

113TH CONGRESS
1ST SESSION

H. R. 30

To amend the Small Business Investment Act of 1958, to provide for a small business early-stage investment program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2013

Ms. VELÁZQUEZ introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Small Business Investment Act of 1958, to provide for a small business early-stage investment program, 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 “Small Business Invest-
5 ment Enhancement and Tax Relief Act”.

1 **TITLE I—SMALL BUSINESS**
2 **EARLY-STAGE INVESTMENT**
3 **PROGRAM**

4 **SEC. 101. SMALL BUSINESS EARLY-STAGE INVESTMENT**
5 **PROGRAM.**

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 ac-
16 cordance 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 existing or newly formed in-
23 corporated body, limited liability company, or limited part-
24 nership organized and chartered or otherwise existing
25 under Federal or State law for the purpose of performing

1 the functions and conducting the activities contemplated
2 under the program and any manager of any small business
3 investment company may submit to the Administrator an
4 application to participate in the program.

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

8 “(1) A business plan describing how the appli-
9 cant intends to make successful venture capital in-
10 vestments in early-stage small businesses and direct
11 capital to small business concerns in targeted indus-
12 tries or other business sectors.

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

17 “(3) A description of the extent to which the
18 applicant meets the selection criteria under section
19 399D.

20 “(c) APPLICATIONS FROM MANAGERS OF SMALL
21 BUSINESS INVESTMENT COMPANIES.—The Administrator
22 shall establish an abbreviated application process for ap-
23 plicants that are managers of small business investment
24 companies that are licensed under section 301 and that
25 are applying to participate in the program. Such abbre-

1 viated process shall incorporate a presumption that such
 2 managers satisfactorily meet the selection criteria under
 3 paragraphs (3) and (5) of section 399D(b).

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

6 “(a) IN GENERAL.—Not later than 90 days after the
 7 date on which the Administrator receives an application
 8 from an applicant under section 399C, the Administrator
 9 shall make a determination to conditionally approve or dis-
 10 approve such applicant to participate in the program and
 11 shall transmit such determination to the applicant in writ-
 12 ing. A determination to conditionally approve an applicant
 13 shall identify all conditions necessary for a final approval
 14 and shall provide a period of not less than one year for
 15 satisfying such conditions.

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

19 “(1) The likelihood that the applicant will meet
 20 the goals specified in the business plan of the appli-
 21 cant.

22 “(2) The likelihood that the investments of the
 23 applicant will create or preserve jobs, both directly
 24 and indirectly.

1 “(3) The character and fitness of the manage-
2 ment of the applicant.

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

5 “(5) The extent to which the applicant will con-
6 centrate investment activities on early-stage small
7 businesses.

8 “(6) The likelihood that the applicant will
9 achieve profitability.

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

13 “(8) The extent to which the applicant will con-
14 centrate investment activities on small business con-
15 cerns in targeted industries.

16 “(c) FINAL APPROVAL.—For each applicant provided
17 a conditional approval under subsection (a), the Adminis-
18 trator shall provide final approval to participate in the
19 program not later than 90 days after the date the appli-
20 cant satisfies the conditions specified by the Administrator
21 under such subsection or, in the case of applicants whose
22 partnership or management agreements conform to mod-
23 els approved by the Administrator, the Administrator shall
24 provide final approval to participate in the program not
25 later than 30 days after the date the applicant satisfies

1 the conditions specified under such subsection. If an appli-
2 cant provided conditional approval under subsection (a)
3 fails to satisfy the conditions specified by the Adminis-
4 trator in the time period designated under such sub-
5 section, the Administrator shall revoke the conditional ap-
6 proval.

7 **“SEC. 399E. EQUITY FINANCINGS.**

8 “(a) IN GENERAL.—The Administrator may make
9 one or more equity financings to a participating invest-
10 ment company.

11 “(b) EQUITY FINANCING AMOUNTS.—

12 “(1) NON-FEDERAL CAPITAL.—An equity fi-
13 nancing made to a participating investment company
14 under the program may not be in an amount that
15 exceeds the amount of the capital of such company
16 that is not from a Federal source and that is avail-
17 able for investment on or before the date on which
18 an equity financing is drawn upon. Such capital may
19 include legally binding commitments with respect to
20 capital for investment.

21 “(2) LIMITATION ON AGGREGATE AMOUNT.—

22 The aggregate amount of all equity financings made
23 to a participating investment company under the
24 program may not exceed \$100,000,000.

1 “(c) EQUITY FINANCING PROCESS.—In making an
 2 equity financing under the program, the Administrator
 3 shall commit an equity financing amount to a partici-
 4 pating investment company and the amount of each such
 5 commitment shall remain available to be drawn upon by
 6 such company—

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

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

15 “(d) COMMITMENT OF FUNDS.—The Administrator
 16 shall make commitments for equity financings not later
 17 than 2 years after the date funds are appropriated for the
 18 program.

