIONS ON LEVERAGE FOR MULTIPLE LICENSES UNDER COMMON CONTROL.**

Section 303(b)(2)(B) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)(2)(B)) is amended by striking "$225,000,000" and inserting "$350,000,000".

## II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 1023, the "Small Business Investment Company Capital Act of 2015," is to amend the Small Business Investment Act of 1958 to increase the amount of leverage that is available for investment companies licensed by the Administrator of the Small Business Administration (SBA) under common control and ownership from $225 million to $350 million. The increase in leverage available to certain licensed entities will have no effect on the overall authorization of the program established in appropriations bills.

## III. BACKGROUND AND NEED FOR LEGISLATION

Small business investment companies (SBICs) were created to fill a gap in the provision of equity capital to small businesses. SBICs receive a license to operate according to a business plan submitted to the SBA. The SBA then authorizes the licensee to draw leverage (essentially a loan from the government) of up to three times the amount of private capital raised by the SBIC.

SBICs are limited in the total amount of leverage they can obtain from the government—$150 million. 15 U.S.C. 683(b)(2)(A)(ii). If a SBIC reaches that limit (as a result of successful private fundraising), the managers of the SBIC are forbidden from participating in the program unless they start a second SBIC, conduct fundraising, and obtain a license from the SBA. In such cases, the statutory limit for the combined funds is $225 million (meaning that the second SBIC under common management only can raise $25 million and obtain leverage of $75 million). Id. at 683(b)(2)(B). These commonly managed funds are colloquially referred to as a family of funds.

The family of funds limit was raised in 2009 from $150 million to $225 million. In the interim, significant changes have occurred in the economic landscape—particularly historically low-interest rates for debt capital. Investors looking for higher returns have gravitated to equity investments, including those provided by managers of SBICs. Given this change, it makes abundant sense to raise the family of fund limits so that successful managers of SBICs can maintain their presence in the program and continue to attract private investor dollars that can be leveraged for investment in small businesses.

## IV. HEARINGS

In the 114th Congress, issues related to SBICs were addressed at a hearing by the Subcommittee on Economic Growth, Tax and Capital Access of the Committee on Small Business entitled "Improving Capital Access Programs within the SBA" on May 19, 2015. At the hearing, witnesses testified that successful family of funds are constrained by the existing statutory cap and will have no choice but to leave the SBIC program without a modification of the limitation.

## V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on June 10, 2015, and ordered H.R. 1023 be favorably reported to the House by a voice vote at 12:03 pm. No amendments were offered during consideration of H.R. 1023.

## VI. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. There were no amendments offered and no recorded votes were taken in the Committee's consideration of H.R. 1023.

## VII. SECTION-BY-SECTION ANALYSIS OF H.R. 1023

*Section 1. Short title*

This section designates the bill as the "Small Business Investment Company Capital Act of 2015."

*Section 2. Increased limitations on leverage for multiple licensees under common control*

This section amends 303(b)(2)(B) of the Small Business Investment Act of 1958, 15 U.S.C. 683(b)(2)(B) to increase the amount of leverage available to SBIC licensees under common control and management from $225 million to $350 million. As already explained, the Committee needed to take this action to ensure that successful SBIC licensees could maintain their presence in the program and raise more funds to invest in small businesses.

The Committee expects that the SBA will continue to use its existing standards when licensing a second fund under common management and control. Further, the Committee fully expects that the modification made in H.R. 1023 will not subject family of funds to any greater scrutiny in obtaining additional leverage with the new cap then under the existing statutory cap.

The Committee also does not expect that this modification will have any cost to the taxpayer. The increase in the family of funds limit made by this section does not change the amounts set out in appropriations bills for authorized levels of leverage available to SBICs in any fiscal year. Since the overall program operates without any appropriated funds (and has operated without such appropriated funds for many years, including during the Great Recession), this sensible change can be made without any risk to the taxpayer.

## VIII. CONGRESSIONAL BUDGET JUSTIFICATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, June 24, 2015.*

Hon. STEVE CHABOT,
*Chairman, Committee on Small Business,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1023, the Small Business Investment Company Capital Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susan Willie and Ben Christopher.

Sincerely,

KEITH HALL,
*Director.*

Enclosure.

*H.R. 1023—Small Business Investment Company Capital Act of 2015*

H.R. 1023 would raise the maximum amount of debt, from $225 million to $350 million, that the Small Business Administration (SBA) can guarantee for a group of companies participating in the Small Business Investment Company (SBIC) program that are operated together (defined as "a family of funds"').

