

Calendar No. 104

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-265

THE SMALL BUSINESS INVESTMENT CAPITAL COMPANY ACT OF 2015

MAY 26, 2016.—Ordered to be printed

Mr. VITTER, from the Committee on Small Business and
Entrepreneurship, submitted the following

R E P O R T

[To accompany S. 552]

The Committee on Small Business and Entrepreneurship, to which was referred the bill (S. 552) 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, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

I. INTRODUCTION

The Small Business Investment Capital Company Act of 2015 (S. 552) was introduced by Senators James Risch and Benjamin L. Cardin, on February 24, 2015. The bill's co-sponsors include Committee members Senator Kelly Ayotte, Jeanne Shaheen, the Committee's Ranking Member, and David Vitter, the Committee's Chair.

The Small Business Investment Capital Company Act of 2015 amends the Small Business Investment Act of 1958 to increase from \$225 million to \$350 million the maximum amount of outstanding leverage to be made available by the Small Business Administration (SBA) to two or more commonly-controlled small business investment companies not under capital impairment (referred to as the "family of funds" limit).

During the markup of the bill, the bill was approved unanimously by voice vote. Identical legislative language was signed into law as a provision of H.R. 2029, the Consolidated Appropriations Act of 2016 (P.L. 114-113).

II. HISTORY (PURPOSE & NEED FOR LEGISLATION)

Small business investment companies (SBIC) are for-profit venture capital firms, privately-owned and managed but licensed and regulated by the SBA.

The Small Business Investment Company (SBIC) program was established pursuant to the Small Business Act of 1958, in order to help stimulate capital investments in U.S.-based small businesses. Companies with tangible net worth of \$19.5 million or less and average net incomes of less than \$6.5 million over the previous two years are eligible for SBIC investment.

Since the 2008–2009 SBICs have boomed with total loan volumes increasing to \$3.5 billion in 2013. The increase stemmed partly from changes to the program made by the American Recovery & Reinvestment Act of 2009. The law encouraged formation of new funds and shortened processing times for new licenses. That same year (Fiscal Year 2010), SBICs attracted record funding from both the SBA and private capital sources.

SBICs are considered precursors to today's private venture capital industry. They were established to encourage investment in innovative small businesses at the start of the space-race era. SBICs generally invest between \$250,000 and \$5 million, according to the Small Business Investor Alliance. The SBIC Program ensures that SBICs invest in businesses, primarily based in the U.S., that are engaged in productive enterprises—not vehicles for financial or real estate investment, for example.

Although they often do not possess the high profiles of well-known venture capital firms, there are more than 300 SBICs in the U.S., with more than \$16 billion in capital under management, according to the SBA. This online tally of licensees lists contact information, investment criteria, and the type of funding each SBIC provides—they make both loans and equity investments.

Outstanding leverage to be made available by the SBA to two or more commonly controlled small business investment companies not under capital impairment is referred to as the “family of funds” limit. A family of funds refers to multiple licensed funds operated by the same 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.

During the 112th Congress, then-Small Business Committee Chair Landrieu and then-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 to \$350 million, as well as a number of other program enhancements. While the stand-alone bill was not acted upon further by the Committee, the increase was included 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 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 Carl Levin, Sherrod Brown, Jeff Merkley, Daniel Akaka, Sheldon Whitehouse, Al Franken, Tom Harkin, Richard Durbin, Jeanne Shaheen, and Robert Menendez. S. Amdt. 1833 was ultimately not included in the final version of H.R. 3606.

Additionally, Chair 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 when it received a vote on the Senate floor on July 12, 2012.

Shortly thereafter, Chair Landrieu filed the SUCCESS Act as a standalone bill. On July 25, 2012, Chair Landrieu introduced S. 3442, the SUCCESS Act of 2012, with eight co-sponsors including Committee members Senators Cardin and Shaheen, as well as Senators Blumenthal, Boxer, Gillibrand, Lieberman, Merkley, and Whitehouse.

