

HR 3738 IH

111th CONGRESS

1st Session

H. R. 3738

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.

IN THE HOUSE OF REPRESENTATIVES**October 7, 2009**

Mr. NYE introduced the following bill; which was referred to the Committee on Small Business

A BILL

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.

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 Early-Stage Investment Act of 2009'.

**SEC. 2. 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. ESTABLISHMENT OF PROGRAM.**

` The Administrator shall establish and carry out an early-stage investment program (hereinafter referred to in this part as the `program') to provide equity investment financing to support early-stage small businesses in targeted industries in accordance with this part.

` SEC. 399B. ADMINISTRATION OF PROGRAM.

` The program shall be administered by the Administrator acting through the Associate Administrator described under section 201.

` SEC. 399C. APPLICATIONS.

` (a) In General- Any incorporated body, limited liability company, or limited partnership organized and chartered or otherwise existing under Federal or State law for the purpose of performing the functions and conducting the activities contemplated under the program and any small business investment company may submit to the Administrator an application to participate in the program.

` (b) Requirements for Application- An application to participate in the program shall include the following:

` (1) A business plan describing how the applicant intends to make successful venture capital investments in early-stage small businesses in targeted industries.

` (2) Information regarding the relevant venture capital investment qualifications and backgrounds of the individuals responsible for the management of the applicant.

` (3) A description of the extent to which the applicant meets the selection criteria under section 399D.

` (c) Applications From Small Business Investment Companies- The Administrator shall establish an abbreviated application process for small business investment companies that have received a license under section 301 and that are applying to participate in the program. Such abbreviated process shall incorporate a presumption that such small business investment companies satisfactorily meet the selection criteria under paragraphs (3) and (5) of section 399D.

(b).

SEC. 399D. SELECTION OF PARTICIPATING INVESTMENT COMPANIES.

(a) In General- Not later than 90 days after the date on which the Administrator receives an application from an applicant under section 399C, the Administrator shall make a final determination to approve or disapprove such applicant to participate in the program and shall transmit such determination to the applicant in writing.

(b) Selection Criteria- In making a determination under subsection (a), the Administrator shall consider each of the following:

- (1) The likelihood that the applicant will meet the goals specified in the business plan of the applicant.
- (2) The likelihood that the investments of the applicant will create or preserve jobs, both directly and indirectly.
- (3) The character and fitness of the management of the applicant.
- (4) The experience and background of the management of the applicant.
- (5) The extent to which the applicant will concentrate investment activities on early-stage small businesses in targeted industries.
- (6) The likelihood that the applicant will achieve profitability.
- (7) The experience of the management of the applicant with respect to establishing a profitable investment track record.

SEC. 399E. GRANTS.

(a) In General- The Administrator may make one or more grants to a participating investment company.

(b) Grant Amounts-

(1) NON-FEDERAL CAPITAL- A grant made to a participating investment company under the program may not be in an amount that exceeds the amount of the capital of such company that is not from a Federal source and that is available for investment on or before the date on which a grant is drawn upon. Such capital may include legally binding commitments with respect to capital for investment.

(2) LIMITATION ON AGGREGATE AMOUNT- The aggregate amount of all grants made to a participating investment company under the program may not exceed \$100,000,000.

(c) Grant Process- In making a grant under the program, the Administrator shall commit a grant amount to a participating investment company and the amount of each such commitment shall remain available to be drawn upon by such company--

- (1) for new-named investments during the 5-year period beginning on the date on which each such commitment is first drawn upon; and
- (2) for follow-on investments and management fees during the 10-year period beginning on the date on which each such commitment is first drawn upon, with not more than 2 additional 1-year periods available at the discretion of the Administrator.

SEC. 399F. INVESTMENTS IN EARLY-STAGE SMALL BUSINESSES IN TARGETED INDUSTRIES.

(a) In General- As a condition of receiving a grant under the program, a participating investment company shall make all of the investments of such company in small business concerns, of which at least 50 percent shall be early-stage small businesses in targeted industries.