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 the SBA, CBO expects that increasing the maximum loan guarantee level for a family of funds would not affect the estimated net subsidy cost, nor would the changes increase the SBA's cost to administer the program, which is recorded in the budget on a cash basis. Therefore, CBO estimates that implementing H.R. 1023 would not affect discretionary spending. Enacting H.R. 1023 also would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1023 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.

On May 28, 2015, CBO transmitted a cost estimate for S. 552, the Small Business Investment Capital Company Act of 2015, as ordered reported by the Senate Committee on Small Business and Entrepreneurship. The two bills are identical and the CBO cost estimate is the same.

The CBO staff contacts for this estimate are Susan Willie and Ben Christopher. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

## IX. UNFUNDED MANDATES

H.R. 1023 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, Pub. L.

No. 104–4, and would impose no costs on state, local or tribal governments.

## X. New Budget Authority, Entitlement Authority and Tax Expenditures

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee opines that H.R. 1023 will not establish any new budget or entitlement authority or create any tax expenditures.

## XI. Oversight Findings

In accordance with clause 2(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 1023 are incorporated into the descriptive portions of this report.

## XII. Statement of Constitutional Authority

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the authority for this legislation in Art. I, § 8, cl. 3 of the Constitution of the United States.

## XIII. Congressional Accountability Act

H.R. 1023 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Pub. L. No. 104–1.

## XIV. Federal Advisory Committee Act Statement

H.R. 1023 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App. 2.

## XV. Statement of No Earmarks

Pursuant to clause 9 of rule XXI, H.R. 1023 does not contain any congressional earmarks, limited tax benefits or limited tariff benefits as defined in subsections (d), (e) or (f) of clause 9 of rule XXI of the Rules of the House.

## XVI. Statement of Duplication of Federal Programs

Pursuant to clause 3(c) of the rule XIII of the Rules of the House, no provision of H.R. 1023 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the United States Government Accountability Office pursuant to § 21 of Pub. L. No. 111–139, or a program related to a program identified in the most recent catalog of federal domestic assistance.

## XVII. Disclosure of Directed Rule Makings

Pursuant to clause 3(c) of rule XIII of the Rules of the House, H.R. 1023 does not direct any rulemaking.

## XVIII. Performance Goals and Objectives

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House, the Committee establishes the following performance-related goals and objectives this legislation:

H.R. 1023 amends the Small Business Investment Act of 1958 to provide for increased limitations on leverage for multiple licensees under common control.

## XIX. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

### SMALL BUSINESS INVESTMENT ACT OF 1958

* * * * * * *

### TITLE III—INVESTMENT DIVISION PROGRAMS

### Part A—Small Business Investment Companies

* * * * * * *

#### BORROWING POWER

Sec. 303. (a) Each small business investment company shall have authority to borrow money and to issue its securities, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Administration may prescribe.

(b) To encourage the formation and growth of small business investment companies the Administration is authorized when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection. Debentures purchased or guaranteed by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 per centum, plus, for debentures obligated after September 30, 2001, an

additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administration of purchasing and guaranteeing debentures under this Act, which amount may not exceed 1.38 percent per year, and which shall be paid to and retained by the Administration. The debentures or participating securities shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

(1) The total amount of debentures and participating securities that may be guaranteed by the Administration and outstanding from a company licensed under section 301(c) of this Act shall not exceed 300 per centum of the private capital of such company: *Provided,* That nothing in this paragraph shall require any such company that on March 31, 1993, has outstanding debentures in excess of 300 per centum of its private capital to prepay such excess: *And provided further,* That any such company may apply for an additional debenture guarantee or participating security guarantee with the proceeds to be used solely to pay the amount due on such maturing debenture, but the maturity of the new debenture or security shall be not later than September 30, 2002.

(2) MAXIMUM LEVERAGE.—

(A) IN GENERAL.—The maximum amount of outstanding leverage made available to any one company licensed under section 301(c) of this Act may not exceed the lesser of—

(i) 300 percent of such company's private capital; or
(ii) $150,000,000.

(B) MULTIPLE LICENSES UNDER COMMON CONTROL.—The maximum amount of outstanding leverage made available to two or more companies licensed under section 301(c) of this Act that are commonly controlled (as determined by the Administrator) and not under capital impairment may not exceed [$225,000,000] *$350,000,000*.

