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INVESTING IN MAIN STREET ACT OF 2021

OCTOBER 12, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. VELÁZQUEZ, from the Committee on Small Business, submitted the following

R E P O R T

[To accompany H.R. 4256]

The Committee on Small Business, to whom was referred the bill (H.R. 4256) to amend the Small Business Investment Act of 1958 to increase the amount that certain banks and savings associations may invest in small business investment companies, subject to the approval of the appropriate Federal banking agency, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND BILL SUMMARY

The purpose of H.R. 4256, the "Investing in Main Street Act of 2021," is to increase the amount of capital and surplus a financial

institution or savings association may invest in a Small Business Investment Company (SBIC) licensed by the Small Business Administration (SBA) from 5 to 15 percent with the goal to improve access to investment capital for small businesses.

II. Background and Need for Legislation

H.R. 4256 was introduced by Rep. Judy Chu (D–CA) and Rep. Andrew Garbarino (R–NY) on June 30, 2021. H.R. 4256 is identical to H.R. 116, which was introduced in the 116th Congress. H.R. 116 was introduced on January 3, 2019, by Rep. Chu and Rep. Ralph Norman (R–SC). H.R. 116 passed the House on January 14, 2019, under Suspension of the Rules by a vote of 403–2 (Roll Call No. 30). H.R. 116 was received in the Senate and read twice and referred to the Committee on Small Business and Entrepreneurship on January 15, 2019.

Authorized by the Small Business Investment Act of 1958, the SBIC program provides access to low-cost, government-backed investment capital for small businesses, which strengthens local communities and empowers American business owners to grow and compete in the global economy. SBA licenses and regulates privately owned and managed investment funds that use their own capital, plus SBA-guaranteed leverage, to make equity and debt investments in small businesses. Leveraged funds obtained under the program generally carry rates lower than would otherwise be available from traditional lending sources. This enables SBIC funds to make investments in greater amounts than would be possible solely with private funds. The size of an SBIC fund's private capital determines the amount of SBA funding for which the SBIC fund is eligible. SBIC funds are generally eligible for up to two tiers of leverage on their private capital, meaning an SBIC fund with $75 million in private capital could have a total fund size of up to $225 million, with up to $150 million of SBA leverage. Investors that typically provide SBICs with private capital include public and private pension funds, banks and other financial institutions, institutional investors, and other high-net-worth individuals. SBIC funds represent approximately $30 billion in investment capital, which have helped create or sustain more than 9.5 million jobs since 1995.

Currently, the Office of the Comptroller of the Currency's (OCC) regulations permit financial institutions and savings associations to invest up to 15 percent (subject to OCC approval) of their capital and surplus into qualified public welfare investments. An SBIC is considered a public welfare investment,[1] however, the Small Business Investment Act of 1958 restricts these institutions from investing more than five percent of their capital and surplus in SBICs.[2] To harmonize the Small Business Investment Act of 1958 with the OCC's public welfare investment regulations, the bill permits financial institutions and savings associations to invest up to 15 percent of their capital and surplus in an SBIC, subject to the approval of the appropriate federal regulator.

[1] 12 CFR § 24.4(a).
[2] 15 U.S.C. § 682(b)(1), (2).

III. HEARINGS

On May 19, 2015, the Subcommittee on Economic Growth, Tax, and Capital Access held a hearing on improving SBA's capital access program, and more specifically there were discussions about improvements that could be made to the SBIC program.[3] On April 5, 2016, the Subcommittee on Economic Growth, Tax, and Capital Access held a field hearing in Pasadena, California.[4] During the hearing, Ms. Jeri Harman testified in support of lifting the cap. On September 26, 2019, the Committee held a management review hearing on the SBIC program, with Mr. Joe Shepard, Associate Administrator of Investment and Innovation, and a panel of private sector SBIC program participants and stakeholders.[5]

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on July 29, 2021 and ordered H.R. 4256 favorably reported to the House of Representatives. During the markup, no amendments were offered.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee approved by voice vote to favorably report H.R. 4256 to the House at 10:19 AM.

VI. SECTION-BY-SECTION ANALYSIS FOR H.R. 4256

Section 1. Short title

This Act may be cited as the "Investing in Main Street Act of 2021."

