

103D CONGRESS
1ST SESSION

S. 396

To establish the Small Business Capital Access Program to enhance the availability of financing for small business concerns.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 18 (legislative day, JANUARY 5), 1993

Mr. LIEBERMAN (for himself, Mr. STEVENS, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Small Business

A BILL

To establish the Small Business Capital Access Program to enhance the availability of financing for small business concerns.

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 Capital
5 Access Program Act of 1993”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) small business concerns remain a thriving
9 and vital part of the economy, accounting for the

1 majority of new jobs, new products, and new services
2 created in the United States;

3 (2) adequate access to capital is a critical com-
4 ponent of small business formation and success;

5 (3) small business concerns, which in many
6 cases represent inherently higher degrees of risk in
7 financial markets than do large businesses, are hav-
8 ing an increasingly difficult time securing sufficient
9 long-term debt financing;

10 (4) recent concerns over the safety and sound-
11 ness of commercial financial institutions and chang-
12 ing capital standards have lead to a more conserv-
13 ative review of loan applications, particularly those
14 from small business concerns;

15 (5) the start-up cycle for a small business con-
16 cern is typically 5 to 7 years, yet only 12 percent of
17 recent commercial loans were made for terms of 7
18 years or longer;

19 (6) price deregulation, which removed ceilings
20 from savings accounts and enabled financial institu-
21 tions to pay market rates of interest, effectively
22 raised returns to depositors and costs to borrowers,
23 resulting in increased costs of debt capital for small-
24 er businesses;

1 (7) commercial banks are the most important
2 supplier of debt capital and financial services to
3 small business concerns in the United States, and
4 according to surveys of small business financing,
5 nearly all small business concerns use some financial
6 services from commercial banks;

7 (8) the new risk-based capital requirements will
8 have an unclear impact on the availability of capital
9 financing for small business concerns;

10 (9) other sources of small business financing
11 such as venture capital markets, public markets, and
12 institutional investors (pension funds or insurance
13 companies) are not viable alternatives for many
14 small business concerns; and

15 (10) innovative developmental finance and small
16 business lending programs at the State level have
17 proven to be particularly effective in promoting the
18 growth and development of small business concerns.

19 (b) PURPOSE.—It is the purpose of this Act to pro-
20 mote economic growth, create jobs, and spur innovation
21 by enhancing the availability of financing for small busi-
22 ness concerns, that might not otherwise be available.

23 **SEC. 3. DEFINITIONS.**

24 For purposes of this Act—

1 (1) the terms “Administration” and “Adminis-
2 trator” mean the Small Business Administration
3 and the Administrator of the Small Business Admin-
4 istration, respectively;

5 (2) the term “appropriate Federal banking
6 agency” has the same meaning as in section 3 of the
7 Federal Deposit Insurance Act;

8 (3) the term “Board” means the Small Busi-
9 ness Capital Access Board established under section
10 4;

11 (4) the term “early loan” means a loan enrolled
12 at a time when the aggregate dollar amount of pre-
13 viously enrolled loans in particular reserve fund is
14 less than \$5,000,000;

15 (5) the term “enrolled loan” means a loan
16 made to a small business concern by a participating
17 financial institution located in a participating State
18 and subsequently enrolled in the Program in accord-
19 ance with section 7;

20 (6) the term “participating financial institu-
21 tion” means any Federal- or State-chartered com-
22 mercial bank, savings association, mutual savings
23 bank, or credit union that—

1 (A) has met all applicable requirements of
2 the Administration and a participating State
3 for participation in the Program;

4 (B) is actually participating in the Pro-
5 gram; and

6 (C) has or is in the process of establishing
7 a reserve fund in accordance with this Act;

8 (7) the term “participating State” means any
9 State that has met the requirements of this Act and
10 is designated for participation in the Program;

11 (8) the term “passive real estate ownership”
12 means ownership of real estate for the purpose of
13 deriving income from speculation, trade, or rental,
14 except that such term shall not include—

15 (A) the ownership of that portion of real
16 estate being used or intended to be used for the
17 operation of the business of the owner of the
18 real estate; or

19 (B) the ownership of real estate for the
20 purpose of construction or renovation, until the
21 completion of the construction or renovation
22 phase;

23 (9) the term “Program” means the Small Busi-
24 ness Capital Access Program established under this
25 Act;

1 (10) the term “reserve fund” means a fund, es-
2 tablished by a participating State, in the name of a
3 participating financial institution, for the purpose
4 of—

5 (A) depositing all required premium
6 charges, paid by the participating financial in-
7 stitution and the borrower;

8 (B) depositing contributions made by par-
9 ticipating States and the Administration; and

10 (C) covering losses on enrolled loans by
11 disbursing funds accumulated in the reserve
12 fund in accordance with section 10; and

13 (11) the term “small business concern” has the
14 same meaning as in section 3 of the Small Business
15 Act.

