

1 (d) PROHIBITION ON PORNOGRAPHY.—None of the
2 funds made available under this title may be used to pay
3 the salary of any individual engaged in activities related
4 to the Program who has been officially disciplined for vio-
5 lations of subpart G of the Standards of Ethical Conduct
6 for Employees of the Executive Branch for viewing,
7 downloading, or exchanging pornography, including child
8 pornography, on a Federal Government computer or while
9 performing official Federal Government duties.

10 **TITLE III—SMALL BUSINESS**
11 **EARLY-STAGE INVESTMENT**
12 **PROGRAM**

13 **SEC. 301. SHORT TITLE.**

14 This title may be cited as the “Small Business Early-
15 Stage Investment Program Act of 2010”.

16 **SEC. 302. SMALL BUSINESS EARLY-STAGE INVESTMENT**
17 **PROGRAM.**

18 Title III of the Small Business Investment Act of
19 1958 (15 U.S.C. 681 et seq.) is amended by adding at
20 the end the following:

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

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

24 “The Administrator shall establish and carry out an
25 early-stage investment program (hereinafter referred to in

1 this part as the ‘program’) to provide equity investment
2 financing to support early-stage small businesses in ac-
3 cordance with this part.

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

5 “The program shall be administered by the Adminis-
6 trator acting through the Associate Administrator de-
7 scribed under section 201.

8 **“SEC. 399C. APPLICATIONS.**

9 “(a) IN GENERAL.—Any existing or newly formed in-
10 corporated body, limited liability company, or limited part-
11 nership organized and chartered or otherwise existing
12 under Federal or State law for the purpose of performing
13 the functions and conducting the activities contemplated
14 under the program and any manager of any small business
15 investment company may submit to the Administrator an
16 application to participate in the program.

17 “(b) REQUIREMENTS FOR APPLICATION.—An appli-
18 cation to participate in the program shall include the fol-
19 lowing:

20 “(1) A business plan describing how the appli-
21 cant intends to make successful venture capital in-
22 vestments in early-stage small businesses and direct
23 capital to small business concerns in targeted indus-
24 tries or other business sectors.

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

5 “(3) A description of the extent to which the
6 applicant meets the selection criteria under section
7 399D.

8 “(c) APPLICATIONS FROM MANAGERS OF SMALL
9 BUSINESS INVESTMENT COMPANIES.—The Administrator
10 shall establish an abbreviated application process for ap-
11 plicants that are managers of small business investment
12 companies that are licensed under section 301 and that
13 are applying to participate in the program. Such abbrevi-
14 ated process shall incorporate a presumption that such
15 managers satisfactorily meet the selection criteria under
16 paragraphs (3) and (5) of section 399D(b).

17 **“SEC. 399D. SELECTION OF PARTICIPATING INVESTMENT**
18 **COMPANIES.**

19 “(a) IN GENERAL.—Not later than 90 days after the
20 date on which the Administrator receives an application
21 from an applicant under section 399C, the Administrator
22 shall make a determination to conditionally approve or dis-
23 approve such applicant to participate in the program and
24 shall transmit such determination to the applicant in writ-
25 ing. A determination to conditionally approve an applicant

1 shall identify all conditions necessary for a final approval
2 and shall provide a period of not less than one year for
3 satisfying such conditions.

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

7 “(1) The likelihood that the applicant will meet
8 the goals specified in the business plan of the appli-
9 cant.

10 “(2) The likelihood that the investments of the
11 applicant will create or preserve jobs, both directly
12 and indirectly.

13 “(3) The character and fitness of the manage-
14 ment of the applicant.

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

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

20 “(6) The likelihood that the applicant will
21 achieve profitability.

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

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

4 “(c) FINAL APPROVAL.—For each applicant provided
5 a conditional approval under subsection (a), the Adminis-
6 trator shall provide final approval to participate in the
7 program not later than 90 days after the date the appli-
8 cant satisfies the conditions specified by the Administrator
9 under such subsection or, in the case of applicants whose
10 partnership or management agreements conform to mod-
11 els approved by the Administrator, the Administrator shall
12 provide final approval to participate in the program not
13 later than 30 days after the date the applicant satisfies
14 the conditions specified under such subsection. If an appli-
15 cant provided conditional approval under subsection (a)
16 fails to satisfy the conditions specified by the Adminis-
17 trator in the time period designated under such sub-
18 section, the Administrator shall revoke the conditional ap-
19 proval.

20 **“SEC. 399E. EQUITY FINANCINGS.**

21 “(a) IN GENERAL.—The Administrator may make
22 one or more equity financings to a participating invest-
23 ment company.

24 “(b) EQUITY FINANCING AMOUNTS.—

1 “(1) NON-FEDERAL CAPITAL.—An equity fi-
2 nancing made to a participating investment company
3 under the program may not be in an amount that
4 exceeds the amount of the capital of such company
5 that is not from a Federal source and that is avail-
6 able for investment on or before the date on which
7 an equity financing is drawn upon. Such capital may
8 include legally binding commitments with respect to
9 capital for investment.

