

113TH CONGRESS
1ST SESSION

S. 1285

To amend the Small Business Investment Act of 1958 to enhance the Small Business Investment Company Program and provide for a small business early-stage investment program.

IN THE SENATE OF THE UNITED STATES

JULY 11, 2013

Ms. BALDWIN introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Investment Act of 1958 to enhance the Small Business Investment Company Program and provide for a small business early-stage investment program.

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 Inno-
5 vation Act of 2013”.

6 **SEC. 2. PROGRAM AUTHORIZATION.**

7 Section 303(b) of the Small Business Investment Act
8 of 1958 (15 U.S.C. 683(b)) is amended, in the matter pre-

ceding paragraph (1), in the first sentence, by inserting after “issued by such companies” the following: “, in a total amount that does not exceed \$4,000,000,000 each fiscal year (adjusted annually to reflect increases in the Chained Consumer Price Index for All Urban Consumers (C–CPI–U), as published by the Bureau of Labor Statistics of the Department of Labor)”.

SEC. 3. FAMILY OF FUNDS.

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”.

SEC. 4. SMALL BUSINESS EARLY-STAGE INVESTMENT PROGRAM.

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

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

“SEC. 399A. DEFINITIONS.

“In this part:

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

1 “(A) is domiciled in a State or Indian
2 country (as defined in section 1151 of title 18,
3 United States Code); and

4 “(B) has not generated gross annual sales
5 revenues exceeding \$15,000,000 in any of the
6 most recent 3 full years before the date on
7 which the Administrator makes an equity fi-
8 nancing to a participating investment company
9 under section 399E.

10 “(2) ELIGIBLE APPLICANT.—The term ‘eligible
11 applicant’ means—

12 “(A) an incorporated body, limited liability
13 company, or limited partnership organized and
14 chartered or otherwise existing under Federal
15 or State law for the purpose of performing the
16 functions and conducting the activities con-
17 templated under the program; or

18 “(B) a manager of a small business invest-
19 ment company.

20 “(3) PARTICIPATING INVESTMENT COMPANY.—
21 The term ‘participating investment company’ means
22 an applicant approved under section 399E to partici-
23 pate in the program.

1 “(4) PROGRAM.—The term ‘program’ means
2 the early-stage investment program established
3 under section 399B.

4 “(5) SMALL BUSINESS CONCERN.—The term
5 ‘small business concern’ has the same meaning given
6 that term in section 3(a) of the Small Business Act
7 (15 U.S.C. 632(a)).

8 “(6) SMALL BUSINESS CONCERN IN A TAR-
9 GETED INDUSTRY.—The term ‘small business con-
10 cern in a targeted industry’ means a small business
11 concern that is engaged primarily in researching, de-
12 veloping, manufacturing, producing, or bringing to
13 market goods, products, or services in a targeted in-
14 dustry.

15 “(7) TARGETED INDUSTRY.—The term ‘tar-
16 geted industry’ means any of the following business
17 sectors:

18 “(A) Advanced manufacturing.

19 “(B) Agricultural technology.

20 “(C) Biotechnology.

21 “(D) Clean energy technology.

22 “(E) Digital media.

23 “(F) Environmental technology.

24 “(G) Information technology.

25 “(H) Life sciences.

1 “(I) Water technology.

2 **“SEC. 399B. ESTABLISHMENT OF PROGRAM.**

3 “The Administrator shall establish and carry out an
4 early-stage investment program to provide equity financ-
5 ing to support early-stage small businesses in accordance
6 with this part.

7 **“SEC. 399C. ADMINISTRATION OF PROGRAM.**

8 “The Administrator, acting through the Associate
9 Administrator described in section 201, shall administer
10 the program.

11 **“SEC. 399D. APPLICATIONS.**

12 “(a) REQUIREMENTS FOR APPLICATION.—An appli-
13 cation to participate in the program shall include—

14 “(1) a business plan describing how the eligible
15 applicant intends to make successful venture capital
16 investments in early-stage small businesses and di-
17 rect capital to small business concerns in targeted
18 industries or other business sectors;

19 “(2) information regarding the relevant venture
20 capital investment qualifications and backgrounds of
21 the individuals responsible for the management of
22 the eligible applicant; and

23 “(3) a description of the extent to which the eli-
24 gible applicant meets the selection criteria under sec-
25 tion 399E.

1 “(b) APPLICATIONS FROM MANAGERS OF SMALL
 2 BUSINESS INVESTMENT COMPANIES.—The Administrator
 3 shall establish an abbreviated application process to par-
 4 ticipate in the program for applicants that are managers
 5 of small business investment companies that are licensed
 6 under section 301. The abbreviated application process
 7 shall incorporate a presumption that managers of small
 8 business investment companies that are licensed under
 9 section 301 satisfactorily meet the selection criteria under
 10 paragraphs (3) and (5) of section 399E(b).

