

111TH CONGRESS
1ST SESSION

H. R. 3738

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2009

Received; read twice and referred to the Committee on Small Business and
Entrepreneurship

AN ACT

To amend the Small Business Investment Act of 1958 to establish a program for the Small Business Administration to provide financing to support early-stage small businesses in targeted industries, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Early-
3 Stage Investment Act of 2009”.

4 **SEC. 2. SMALL BUSINESS EARLY-STAGE INVESTMENT PRO-**
5 **GRAM.**

6 Title III of the Small Business Investment Act of
7 1958 (15 U.S.C. 681 et seq.) is amended by adding at
8 the end the following:

9 **“PART D—SMALL BUSINESS EARLY-STAGE**
10 **INVESTMENT PROGRAM**

11 **“SEC. 399A. ESTABLISHMENT OF PROGRAM.**

12 “The Administrator shall establish and carry out an
13 early-stage investment program (hereinafter referred to in
14 this part as the ‘program’) to provide equity investment
15 financing to support early-stage small businesses in tar-
16 geted industries in accordance with this part.

17 **“SEC. 399B. ADMINISTRATION OF PROGRAM.**

18 “The program shall be administered by the Adminis-
19 trator acting through the Associate Administrator de-
20 scribed under section 201.

21 **“SEC. 399C. APPLICATIONS.**

22 “(a) IN GENERAL.—Any incorporated body, limited
23 liability company, or limited partnership organized and
24 chartered or otherwise existing under Federal or State law
25 for the purpose of performing the functions and con-
26 ducting the activities contemplated under the program and

1 any small business investment company may submit to the
2 Administrator an application to participate in the pro-
3 gram.

4 “(b) REQUIREMENTS FOR APPLICATION.—An appli-
5 cation to participate in the program shall include the fol-
6 lowing:

7 “(1) A business plan describing how the appli-
8 cant intends to make successful venture capital in-
9 vestments in early-stage small businesses in targeted
10 industries.

11 “(2) Information regarding the relevant venture
12 capital investment qualifications and backgrounds of
13 the individuals responsible for the management of
14 the applicant.

15 “(3) A description of the extent to which the
16 applicant meets the selection criteria under section
17 399D.

18 “(c) APPLICATIONS FROM SMALL BUSINESS INVEST-
19 MENT COMPANIES.—The Administrator shall establish an
20 abbreviated application process for small business invest-
21 ment companies that have received a license under section
22 301 and that are applying to participate in the program.
23 Such abbreviated process shall incorporate a presumption
24 that such small business investment companies satisfac-

1 torily meet the selection criteria under paragraphs (3) and
2 (5) of section 399D(b).

3 **“SEC. 399D. SELECTION OF PARTICIPATING INVESTMENT**
4 **COMPANIES.**

5 “(a) IN GENERAL.—Not later than 90 days after the
6 date on which the Administrator receives an application
7 from an applicant under section 399C, the Administrator
8 shall make a final determination to approve or disapprove
9 such applicant to participate in the program and shall
10 transmit such determination to the applicant in writing.

11 “(b) SELECTION CRITERIA.—In making a determina-
12 tion under subsection (a), the Administrator shall consider
13 each of the following:

14 “(1) The likelihood that the applicant will meet
15 the goals specified in the business plan of the appli-
16 cant.

17 “(2) The likelihood that the investments of the
18 applicant will create or preserve jobs, both directly
19 and indirectly.

20 “(3) The character and fitness of the manage-
21 ment of the applicant.

22 “(4) The experience and background of the
23 management of the applicant.

1 “(5) The extent to which the applicant will con-
2 centrate investment activities on early-stage small
3 businesses in targeted industries.

4 “(6) The likelihood that the applicant will
5 achieve profitability.

6 “(7) The experience of the management of the
7 applicant with respect to establishing a profitable in-
8 vestment track record.

9 **“SEC. 399E. GRANTS.**

10 “(a) IN GENERAL.—The Administrator may make
11 one or more grants to a participating investment company.

12 “(b) GRANT AMOUNTS.—

13 “(1) NON-FEDERAL CAPITAL.—A grant made
14 to a participating investment company under the
15 program may not be in an amount that exceeds the
16 amount of the capital of such company that is not
17 from a Federal source and that is available for in-
18 vestment on or before the date on which a grant is
19 drawn upon. Such capital may include legally bind-
20 ing commitments with respect to capital for invest-
21 ment.

22 “(2) LIMITATION ON AGGREGATE AMOUNT.—
23 The aggregate amount of all grants made to a par-
24 ticipating investment company under the program
25 may not exceed \$100,000,000.

1 “(c) GRANT PROCESS.—In making a grant under the
2 program, the Administrator shall commit a grant amount
3 to a participating investment company and the amount of
4 each such commitment shall remain available to be drawn
5 upon by such company—

6 “(1) for new-named investments during the 5-
7 year period beginning on the date on which each
8 such commitment is first drawn upon; and

9 “(2) for follow-on investments and management
10 fees during the 10-year period beginning on the date
11 on which each such commitment is first drawn upon,
12 with not more than 2 additional 1-year periods avail-
13 able at the discretion of the Administrator.

14 **“SEC. 399F. INVESTMENTS IN EARLY-STAGE SMALL BUSI-**
15 **NESSES IN TARGETED INDUSTRIES.**

16 “(a) IN GENERAL.—As a condition of receiving a
17 grant under the program, a participating investment com-
18 pany shall make all of the investments of such company
19 in small business concerns, of which at least 50 percent
20 shall be early-stage small businesses in targeted indus-
21 tries.

22 “(b) EVALUATION OF COMPLIANCE.—With respect to
23 a grant amount committed to a participating investment
24 company under section 399E, the Administrator shall
25 evaluate the compliance of such company with the require-

1 ments under this section if such company has drawn upon
2 50 percent of such commitment.