19 **“SEC. 399F. INVESTMENTS IN EARLY-STAGE SMALL BUSI-**
 20 **NESSES.**

21 “(a) IN GENERAL.—As a condition of receiving an
 22 equity financing under the program, a participating in-
 23 vestment company shall make all of the investments of
 24 such company in small business concerns, of which at least
 25 50 percent shall be early-stage small businesses.

1 “(b) EVALUATION OF COMPLIANCE.—With respect to
 2 an equity financing amount committed to a participating
 3 investment company under section 399E, the Adminis-
 4 trator shall evaluate the compliance of such company with
 5 the requirements under this section if such company has
 6 drawn upon 50 percent of such commitment.

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

8 “Each investment made by a participating invest-
 9 ment company under the program shall be treated as com-
 10 prised of capital from equity financings under the program
 11 according to the ratio that capital from equity financings
 12 under the program bears to all capital available to such
 13 company for investment.

14 **“SEC. 399H. EQUITY FINANCING INTEREST.**

15 “(a) EQUITY FINANCING INTEREST.—

16 “(1) IN GENERAL.—As a condition of receiving
 17 an equity financing under the program, a partici-
 18 pating investment company shall convey an equity fi-
 19 nancing interest to the Administrator in accordance
 20 with paragraph (2).

21 “(2) EFFECT OF CONVEYANCE.—The equity fi-
 22 nancing interest conveyed under paragraph (1) shall
 23 have all the rights and attributes of other investors
 24 attributable to their interests in the participating in-
 25 vestment company, but shall not denote control or

1 voting rights to the Administrator. The equity fi-
2 nancing interest shall entitle the Administrator to a
3 pro rata portion of any distributions made by the
4 participating investment company equal to the per-
5 centage of capital in the participating investment
6 company that the equity financing comprises. The
7 Administrator shall receive distributions from the
8 participating investment company at the same times
9 and in the same amounts as any other investor in
10 the company with a similar interest. The investment
11 company shall make allocations of income, gain, loss,
12 deduction, and credit to the Administrator with re-
13 spect to the equity financing interest as if the Ad-
14 ministrator were an investor.

15 “(b) MANAGER PROFITS.—As a condition of receiv-
16 ing an equity financing under the program, the manager
17 profits interest payable to the managers of a participating
18 investment company under the program shall not exceed
19 20 percent of profits, exclusive of any profits that may
20 accrue as a result of the capital contributions of any such
21 managers with respect to such company. Any excess of
22 this amount, less taxes payable thereon, shall be returned
23 by the managers and paid to the investors and the Admin-
24 istrator in proportion to the capital contributions and eq-
25 uity financings paid in. No manager profits interest (other

1 than a tax distribution) shall be paid prior to the repay-
2 ment to the investors and the Administrator of all contrib-
3 uted capital and equity financings made.

4 “(c) DISTRIBUTION REQUIREMENTS.—As a condition
5 of receiving an equity financing under the program, a par-
6 ticipating investment company shall make all distributions
7 to all investors in cash and shall make distributions within
8 a reasonable time after exiting investments, including fol-
9 lowing a public offering or market sale of underlying in-
10 vestments.

11 **“SEC. 399I. FUND.**

12 “There is hereby created within the Treasury a sepa-
13 rate fund for equity financings which shall be available
14 to the Administrator subject to annual appropriations as
15 a revolving fund to be used for the purposes of the pro-
16 gram. All amounts received by the Administrator, includ-
17 ing any moneys, property, or assets derived by the Admin-
18 istrator from operations in connection with the program,
19 shall be deposited in the fund. All expenses and payments,
20 excluding administrative expenses, pursuant to the oper-
21 ations of the Administrator under the program shall be
22 paid from the fund.

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

24 “To the extent not inconsistent with requirements
25 under this part, the Administrator may apply sections

1 309, 311, 312, 313, and 314 to activities under this part
 2 and an officer, director, employee, agent, or other partici-
 3 pant in a participating investment company shall be sub-
 4 ject to the requirements under such sections.

5 **“SEC. 399K. ANNUAL REPORTING.**

6 “The Administrator shall report on the performance
 7 of the program in the annual performance report of the
 8 Administration.

9 **“SEC. 399L. DEFINITIONS.**

10 “In this part, the following definitions apply:

11 “(1) **EARLY-STAGE SMALL BUSINESS.**—The
 12 term ‘early-stage small business’ means a small busi-
 13 ness concern that—

14 “(A) is domiciled in a State; and

15 “(B) has not generated gross annual sales
 16 revenues exceeding \$15,000,000 in any of the
 17 previous 3 years.

18 “(2) **PARTICIPATING INVESTMENT COMPANY.**—
 19 The term ‘participating investment company’ means
 20 an applicant approved under section 399D to par-
 21 ticipate in the program.

22 “(3) **TARGETED INDUSTRIES.**—The term ‘tar-
 23 geted industries’ means any of the following business
 24 sectors:

25 “(A) Agricultural technology.

1 “(B) Energy technology.

2 “(C) Environmental technology.

3 “(D) Life science.

4 “(E) Information technology.

5 “(F) Digital media.

6 “(G) Clean technology.

7 “(H) Defense technology.”.