Section 2. Investments in Small Business Investment Companies

This section increases the percent of capital and surplus a financial institution or federal savings institution may invest in an SBIC from 5 to 15 percent, subject to the approval of the appropriate federal banking agency.

VII. CONGRESSIONAL BUDGET COST ESTIMATE

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate for the Committee's provisions.

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[3] Improving Capital Access Programs Within the SBA: Hearing Before the H. Comm. on Small Business Subcomm. on Economic Growth, Tax, and Capital Access, 114th Cong. (2015) (statement of Brett Palmer, President, Small Business Investor Alliance).

[4] Field Hearing in Pasadena, CA: Bridging the Gap—Increasing Access to Venture Capital for Small Businesses: Hearing Before the H. Comm. on Small Business Subcomm. on Economic Growth, Tax, and Capital Access, 114th Cong. (2016) (statement of Jeri J. Harman, Managing Partner & CEO, Avante Mezzanine Partners).

[5] SBA Management Review: Small Business Investment Company Program: Hearing Before the H. Comm. on Small Business, 116th Cong. (2019).

VIII. New Budget Authority, Entitlement Authority, and Tax Expenditures

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 4256 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. Committee Oversight Findings and Recommendations

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 4256 are incorporated into the descriptive portions of this report.

X. Statement of General Performance Goals and Objectives

With respect to the requirements of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 4256 is to increase the amount of capital and surplus financial institutions and savings associations may invest in an SBIC to improve access to investment capital for small businesses.

XI. Duplication of Federal Programs

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 4256 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. Federal Mandates Statement

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

XIV. Federal Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XV. Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XVI. Constitutional Authority Statement

Pursuant to clause 7 of rule XII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Art. I, § 8, cl. 1 of the Constitution of the United States.

XVII. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, as shown as follows: existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS INVESTMENT ACT OF 1958

* * * * * * *

TITLE III—INVESTMENT DIVISION PROGRAMS

Part A—Small Business Investment Companies

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CAPITAL REQUIREMENTS

Sec. 302.

(a) Amount.—

(1) In general.—Except as provided in paragraph (2), the private capital of each licensee shall be not less than—

(A) $5,000,000; or

(B) $10,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administration under this Act.

(2) Exception.—The Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, permit the private capital of a li-

censee authorized or seeking authorization to issue participating securities to be purchased or guaranteed by the Administration to be less than $10,000,000, but not less than $5,000,000, if the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(3) ADEQUACY.—In addition to the requirements of paragraph (1), the Administrator shall—

(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

(B) determine that the licensee will be able both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources.

(4) EXEMPTION FROM CAPITAL REQUIREMENTS.—The Administrator may, in the discretion of the Administrator, approve leverage for any licensee licensed under subsection (c) or (d) of section 301 before the date of enactment of the Small Business Program Improvement Act of 1996 that does not meet the capital requirements of paragraph (1), if—

(A) the licensee certifies in writing that not less 50 percent of the aggregate dollar amount of its financings after the date of enactment of the Small Business Program Improvement Act of 1996 will be provided to smaller enterprises; and

(B) the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government.

(b) FINANCIAL INSTITUTION INVESTMENTS.—

(1) CERTAIN BANKS.—Notwithstanding the provisions of section 6(a)(1) of the Bank Holding Company Act of 1956, any national bank, or any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank *or, subject to the approval of the appropriate Federal banking agency, 15 percent of such capital and surplus*.

(2) CERTAIN SAVINGS ASSOCIATIONS.—Notwithstanding any other provision of law, any Federal savings association may invest in any one or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event may the total amount of such investments by any such Federal savings association exceed 5 percent of the capital and surplus of the Federal savings association *or, subject to the approval of the appro-*

priate Federal banking agency, 15 percent of such capital and surplus.

(3) APPROPRIATE FEDERAL BANKING AGENCY DEFINED.—For purposes of this subsection, the term "appropriate Federal banking agency" has the meaning given that term under section 3 of the Federal Deposit Insurance Act.

(c) DIVERSIFICATION OF OWNERSHIP.—The Administrator shall ensure that the management of each licensee licensed after the date of enactment of the Small Business Program Improvement Act of 1996 is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.

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