3 **“SEC. 399G. PRO RATA INVESTMENT SHARES.**

4 “Each investment made by a participating invest-
5 ment company under the program shall be treated as com-
6 prised of capital from grants under the program according
7 to the ratio that capital from grants under the program
8 bears to all capital available to such company for invest-
9 ment.

10 **“SEC. 399H. GRANT INTEREST.**

11 “(a) GRANT INTEREST.—

12 “(1) IN GENERAL.—As a condition of receiving
13 a grant under the program, a participating invest-
14 ment company shall convey a grant interest to the
15 Administrator in accordance with paragraph (2).

16 “(2) EFFECT OF CONVEYANCE.—The grant in-
17 terest conveyed under paragraph (1) shall have all
18 the rights and attributes of other investors attrib-
19 utable to their interests in the participating invest-
20 ment company, but shall not denote control or vot-
21 ing rights to the Administrator. The grant interest
22 shall entitle the Administrator to a pro rata portion
23 of any distributions made by the participating in-
24 vestment company equal to the percentage of capital
25 in the participating investment company that the

1 grant comprises. The Administrator shall receive dis-
2 tributions from the participating investment com-
3 pany at the same times and in the same amounts as
4 any other investor in the company with a similar in-
5 terest. The investment company shall make alloca-
6 tions of income, gain, loss, deduction, and credit to
7 the Administrator with respect to the grant interest
8 as if the Administrator were an investor.

9 “(b) MANAGER PROFITS.—As a condition of receiv-
10 ing a grant under the program, the manager profits inter-
11 est payable to the managers of a participating investment
12 company under the program shall not exceed 20 percent
13 of profits, exclusive of any profits that may accrue as a
14 result of the capital contributions of any such managers
15 with respect to such company. Any excess of this amount,
16 less taxes payable thereon, shall be returned by the man-
17 agers and paid to the investors and the Administrator in
18 proportion to the capital contributions and grants paid in.
19 No manager profits interest (other than a tax distribution)
20 shall be paid prior to the repayment to the investors and
21 the Administrator of all contributed capital and grants
22 made.

23 “(c) DISTRIBUTION REQUIREMENTS.—As a condition
24 of receiving a grant under the program, a participating
25 investment company shall make all distributions to all in-

1 vestors in cash and shall make distributions within a rea-
2 sonable time after exiting investments, including following
3 a public offering or market sale of underlying investments.

4 **“SEC. 399I. FUND.**

5 “There is hereby created within the Treasury a sepa-
6 rate fund for grants which shall be available to the Admin-
7 istrator subject to annual appropriations as a revolving
8 fund to be used for the purposes of the program. All
9 amounts received by the Administrator, including any
10 moneys, property, or assets derived by the Administrator
11 from operations in connection with the program, shall be
12 deposited in the fund. All expenses and payments, exclud-
13 ing administrative expenses, pursuant to the operations of
14 the Administrator under the program shall be paid from
15 the fund.

16 **“SEC. 399J. APPLICATION OF OTHER SECTIONS.**

17 “To the extent not inconsistent with requirements
18 under this part, the Administrator may apply sections
19 309, 311, 312, 313, and 314 to activities under this part
20 and an officer, director, employee, agent, or other partici-
21 pant in a participating investment company shall be sub-
22 ject to the requirements under such sections.

23 **“SEC. 399K. DEFINITIONS.**

24 “In this part, the following definitions apply:

1 “(1) EARLY-STAGE SMALL BUSINESS IN A TAR-
2 GETED INDUSTRY.—The term ‘early-stage small
3 business in a targeted industry’ means a small busi-
4 ness concern that—

5 “(A) is domiciled in a State;

6 “(B) has not generated gross annual sales
7 revenues exceeding \$15,000,000 in any of the
8 previous 3 years; and

9 “(C) is engaged primarily in researching,
10 developing, manufacturing, producing, or bring-
11 ing to market goods, products, or services with
12 respect to any of the following business sectors:

13 “(i) Agricultural technology.

14 “(ii) Energy technology.

15 “(iii) Environmental technology.

16 “(iv) Life science.

17 “(v) Information technology.

18 “(vi) Digital media.

19 “(vii) Clean technology.

20 “(viii) Defense technology.

21 “(ix) Photonics technology.

22 “(2) PARTICIPATING INVESTMENT COMPANY.—
23 The term ‘participating investment company’ means
24 an applicant approved under section 399D to par-
25 ticipate in the program.

1 “(3) SMALL BUSINESS CONCERN.—The term
2 ‘small business concern’ has the same meaning given
3 such term under section 3(a) of the Small Business
4 Act (15 U.S.C. 632(a)).

5 **“SEC. 399L. AUTHORIZATION OF APPROPRIATIONS.**

6 “‘There is authorized to be appropriated to carry out
7 the program \$200,000,000 for the first full fiscal year be-
8 ginning after the date of the enactment of this part.’”.

9 **SEC. 3. PROHIBITIONS ON EARMARKS.**

10 None of the funds appropriated for the program es-
11 tablished under part D of title III of the Small Business
12 Investment Act of 1958, as added by this Act, may be
13 used for a Congressional earmark as defined in clause 9(d)
14 of rule XXI of the Rules of the House of Representatives.

15 **SEC. 4. REGULATIONS.**

16 Except as otherwise provided in this Act or in amend-
17 ments made by this Act, after an opportunity for notice
18 and comment, but not later than 180 days after the date
19 of the enactment of this Act, the Administrator shall issue

1 regulations to carry out this Act and the amendments
2 made by this Act.

Passed the House of Representatives November 18,
2009.

Attest: LORRAINE C. MILLER,
Clerk.