(C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—(i) In calculating the outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 351), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

(ii) The maximum amount of outstanding leverage made available to—

(I) any 1 company described in clause (iii) may not exceed the lesser of 300 percent of private capital of the company, or $175,000,000; and

(II) 2 or more companies described in clause (iii) that are under common control (as determined by the Administrator) may not exceed $250,000,000.

(iii) A company described in this clause is a company licensed under section 301(c) in the first fiscal year after the date of enactment of this clause or any fiscal year thereafter that certifies in writing that not

less than 50 percent of the dollar amount of investments of that company shall be made in companies that are located in a low-income geographic area (as that term is defined in section 351).

(D) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

(i) IN GENERAL.—Subject to clause (ii), in calculating the outstanding leverage of a company for purposes of subparagraph (A), the Administrator shall exclude the amount of the cost basis of any Energy Saving qualified investment in a smaller enterprise made in the first fiscal year after the date of enactment of this subparagraph or any fiscal year thereafter by a company licensed in the applicable fiscal year.

(ii) LIMITATIONS.—

(I) AMOUNT OF EXCLUSION.—The amount excluded under clause (i) for a company shall not exceed 33 percent of the private capital of that company.

(II) MAXIMUM INVESTMENT.—A company shall not make an Energy Saving qualified investment in any one entity in an amount equal to more than 20 percent of the private capital of that company.

(III) OTHER TERMS.—The exclusion of amounts under clause (i) shall be subject to such terms as the Administrator may impose to ensure that there is no cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) with respect to purchasing or guaranteeing any debenture involved.

(3) Subject to the foregoing dollar and percentage limits, a company licensed under section 301(c) of this Act may issue and have outstanding both guaranteed debentures and participating securities: *Provided,* That the total amount of participating securities outstanding shall not exceed 200 per centum of private capital.

For purposes of this subsection, the term "venture capital" includes such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration determines to be substantially similar to equity financing.

(c) THIRD PARTY DEBT.—The Administrator—

(1) shall not permit a licensee having outstanding leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government;

(2) shall permit such licensees to incur third party debt only on such terms and subject to such conditions as may be established by the Administrator, by regulation or otherwise.

(d) INVESTMENTS IN SMALLER ENTERPRISES.—The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 25 percent of the aggregate dollar amount of financings of that licensee shall be provided to smaller enterprises.

(e) CAPITAL IMPAIRMENT.—Before approving any application for leverage submitted by a licensee under this Act, the Administrator—

(1) shall determine that the private capital of the licensee meets the requirements of section 302(a); and

(2) shall determine, taking into account the nature of the assets of the licensee, the amount and terms of any third party debt owed by such licensee, and any other factors determined to be relevant by the Administrator, that the private capital of the licensee has not been impaired to such an extent that the issuance of additional leverage would create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(f) REDEMPTION OR REPURCHASE OF PREFERRED STOCK.—Notwithstanding any other provision of law—

(1) the Administrator may allow the issuer of any preferred stock sold to the Administration before November 1, 1989 to redeem or repurchase such stock, upon the payment to the Administration of an amount less than the par value of such stock, for a repurchase price determined by the Administrator after consideration of all relevant factors, including—

(A) the market value of the stock;

(B) the value of benefits provided and anticipated to accrue to the issuer;

(C) the amount of dividends paid, accrued, and anticipated; and

(D) the estimate of the Administrator of any anticipated redemption; and

(2) any moneys received by the Administration from the repurchase of preferred stock shall be available solely to provide debenture leverage to licensees having 50 percent or more in aggregate dollar amount of their financings invested in smaller enterprises.

(g) In order to encourage small business investment companies to provide equity capital to small businesses, the Administration is authorized to guarantee the payment of the redemption price and prioritized payments on participating securities issued by such companies which are licensed pursuant to section 301(c) of this Act, and a trust or a pool acting on behalf of the Administration is authorized to purchase such securities. Such guarantees and purchases shall be made on such terms and conditions as the Administration shall establish by regulation. For purposes of this section, (A) the term "participating securities" includes preferred stock, a preferred limited partnership interest or a similar instrument, including debentures under the terms of which interest is payable only to the extent of earnings and (B) the term "prioritized payments" includes dividends on stock, interest on qualifying debentures, or priority returns on preferred limited partnership interests which are paid only to the extent of earnings. Participating securities guaranteed under this subsection shall be subject to the following restrictions and limitations, in addition to such other restrictions and limitations as the Administration may determine:

(1) Participating securities shall be redeemed not later than 15 years after their date of issuance for an amount equal to 100 per centum of the original issue price plus the amount of

any accrued prioritized payment: *Provided,* That if, at the time the securities are redeemed, whether as scheduled or in advance, the issuing company (A) has not paid all accrued prioritized payments in full as provided in paragraph (2) below and (B) has not sold or otherwise disposed of all investments subject to profit distributions pursuant to paragraph (11), the company's obligation to pay accrued and unpaid prioritized payments shall continue and payment shall be made from the realized gain, if any, on the disposition of such investments, but if on disposition there is no realized gain, the obligation to pay accrued and unpaid prioritized payments shall be extinguished: *Provided further,* That in the interim, the company shall not make any in-kind distributions of such investments unless it pays to the Administration such sums, up to the amount of the unrealized appreciation on such investments, as may be necessary to pay in full the accrued prioritized payments.

(2) Prioritized payments on participating securities shall be preferred and cumulative and payable out of the retained earnings available for distribution, as defined by the Administration, of the issuing company at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such securities, adjusted to the nearest one-eighth of 1 percent, plus, for participating securities obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administration of purchasing and guaranteeing participating securities under this Act, which amount may not exceed 1.46 percent per year, and which shall be paid to and retained by the Administration.

(3) In the event of liquidation of the company, participating securities shall be senior in priority for all purposes to all other equity interests in the issuing company, whenever created.

(4) Any company issuing a participating security under this Act shall commit to invest or shall invest an amount equal to the outstanding face value of such security solely in equity capital. As used in this subsection, "equity capital" means common or preferred stock or a similar instrument, including subordinated debt with equity features which is not amortized and which provides for interest payments from appropriate sources, as determined by the Administration.

(5) The only debt (other than leverage obtained in accordance with this title) which any company issuing a participating security under this subsection may have outstanding shall be temporary debt in amounts limited to not more than 50 per centum of private capital.

(6) The Administration may permit the proceeds of a participating security to be used to pay the principal amount due on outstanding debentures guaranteed by the Administration, if (A) the company has outstanding equity capital invested in an amount equal to the amount of the debentures being refi-

nanced and (B) the Administration receives profit participation on such terms and conditions as it may determine, but not to exceed the per centums specified in paragraph (11).

(7) For purposes of computing profit participation under paragraph (11), except as otherwise determined by the Administration, the management expenses of any company which issues participating securities shall not be greater than 2.5 per centum per annum of the combined capital of the company, plus $125,000 if the company's combined capital is less than $20,000,000. For purposes of this paragraph, (A) the term "combined capital" means the aggregate amount of private capital and outstanding leverage and (B) the term "management expenses" includes salaries, office expenses, travel, business development, office and equipment rental, bookkeeping and the development, investigation and monitoring of investments, but does not include the cost of services provided by specialized outside consultants, outside lawyers and outside auditors, who perform services not generally expected of a venture capital company nor does such term include the cost of services provided by any affiliate of the company which are not part of the normal process of making and monitoring venture capital investments.

(8) Notwithstanding paragraph (9), if a company is operating as a limited partnership or as a subchapter S corporation or an equivalent pass-through entity for tax purposes and if there are no accumulated and unpaid prioritized payments, the company may make annual distributions to the partners, shareholders, or members in amounts not greater than each partner's, shareholder's, or member's maximum tax liability. For purposes of this paragraph, the term "maximum tax liability" means the amount of income allocated to each partner, shareholder, or member (including an allocation to the Administration as if it were a taxpayer) for Federal income tax purposes in the income tax return filed or to be filed by the company with respect to the fiscal year of the company immediately preceding such distribution, multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in such return. For purposes of this paragraph, the term "State income tax" means the income tax of the State where the company's principal place of business is located. A company may also elect to make a distribution under this paragraph at any time during any calendar quarter based on an estimate of the maximum tax liability. If a company makes 1 or more interim distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed.

(9) After making any distributions as provided in paragraph (8), a company with participating securities outstanding may distribute the balance of income to its investors, specifically including the Administration, in the per centums specified in paragraph (11), if there are no accumulated and unpaid

prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full, subject to the following conditions:

(A) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 200 per centum of the amount of private capital, any amounts distributed shall be made to private investors and to the Administration in the ratio of leverage to private capital.