10 “(2) LIMITATION ON AGGREGATE AMOUNT.—
11 The aggregate amount of all equity financings made
12 to a participating investment company under the
13 program may not exceed \$100,000,000.

14 “(c) EQUITY FINANCING PROCESS.—In making an
15 equity financing under the program, the Administrator
16 shall commit an equity financing amount to a partici-
17 pating investment company and the amount of each such
18 commitment shall remain available to be drawn upon by
19 such company—

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

23 “(2) for follow-on investments and management
24 fees during the 10-year period beginning on the date
25 on which each such commitment is first drawn upon,

1 with not more than 2 additional 1-year periods avail-
2 able at the discretion of the Administrator.

3 “(d) COMMITMENT OF FUNDS.—The Administrator
4 shall make commitments for equity financings not later
5 than 2 years after the date funds are appropriated for the
6 program.

7 **“SEC. 399F. INVESTMENTS IN EARLY-STAGE SMALL BUSI-**
8 **NESSES.**

9 “(a) IN GENERAL.—As a condition of receiving an
10 equity financing under the program, a participating in-
11 vestment company shall make all of the investments of
12 such company in small business concerns, of which at least
13 50 percent shall be early-stage small businesses.

14 “(b) EVALUATION OF COMPLIANCE.—With respect to
15 an equity financing amount committed to a participating
16 investment company under section 399E, the Adminis-
17 trator shall evaluate the compliance of such company with
18 the requirements under this section if such company has
19 drawn upon 50 percent of such commitment.

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

21 “Each investment made by a participating invest-
22 ment company under the program shall be treated as com-
23 prised of capital from equity financings under the program
24 according to the ratio that capital from equity financings

1 under the program bears to all capital available to such
2 company for investment.

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

4 “(a) EQUITY FINANCING INTEREST.—

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

10 “(2) EFFECT OF CONVEYANCE.—The equity fi-
11 nancing interest conveyed under paragraph (1) shall
12 have all the rights and attributes of other investors
13 attributable to their interests in the participating in-
14 vestment company, but shall not denote control or
15 voting rights to the Administrator. The equity fi-
16 nancing interest shall entitle the Administrator to a
17 pro rata portion of any distributions made by the
18 participating investment company equal to the per-
19 centage of capital in the participating investment
20 company that the equity financing comprises. The
21 Administrator shall receive distributions from the
22 participating investment company at the same times
23 and in the same amounts as any other investor in
24 the company with a similar interest. The investment
25 company shall make allocations of income, gain, loss,

1 deduction, and credit to the Administrator with re-
2 spect to the equity financing interest as if the Ad-
3 ministrator were an investor.

4 “(b) MANAGER PROFITS.—As a condition of receiv-
5 ing an equity financing under the program, the manager
6 profits interest payable to the managers of a participating
7 investment company under the program shall not exceed
8 20 percent of profits, exclusive of any profits that may
9 accrue as a result of the capital contributions of any such
10 managers with respect to such company. Any excess of
11 this amount, less taxes payable thereon, shall be returned
12 by the managers and paid to the investors and the Admin-
13 istrator in proportion to the capital contributions and eq-
14 uity financings paid in. No manager profits interest (other
15 than a tax distribution) shall be paid prior to the repay-
16 ment to the investors and the Administrator of all contrib-
17 uted capital and equity financings made.

18 “(c) DISTRIBUTION REQUIREMENTS.—As a condition
19 of receiving an equity financing under the program, a par-
20 ticipating investment company shall make all distributions
21 to all investors in cash and shall make distributions within
22 a reasonable time after exiting investments, including fol-
23 lowing a public offering or market sale of underlying in-
24 vestments.

1 **“SEC. 399I. FUND.**

2 “There is hereby created within the Treasury a sepa-
3 rate fund for equity financings which shall be available
4 to the Administrator subject to annual appropriations as
5 a revolving fund to be used for the purposes of the pro-
6 gram. All amounts received by the Administrator, includ-
7 ing any moneys, property, or assets derived by the Admin-
8 istrator from operations in connection with the program,
9 shall be deposited in the fund. All expenses and payments,
10 excluding administrative expenses, pursuant to the oper-
11 ations of the Administrator under the program shall be
12 paid from the fund.

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

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

20 **“SEC. 399K. ANNUAL REPORTING.**

21 “The Administrator shall report on the performance
22 of the program in the annual performance report of the
23 Administration.

24 **“SEC. 399L. DEFINITIONS.**

25 “In this part, the following definitions apply:

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

4 “(A) is domiciled in a State; and

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

8 “(2) PARTICIPATING INVESTMENT COMPANY.—
9 The term ‘participating investment company’ means
10 an applicant approved under section 399D to par-
11 ticipate in the program.

12 “(3) TARGETED INDUSTRIES.—The term ‘tar-
13 geted industries’ means any of the following business
14 sectors:

15 “(A) Agricultural technology.

16 “(B) Energy technology.

17 “(C) Environmental technology.