11 **“SEC. 399E. SELECTION OF PARTICIPATING INVESTMENT**
 12 **COMPANIES.**

13 “(a) IN GENERAL.—Not later than 90 days after the
 14 date on which the Administrator receives an application
 15 from an eligible applicant under section 399D, the Admin-
 16 istrator shall make a determination to conditionally ap-
 17 prove or disapprove the eligible applicant to participate in
 18 the program and shall transmit the determination to the
 19 eligible applicant electronically and in writing. A deter-
 20 mination to conditionally approve an eligible applicant
 21 shall identify all conditions the eligible applicant is re-
 22 quired to satisfy for the Administrator to provide final ap-
 23 proval to the eligible applicant to participate in the pro-
 24 gram, and shall provide a period of not less than 1 year
 25 for the eligible applicant to satisfy the conditions.

1 “(b) SELECTION CRITERIA.—In making a determina-
2 tion under subsection (a), the Administrator shall con-
3 sider—

4 “(1) the likelihood that the eligible applicant
5 will meet the goals specified in the business plan of
6 the eligible applicant;

7 “(2) the likelihood that the investments of the
8 eligible applicant will create or preserve jobs in the
9 United States, both directly and indirectly;

10 “(3) the character and fitness of the manage-
11 ment of the eligible applicant;

12 “(4) the experience and background of the
13 management of the eligible applicant;

14 “(5) the extent to which the eligible applicant
15 will concentrate investment activities on early-stage
16 small businesses;

17 “(6) the likelihood that the eligible applicant
18 will achieve profitability;

19 “(7) the experience of the management of the
20 eligible applicant with respect to establishing a prof-
21 itable investment track record;

22 “(8) the extent to which the eligible applicant
23 will concentrate investment activities on small busi-
24 ness concerns in targeted industries; and

1 “(9) the extent to which the eligible applicant
2 will concentrate investment activities on small busi-
3 ness concerns in targeted industries that have re-
4 ceived funds from an agency of the Federal Govern-
5 ment, including—

6 “(A) the National Institutes of Health;

7 “(B) the National Science Foundation; and

8 “(C) funds received under the Small Busi-
9 ness Innovation Research Program or the Small
10 Business Technology Transfer Program, as
11 such terms are defined under section 9 of the
12 Small Business Act (15 U.S.C. 638).

13 “(c) FINAL APPROVAL.—

14 “(1) IN GENERAL.—Not later than 90 days
15 after the date on which an eligible applicant satisfies
16 the conditions identified by the Administrator under
17 subsection (a), the Administrator shall provide final
18 approval to the eligible applicant to participate in
19 the program.

20 “(2) EXCEPTION.—Not later than 30 days after
21 the date on which an eligible applicant, the partner-
22 ship or management agreement of which conforms to
23 models approved by the Administrator, satisfies the
24 conditions identified by the Administrator under
25 subsection (a), the Administrator shall provide final

1 approval to the eligible applicant to participate in
2 the program.

3 “(3) REVOCATION OF CONDITIONAL AP-
4 PROVAL.—If an eligible applicant fails to satisfy the
5 conditions identified by the Administrator under
6 subsection (a) in the time period required by that
7 subsection, the Administrator shall revoke the condi-
8 tional approval.

9 **“SEC. 399F. EQUITY FINANCINGS.**

10 “(a) IN GENERAL.—The Administrator may make 1
11 or more equity financings to a participating investment
12 company.

13 “(b) EQUITY FINANCING AMOUNTS.—

14 “(1) NON-FEDERAL CAPITAL.—An equity fi-
15 nancing made to a participating investment company
16 under the program may not be in an amount that
17 exceeds the amount of the capital of the partici-
18 pating investment company that is not from a Fed-
19 eral source and that is available for investment on
20 or before the date on which an equity financing is
21 drawn upon by the participating investment com-
22 pany. The capital of the participating investment
23 company may include legally binding commitments
24 with respect to capital for investment.

1 “(2) LIMITATION ON AGGREGATE AMOUNT.—

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

5 “(c) EQUITY FINANCING PROCESS.—In making an
6 equity financing under the program, the Administrator
7 shall commit an equity financing amount to a partici-
8 pating investment company, and the amount of each com-
9 mitment shall remain available to be drawn upon by a par-
10 ticipating investment company—

11 “(1) for new-named investments, during the 5-
12 year period beginning on the date on which the com-
13 mitment is first drawn upon by the participating in-
14 vestment company; and

15 “(2) for follow-on investments and management
16 fees, during the 10-year period beginning on the
17 date on which the commitment is first drawn upon
18 by the participating investment company, with not
19 more than 2 additional 1-year periods available at
20 the discretion of the Administrator.