(B) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 100 per centum but not more than 200 per centum of the amount of private capital, 50 per centum of any amounts distributed shall be made to the Administration and 50 per centum shall be made to the private investors.

(C) If the amount of leverage outstanding is 100 per centum, or less, of the amount of private capital, the ratio shall be that for distribution of profits as provided in paragraph (11).

(D) Any amounts received by the Administration under subparagraph (A) or (B) shall be applied first as profit participation as provided in paragraph (11) and any remainder shall be applied as a prepayment of the principal amount of the participating securities or debentures.

(10) After making any distributions pursuant to paragraph (8), a company with participating securities outstanding may return capital to its investors, specifically including the Administration, if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full. Any distributions under this paragraph shall be made to private investors and to the Administration in the ratio of private capital to leverage as of the date of the proposed distribution: *Provided,* That if the amount of leverage outstanding is less than 50 per centum of the amount of private capital or $10,000,000, whichever is less, no distribution shall be required to be made to the Administration unless the Administration determines, on a case by case basis, to require distributions to the Administration to reduce the amount of outstanding leverage to an amount less than $10,000,000.

(11)(A) A company which issues participating securities shall agree to allocate to the Administration a share of its profits determined by the relationship of its private capital to the amount of participating securities guaranteed by the Administration in accordance with the following:

(i) If the total amount of participating securities is 100 per centum of private capital or less, the company shall allocate to the Administration a per centum share computed as follows: the amount of participating securities divided by private capital times 9 per centum.

(ii) If the total amount of participating securities is more than 100 per centum but not greater than 200 per centum of private capital, the company shall allocate to the Administration a per centum share computed as follows:

(I) 9 per centum, plus

(II) 3 per centum of the amount of participating securities minus private capital divided by private capital.

(B) Notwithstanding any other provision of this paragraph—

(i) in no event shall the total per centum required by this paragraph exceed 12 per centum, unless required pursuant to the provisions of (ii) below,

(ii) if, on the date the participating securities are marketed, the interest rate on Treasury bonds with a maturity of 10 years is a rate other than 8 per centum, the Administration shall adjust the rate specified in paragraph (A) above, either higher or lower, by the same per centum by which the Treasury bond rate is higher or lower than 8 per centum, and

(iii) this paragraph shall not be construed to create any ownership interest of the Administration in the company.

(12) A company may elect to make an in-kind distribution of securities only if such securities are publicly traded and marketable. The company shall deposit the Administration's share of such securities for disposition with a trustee designated by the Administration or, at its option and with the agreement of the company, the Administration may direct the company to retain the Administration's share. If the company retains the Administration's share, it shall sell the Administration's share and promptly remit the proceeds to the Administration. As used in this paragraph, the term "trustee" means a person who is knowledgeable about and proficient in the marketing of thinly traded securities.

(h) The computation of amounts due the Administration under participating securities shall be subject to the following terms and conditions:

(1) The formula in subsection (g)(11) shall be computed annually and the Administration shall receive distributions of its profit participation at the same time as other investors in the company.

(2) The formula shall not be modified due to an increase in the private capital unless the increase is provided for in a proposed business plan submitted to and approved by the Administration.

(3) After distributions have been made, the Administration's share of such distributions shall not be recomputed or reduced.

(4) If the company prepays or repays the participating securities, the Administration shall receive the requisite participation upon the distribution of profits due to any investments held by the company on the date of the repayment or prepayment.

(5) If a company is licensed on or before March 31, 1993, it may elect to exclude from profit participation all investments held on that date and in such case the Administration shall determine the amount of the future expenses attributable to such prior investment: *Provided,* That if the company issues participating securities to refinance debentures as authorized in subsection (g)(6), it may not elect to exclude profits on existing investments under this paragraph.

(i) LEVERAGE FEE.—With respect to leverage granted by the Administration to a licensee, the Administration shall collect from the licensee a nonrefundable fee in an amount equal to 3 percent of the face amount of leverage granted to the licensee in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee.

(j) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures and participating securities under this Act.

(k) ENERGY SAVING DEBENTURES.—In addition to any other authority under this Act, a small business investment company licensed in the first fiscal year after the date of enactment of this subsection or any fiscal year thereafter may issue Energy Saving debentures.