(b) Evaluation of Compliance- With respect to a grant amount committed to a participating investment company under section 399E, the Administrator shall evaluate the compliance of such company with the requirements under this section if such company has drawn upon 50 percent of such commitment.

SEC. 399G. PRO RATA INVESTMENT SHARES.

Each investment made by a participating investment company under the program shall be treated as comprised of capital from grants under the program according to the ratio that capital from grants under the program bears to all capital available to such company for investment.

SEC. 399H. GRANT INTEREST.

^ (a) Grant Interest-

^ (1) IN GENERAL- As a condition of receiving a grant under the program, a participating investment company shall convey a grant interest to the Administrator in accordance with paragraph (2).

^ (2) EFFECT OF CONVEYANCE- The grant interest conveyed under paragraph (1) shall have all the rights and attributes of other investors attributable to their interests in the participating investment company, but shall not denote control or voting rights to the Administrator. The grant interest shall entitle the Administrator to a pro rata portion of any distributions made by the participating investment company equal to the percentage of capital in the participating investment company that the grant comprises. The Administrator shall receive distributions from the participating investment company at the same times and in the same amounts as any other investor in the company with a similar interest. The investment company shall make allocations of income, gain, loss, deduction, and credit to the Administrator with respect to the grant interest as if the Administrator were an investor.

^ (b) Manager Profits- As a condition of receiving a grant under the program, the manager profits interest payable to the managers of a participating investment company under the program shall not exceed 20 percent of profits, exclusive of any profits that may accrue as a result of the capital contributions of any such managers with respect to such company. Any excess of this amount, less taxes payable thereon, shall be returned by the managers and paid to the investors and the Administrator in proportion to the capital contributions and grants paid in. No manager profits interest (other than a tax distribution) shall be paid prior to the repayment to the investors and the Administrator of all contributed capital and grants made.

^ (c) Distribution Requirements- As a condition of receiving a grant under the program, a participating investment company shall make all distributions to all investors in cash and shall make distributions within a reasonable time after exiting investments, including following a public offering or market sale of underlying investments.

^ **SEC. 399I. FUND.**

^ There is hereby created within the Treasury a separate fund for grants which shall be available to the Administrator subject to annual appropriations as a revolving fund to be used for the purposes of the program. All amounts received by the Administrator, including any moneys, property, or assets derived by the Administrator from operations in connection with the program, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to the operations of the Administrator under the program shall be paid from the fund.

^ **SEC. 399J. APPLICATION OF OTHER SECTIONS.**

^ To the extent not inconsistent with requirements under this part, the Administrator may apply sections 309, 311, 312, 313, and 314 to activities under this part and an officer, director, employee, agent, or other participant in a participating investment company shall be subject to the requirements under such sections.

^ **SEC. 399K. DEFINITIONS.**

^ In this part, the following definitions apply:

^ (1) EARLY-STAGE SMALL BUSINESS IN A TARGETED INDUSTRY- The term 'early-stage small business in a targeted industry' means a small business concern that--

^ (A) is domiciled in a State;

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

^ (C) is engaged primarily in researching, developing, manufacturing, producing, or bringing to market goods, products, or services with respect to any of the following business sectors:

^ (i) Agricultural technology.

^ (ii) Energy technology.

^ (iii) Environmental technology.

^ (iv) Life science.

^ (v) Information technology.

^ (vi) Digital media.

^ (vii) Clean technology.

^ (viii) Defense technology.

` (2) PARTICIPATING INVESTMENT COMPANY- The term `participating investment company' means an applicant approved under section 399D to participate in the program.

` (3) SMALL BUSINESS CONCERN- The term `small business concern' has the same meaning given such term under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

` SEC. 399L. AUTHORIZATION OF APPROPRIATIONS.

` There is authorized to be appropriated to carry out the program \$250,000,000 for the first full fiscal year beginning after the date of the enactment of this part.'.

END

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