21 “(d) COMMITMENT OF FUNDS.—Not later than 2
22 years after the date on which funds are appropriated for
23 the program, the Administrator shall make commitments
24 for equity financings.

1 **“SEC. 399G. INVESTMENTS IN EARLY-STAGE SMALL BUSI-**
2 **NESSES.**

3 “(a) IN GENERAL.—As a condition of receiving an
4 equity financing under the program, a participating in-
5 vestment company shall make all of the investments of the
6 participating investment company made with amounts re-
7 ceived under the program, including securities, promissory
8 notes, or other obligations, in small business concerns, of
9 which at least 50 percent of the total amount of such in-
10 vestments shall be in early-stage small businesses in tar-
11 geted industries.

12 “(b) EVALUATION OF COMPLIANCE.—After a partici-
13 pating investment company has expended not less than 50
14 percent of the amount of an equity financing commitment
15 made under section 399F, the Administrator shall evalu-
16 ate the compliance of the participating investment com-
17 pany with the requirements under subsection (a).

18 “(c) WAIVER.—The Administrator may waive the re-
19 quirements for a participating investment company under
20 subsection (a) if the Administrator determines that it is
21 in the best interest of the long term solvency of the fund
22 established in section 399J.

23 **“SEC. 399H. PRO RATA INVESTMENT SHARES.**

24 “Each investment made by a participating invest-
25 ment company under the program shall be treated as com-
26 prised of capital from equity financings under the program

1 according to the ratio that capital from equity financings
 2 under the program bears to all capital available to the par-
 3 ticipating investment company for investment.

4 **“SEC. 399I. EQUITY FINANCING INTEREST.**

5 “(a) EQUITY FINANCING INTEREST.—

6 “(1) IN GENERAL.—As a condition of receiving
 7 an equity financing under the program, a partici-
 8 pating investment company shall convey an equity fi-
 9 nancing interest to the Administrator in accordance
 10 with paragraph (2).

11 “(2) EFFECT OF CONVEYANCE.—The equity fi-
 12 nancing interest conveyed under paragraph (1)—

13 “(A) shall have all the rights and at-
 14 tributes of other investors attributable to their
 15 interests in the participating investment com-
 16 pany;

17 “(B) shall not denote control or voting
 18 rights to the Administrator; and

19 “(C) shall entitle the Administrator to a
 20 pro rata portion of any distributions made by
 21 the participating investment company equal to
 22 the percentage of capital in the participating in-
 23 vestment company that the equity financing
 24 comprises, which shall be made at the same
 25 times and in the same amounts as any other in-

1 investor in the participating investment company
2 with a similar interest.

3 “(3) ALLOCATIONS.—A participating invest-
4 ment company shall make allocations of income,
5 gain, loss, deduction, and credit to the Adminis-
6 trator with respect to the equity financing interest
7 as if the Administrator were an investor.

8 “(b) MANAGER PROFITS.—As a condition of receiv-
9 ing an equity financing under the program, the manager
10 profits interest payable to the managers of a participating
11 investment company under the program shall not exceed
12 20 percent of profits, exclusive of any profits that may
13 accrue as a result of the capital contributions of any such
14 managers with respect to the participating investment
15 company. Any excess of manager profits interest, less
16 taxes payable thereon, shall be returned by the managers
17 and paid to the investors and the Administrator in propor-
18 tion to the capital contributions and equity financings paid
19 in. No manager profits interest (other than a tax distribu-
20 tion) shall be paid before the repayment to the investors
21 and the Administrator of all contributed capital and equity
22 financings made.

23 “(c) DISTRIBUTION REQUIREMENTS.—As a condition
24 of receiving an equity financing under the program, a par-
25 ticipating investment company shall make all distributions

1 to all investors in cash and shall make distributions within
2 a reasonable time after exiting investments, including fol-
3 lowing a public offering or market sale of underlying in-
4 vestments.

5 **“SEC. 399J. FUND.**

6 “There is established in the Treasury a separate ac-
7 count (in this section referred to as ‘the fund’) for equity
8 financings which shall be available to the Administrator,
9 subject to annual appropriations, as a revolving fund to
10 be used for the purposes of the program. All amounts re-
11 ceived by the Administrator under the program, including
12 any moneys, property, or assets derived by the Adminis-
13 trator from operations in connection with the program,
14 shall be deposited in the fund.

15 **“SEC. 399K. APPLICATION OF OTHER SECTIONS.**

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

22 **“SEC. 399L. ANNUAL REPORTING.**

23 “The Administrator shall include information on the
24 performance of the program in the annual performance
25 report of the Administration required to be submitted

1 under section 10(a) of the Small Business Act (15 U.S.C.
2 639(a)).”.

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