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## XX. ADDITIONAL VIEWS

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### ADDITIONAL VIEW

#### BACKGROUND

Like many of the SBA's financing programs, the SBIC program operates as a public-private partnership. The SBA does not make direct investments in small business concerns through the SBIC program, but instead licenses Small Business Investment Companies (SBICs) to administer the program. SBICs are state-chartered entities organized solely for the purpose of providing a source of equity capital for small business concerns. The SBA provides funding to qualified SBICs with expertise in certain sectors or industries, which then use their own funds, plus resources borrowed with an SBA guaranty or "leverage," to invest in small businesses. Although subject to SBA regulation, SBICs remain privately owned and managed and make their own decisions about which small business investments to make.

The SBA provides leverage to SBICs in two forms, "debentures" and "participating securities." To obtain leverage, SBICs issue debentures or participating securities, which are guaranteed by the SBA. Debenture leverage has a term of ten years, with semi-annual interest payments and a lump sum payment of principal at maturity. Debenture leverage operates on a zero-subsidy basis. Participating securities function similar to debentures, but the SBA advances interest to the pool investors and is repaid only out of profits of the fund. This makes participating securities unique among the SBA's programs. Due to rising costs, the SBA stopped issuing participating securities in 2004 and today, only 50 remain in operation.

By their nature, debenture SBICs focus on companies that are mature enough to make current interest payments on the investment so that, in turn, the SBIC can meet its interest obligations to SBA. Thus, debenture financing will generally be best suited for SBICs investing in portfolio companies with the ability to service debt. By contrast, participating securities SBICs are able to invest equity capital in earlier stage businesses because interest is accrued on their obligation to the SBA. Thus, participating securities are generally best suited for SBICs investing in seed and early stage businesses or businesses that either do not have established cash flow or need to use available cash for other purposes.

Over the past 5 years, the number of SBIC licenses has remained fairly constant, averaging 300 each year. However, financing has grown considerably in that period. For comparison, in 2010, SBICs reported financings of $2 billion, by 2014 that figure grew to $5.4 billion, a 170 percent increase. Also, as the number of participating

securities SBIC licensees has decreased (with commensurate increases in debenture SBICs), debt financing has grown at a much faster pace than equity-only investments. Straight debt has grown 4-fold, while all-equity investments have only doubled since FY 2010.

For the larger and more active SBICs, the Small Business Investment Act permits fund managers to hold multiple licenses, known as a "family-of-funds." The main benefit of a family-of-funds is the ability to draw additional SBA leverage. The majority of SBIC licenses are held in families. The current leverage caps, implemented in 2010, allow single licensees to draw $175 million and "family-of-fund" licensees to draw $225 million. Today, some of the largest SBICs have reached the cap.

LEGISLATION

Introduced by Chairman Chabot, H.R. 1023, the "Small Business Investment Company Capital Act of 2015" would permanently increase the family-of-funds leverage cap from $225 million to $350 million, a 55 percent increase. While the goal of expanding access to capital for small businesses is laudable, the increase in leverage raises a number of concerns.

Very few SBICs will be able to take advantage of the increase, limiting the actual amount of capital that will reach the small business community. According to SBA data, out of the total 299 funds in the SBIC program, 20 of them (6% of total funds) belong to 10 families that are either at or within 10 percent of the limit: 7 families are at the max and three families have between $200 million and $225 million. The rest of the funds are either single funds (121) or managed by families that have less than $200 million outstanding from SBA (158).

The seven firms that have maxed out their SBIC leverage ("Tier-1 SBICs") have made 732 investments totaling $3 billion over the past 5 years. However, women- and minority-owned firms were significantly underrepresented. Tier-1 SBICs made only twelve investments to women-owned firms and four to minority-owned firms. These figures equate to just 1.6 and 0.5 percent of all investments made by the group. Veteran-owned firms were also shunned by the seven largest SBICs, receiving just two investments during the same period.

This bill also concentrates risk in just a handful of SBIC asset managers without increasing safeguards on safety and soundness. If the top 10 SBIC fund families drew the leverage authorized by H.R. 1023, taxpayers would be exposed to an additional $1.25 billion in outlays. It should be noted that, according to the federal credit supplement, the lifetime default rate in the SBIC debenture program is over 24 percent.

Finally, increasing leverage in the SBIC program could be seen as fostering a duplicative federal program. As noted above, the majority of SBICs operate under the debenture program, which favors businesses that can service debt. As such, SBA data shows about 66 percent of SBIC investments are in the form of straight debt, with the average being about $3 million. The 7(a) program offers

a competing loan product and made nearly 2,000 loans of $2 million or more last year.

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