18 “(D) Life science.

19 “(E) Information technology.

20 “(F) Digital media.

21 “(G) Clean technology.

22 “(H) Defense technology.

23 “(I) Photonics technology.

1 **“SEC. 399M. APPROPRIATION.**

2 “From funds not otherwise appropriated, there is
3 hereby appropriated \$1,000,000,000 to carry out the pro-
4 gram.

5 **“SEC. 399N. CERTIFICATION.**

6 “(a) IMMIGRATION CERTIFICATION.—

7 “(1) PARTICIPATING INVESTMENT COMPA-
8 NIES.—Each participating investment company that
9 receives an equity financing under this part after the
10 date of the enactment of this part must, if applica-
11 ble, certify that such company is in compliance with
12 the requirements of section 103.121 of title 31, Code
13 of Federal Regulations, a regulation that, at a min-
14 imum, requires financial institutions, as that term is
15 defined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to
16 implement reasonable procedures to verify the iden-
17 tity of any person seeking to open an account, to the
18 extent reasonable and practicable, maintain records
19 of the information used to verify the person’s iden-
20 tity, and determine whether the person appears on
21 any lists of known or suspected terrorists or ter-
22 rorist organizations provided to the financial institu-
23 tion by any government agency.

24 “(2) EARLY-STAGE SMALL BUSINESSES.—Each
25 early-stage small business that receives funds from
26 a participating investment company that receives an

1 equity financing under this part after the date of the
2 enactment of this part must, if applicable, certify
3 that such company is in compliance with the require-
4 ments of section 103.121 of title 31, Code of Fed-
5 eral Regulations, a regulation that, at a minimum,
6 requires financial institutions, as that term is de-
7 fined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to im-
8 plement reasonable procedures to verify the identity
9 of any person seeking to open an account, to the ex-
10 tent reasonable and practicable, maintain records of
11 the information used to verify the person's identity,
12 and determine whether the person appears on any
13 lists of known or suspected terrorists or terrorist or-
14 ganizations provided to the financial institution by
15 any government agency.

16 “(b) SEX OFFENDER CERTIFICATION.—

17 “(1) PARTICIPATING INVESTMENT COMPA-
18 NIES.—Each participating investment company that
19 receives an equity financing under this part after the
20 date of the enactment of this part shall certify to the
21 Administrator that the principals of such company
22 have not been convicted of a sex offense against a
23 minor (as such terms are defined in section 111 of
24 the Sex Offender Registration and Notification Act
25 (42 U.S.C. 16911)).

1 “(2) EARLY-STAGE SMALL BUSINESSES.—Each
2 early-stage small business that receives funds from
3 a participating investment company that receives an
4 equity financing under this part after the date of the
5 enactment of this part shall certify to the Adminis-
6 trator that the principals of such business have not
7 been convicted of a sex offense against a minor (as
8 such terms are defined in section 111 of the Sex Of-
9 fender Registration and Notification Act (42 U.S.C.
10 16911)).

11 “(c) PORNOGRAPHY CERTIFICATION.—None of the
12 funds made available under this part may be used to pay
13 the salary of any individual engaged in activities related
14 to the provisions of this part who has been officially dis-
15 ciplined for violations of subpart G of the Standards of
16 Ethical Conduct for Employees of the Executive Branch
17 for viewing, downloading, or exchanging pornography, in-
18 cluding child pornography, on a Federal Government com-
19 puter or while performing official Federal Government du-
20 ties.”.

21 **SEC. 303. REGULATIONS.**

22 Not later than 180 days after the date of enactment
23 of this Act, the Administrator shall issue regulations to
24 carry out this title and the amendments made by this title.

1 **SEC. 304. PROHIBITIONS ON EARMARKS.**

2 None of the funds appropriated for the program es-
3 tablished under part D of title III of the Small Business
4 Investment Act of 1958, as added by this Act, may be
5 used for a Congressional earmark as defined in clause 9(e)
6 of rule XXI of the Rules of the House of Representatives.

7 **TITLE IV—MISCELLANEOUS**

8 **SEC. 401. BUDGETARY EFFECTS.**

9 The budgetary effects of this Act, for the purpose of
10 complying with the Statutory Pay-As-You-Go Act of 2010,
11 shall be determined by reference to the latest statement
12 titled “Budgetary Effects of PAYGO Legislation” for this
13 Act, submitted for printing in the Congressional Record
14 by the Chairman of the House Budget Committee, pro-
15 vided that such statement has been submitted prior to the
16 vote on passage.

17 **TITLE V—TAX PROVISIONS**

18 **SEC. 500. SHORT TITLE; ETC.**

19 (a) **SHORT TITLE.**—This title may be cited as the
20 “Small Business Jobs Tax Relief Act of 2010”.

21 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
22 wise expressly provided, whenever in this title an amend-
23 ment or repeal is expressed in terms of an amendment
24 to, or repeal of, a section or other provision, the reference
25 shall be considered to be made to a section or other provi-
26 sion of the Internal Revenue Code of 1986.