Ultimately, however, none of the bills or amendments were signed into law during the 112th Congress.

During the 113th Congress, on March 11, 2013, then-Chair Landrieu reintroduced S. 511, the EXECL Act, which included the same increase from \$225 million to \$350 million as the maximum amount of outstanding leverage for two or more commonly-controlled SBICs.

On March 13, 2013, the Committee's then-ranking member, Senator Risch, introduced S. 550, the Small Business Investment Company Modernization Act of 2013. This bill would have increased the family of funds limit (multiple licensees under common control) from \$225 million to \$350 million.

III. HEARINGS & ROUNDTABLES

In the 111th Congress:

On October 1, 2009, the Committee held a roundtable discussion titled, "Reauthorization of SBA Finance Programs and the Impact of the Small Business Provisions in the Recovery Act," at which it was pointed out that the family of funds limit should be increased because several funds were approaching the current limit.

In the 112th Congress:

On March 22, 2012, the Committee held a roundtable discussion titled, "A Spotlight on Small Business Investment Companies and their Role in the Entrepreneurial Ecosystem," which featured various stakeholders in the SBIC community, to highlight the success of the SBIC program, and to examine opportunities for improvement. The 14 roundtable participants included representatives from the SBA, SBICs, SBIC investors, and small businesses. The discussion centered on the success of the SBA programs. Several business owners shared their stories about how SBA programs assisted with their companies' growth. Additionally, SBA's Deputy Associate Administrator for Investment, Mr. Harry Haskins, spe-

cifically discussed the positive impacts associated with increasing the family of funds limit. He highlighted that the capital can be managed at minimal risk and no cost to the taxpayer because the fees associated with the program cover the costs.

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 Act of 2012 (S. 3442), which was the result of recommendations gathered during a series of three Committee roundtables examining the entrepreneurial 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. Witnesses testified that funding levels at the time were close to hitting the cap limit and that increasing the limit would allow the program to continue its growth and success.

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 113th Congress, including the EXCEL Act and the Small Business Investment Company Modernization Act of 2013. Both included an increase of the family of funds limit to \$350 million. Again, the discussion highlighted the importance of increasing the limit, especially since the program had proven to be cost effective.

The EXCEL Act was considered during a markup on June 13, 2013 and was reported favorably with amendments on June 17, 2013.

IV. DESCRIPTION OF BILL

The bill amends the Small Business Investment Act of 1958 to increase from \$225 million to \$350 million the maximum amount of outstanding leverage to be made available by the Small Business Administration (SBA) to two or more commonly controlled small business investment companies not under capital impairment (referred to as the “family of funds” limit).

V. COMMITTEE VOTE

In compliance with rule XXVI (7)(b) of the Standing Rules of the Senate, the following vote was recorded on April 23, 2015.

A motion to adopt the Small Business Investment Capital Company Act of 2015, a bill to amend the Small Business Investment Act of 1958 to provide for increased limitations on leverage for multiple licenses under common control, was approved unanimously by voice vote with the following Senators present: Senators Vitter, Risch, Fischer, Gardner, Ernst, Ayotte, Enzi, Shaheen, Cantwell, Cardin, Heitkamp, Booker, Coons, Hirono, and Peters.

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:

MAY 28, 2015.

Hon. DAVID VITTER,
Chairman, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 552, the Small Business Investment Capital Company Act of 2015.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 552—Small Business Investment Capital Company Act of 2015

S. 552 would raise the maximum amount of debt 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”) 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 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 S. 552 would not affect discretionary spending. Enacting S. 552 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 552 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, 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*Section 1. Title*

This section provides the short title, “Small Business Investment Capital Company Act of 2015”.

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

This section increases from \$225 million to \$350 million the maximum amount of outstanding leverage to be made available by the SBA to two or more commonly controlled small business investment companies not under capital impairment (referred to as the “family of funds” limit).