8 **TITLE II—SMALL BUSINESS** 9 **INVESTMENT**

10 **SEC. 201. TAX CREDIT FOR SMALL BUSINESS INVESTMENT.**

11 (a) IN GENERAL.—Subpart A of part IV of sub-
12 chapter A of chapter 1 of the Internal Revenue Code of
13 1986 (relating to nonrefundable personal credits) is
14 amended by inserting after section 25D the following new
15 section:

16 **“SEC. 25E. SMALL BUSINESS INVESTMENT.**

17 “(a) IN GENERAL.—In the case of an individual,
18 there shall be allowed as a credit against the tax imposed
19 by this chapter an amount equal to 20 percent of the
20 amount paid or incurred for qualified small business in-
21 vestments during the taxable year.

22 “(b) LIMITATION.—With respect to any qualified
23 small business investment in any corporation or partner-
24 ship, the amount paid or incurred by any taxpayer which
25 is taken into account under subsection (a) shall not exceed

1 \$250,000 (\$500,000 in the case of a joint return), reduced
2 by the amount taken into account under such subsection
3 with respect to investments by the taxpayer in such cor-
4 poration or partnership for all prior taxable years.

5 “(c) QUALIFIED SMALL BUSINESS INVESTMENT.—
6 For purposes of this section—

7 “(1) IN GENERAL.—The term ‘qualified small
8 business investment’ means any small business stock
9 and any small business partnership interest.

10 “(2) SMALL BUSINESS STOCK.—The term
11 ‘small business stock’ means any stock in a domestic
12 corporation acquired by the taxpayer at its original
13 issue (directly or through an underwriter) solely in
14 exchange for cash, if—

15 “(A) such corporation is an eligible small
16 business (as defined in section 41(b)(3)(D)(ii));

17 “(B) such corporation is engaged primarily
18 in the trade or business of manufacturing, proc-
19 essing, assembling, or researching and devel-
20 oping products or in the trade or business of
21 agriculture, technology, or life science;

22 “(C) such corporation has been in exist-
23 ence for less than 5 years as of such acquisi-
24 tion;

1 “(D) such corporation has fewer than 75
2 employees as of such acquisition;

3 “(E) more than 50 percent of the corpora-
4 tion’s employees perform substantially all of
5 their services in the United States as of such
6 acquisition; and

7 “(F) such stock is designated by the cor-
8 poration for purposes of this paragraph.

9 For purposes of subparagraph (E), stock shall not
10 be treated as designated if such designation would
11 result in the aggregate amount which may be taken
12 into account under this section with respect to stock
13 issued by such corporation to exceed \$750,000, tak-
14 ing into account all taxpayers for all taxable years.

15 “(3) SMALL BUSINESS PARTNERSHIP INTER-
16 EST.—The term ‘small business partnership interest’
17 means any capital or profits interest in a domestic
18 partnership acquired by the taxpayer from the part-
19 nership solely in exchange for cash, if—

20 “(A) such partnership is an eligible small
21 business (as defined in section 41(b)(3)(D)(ii));

22 “(B) such partnership is engaged primarily
23 in the trade or business of manufacturing, proc-
24 essing, assembling, or researching and devel-

1 oping products or in the trade or business of
2 agriculture, technology, or life science;

3 “(C) such partnership has been in exist-
4 ence for less than 5 years as of such acquisi-
5 tion;

6 “(D) such partnership has fewer than 75
7 employees as of such acquisition;

8 “(E) more than 50 percent of the partner-
9 ship’s employees perform substantially all of
10 their services in the United States as of such
11 acquisition; and

12 “(F) such capital or profits interest is des-
13 ignated by partnership for purposes of this
14 paragraph.

15 For purposes of subparagraph (E), a capital or prof-
16 its interest shall not be treated as designated if such
17 designation would result in the aggregate amount
18 which may be taken into account under this section
19 with respect to interests in such partnership to ex-
20 ceed \$750,000, taking into account all taxpayers for
21 all taxable years.

22 “(d) CARRYFORWARD OF UNUSED CREDIT.—If the
23 credit allowable under subsection (a) exceeds the limita-
24 tion imposed by section 26(a) for such taxable year re-
25 duced by the sum of the credits allowable under this sub-

1 part (other than this section), such excess shall be carried
2 to the succeeding taxable year and added to the credit al-
3 lowable under this section. Such excess shall not be taken
4 into account under this subsection for such succeeding
5 taxable year or any taxable year succeeding such year.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 of such subpart is amended by inserting after the item
8 relating to section 25D the following new item:

“Sec. 25E. Small business investment.”.

9 (c) REPORT TO CONGRESS.—The Secretary of the
10 Treasury shall conduct a study and report to Congress on
11 the effectiveness of the credit allowed under section 25E
12 of the Internal Revenue Code of 1986 (as added by this
13 section), and similar State tax credits, in providing incen-
14 tives for investment in qualified small businesses. There
15 are authorized to be appropriated \$500,000 to carry out
16 the purposes of this subsection.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning after
19 the date of the enactment of this Act.

○