16 **SEC. 4. SMALL BUSINESS CAPITAL ACCESS BOARD.**

17 (a) ESTABLISHMENT.—There is established within
18 the Administration, a Small Business Capital Access
19 Board which shall be chaired by the Administrator and
20 shall consist of the following additional members, to be
21 appointed by the Administrator:

22 (1) SMALL BUSINESS REPRESENTATIVES.—Two
23 members shall be appointed from the private sector
24 representing small business concerns.

1 (2) FINANCIAL SERVICES REPRESENTATIVES.—

2 Two members shall be appointed from the private
3 sector representing the financial services industry.

4 (3) STATE GOVERNMENT REPRESENTATIVES.—

5 Two members representing State government shall
6 be appointed.

7 (b) DUTIES.—The Board shall—

8 (1) designate States to participate in the Pro-
9 gram, as provided in section 5; and

10 (2) prepare annual reports to the Congress that
11 shall include—

12 (A) data on the number, types, amounts,
13 and average amounts of loans made pursuant to
14 the Program;

15 (B) an analysis of the types of firms fi-
16 nanced as part of the Program;

17 (C) an analysis of the terms, fees, and in-
18 terest rates of Program loans;

19 (D) the types and sizes of financial institu-
20 tions participating in the Program; and

21 (E) an accounting of active reserve funds
22 established as part of the Program in partici-
23 pating States, including the amounts and the
24 number of covered loans.

25 (c) TERMS AND COMPENSATION.—

1 (1) PERIOD OF APPOINTMENT.—Each member
2 of the Board referred to in subsection (a) shall be
3 appointed for the life of the Board.

4 (2) VACANCIES.—Vacancies on the Board shall
5 be filled in the same manner in which the original
6 appointment was made.

7 (3) COMPENSATION AND EXPENSES.—Each
8 member of the Board referred to in paragraphs (1)
9 and (2) of subsection (a) shall be paid at a rate
10 equivalent to the maximum rate payable for a posi-
11 tion classified above GS–15 of the General Schedule
12 for each day during which such member is engaged
13 in the duties of the Board. Each member shall re-
14 ceive travel expenses, including per diem in lieu of
15 subsistence, in accordance with sections 5702 and
16 5703 of title 5, United States Code.

17 **SEC. 5. DESIGNATION OF STATES FOR PARTICIPATION.**

18 (a) IN GENERAL.—The Board shall designate States
19 to participate in the Program in accordance with this Act.

20 (b) STATE COMMITMENT REQUIRED.—A State that
21 has fulfilled, or is in the process of fulfilling, the State
22 commitments required under section 6 may be designated
23 for participation in the Program.

1 **SEC. 6. PROGRAM SPECIFICATIONS.**

2 (a) FEDERAL CONTRIBUTIONS.—The Administration
3 is authorized to contribute, on an immediate or deferred
4 basis, not more than \$8,000,000 for fiscal years 1994
5 through 1999 to each participating State. Such contribu-
6 tions shall to be credited to the reserve funds established
7 in connection with loans made to small business concerns
8 by participating financial institutions under the Program.

9 (b) PARTICIPATION LIMITS.—Contributions made by
10 the Administration pursuant to subsection (a)—

11 (1) shall be not less than 1.5 percent and not
12 more than 3.5 percent of the amount of the loan;
13 and

14 (2) shall match on a one-to-one basis the
15 amounts contributed by the participating State.

16 (c) STATE COMMITMENTS.—

17 (1) STATUTORY AUTHORITY AND APPROPRIA-
18 TIONS.—Not more than 12 months after the date on
19 which a State is designated for participation in the
20 Program under section 5(c), such State shall—

21 (A) establish all necessary statutory au-
22 thority to carry out the Program;

23 (B) appropriate all necessary funds to
24 cover immediate or deferred premiums required
25 by the State on enrolled loans; and

1 (C) establish an administrative mechanism
2 to carry out—

3 (i) the establishment, management,
4 and accounting of reserve funds;

5 (ii) the enrollment of loans in accord-
6 ance with section 7(c);

7 (iii) the payment of claims under this
8 Act; and

9 (iv) the designation of participating fi-
10 nancial institutions under this Act.

11 (2) TERMINATION OF PARTICIPATION.—A State
12 that fails to meet the requirements of paragraph (1)
13 within the 12-month period referred to in that para-
14 graph shall forego participation in the Program.
15 Upon the request of a State, the Board, by a major-
16 ity vote, may extend such 12-month period for not
17 more than 12 months.

18 (3) REAPPLICATION FOR PARTICIPATION.—A
19 State for which participation in the Program has
20 been terminated under paragraph (2) may reapply to
21 the Board for participation in the program at any
22 time after the requirements of paragraph (1) have
23 been met by the State.

24 (d) ESTABLISHMENT OF RESERVE FUNDS.—Each
25 participating State shall establish reserve funds in the

1 name of each participating financial institution for the
2 purposes of—

3 (1) depositing all required premium charges to
4 be paid by the participating financial institution and
5 the borrower;

6 (2) accounting for immediate or deferred con-
7 tributions made by participating States and the Ad-
8 ministration; and

9 (3) disbursing funds accumulated in accordance
10 with the Program to cover losses sustained by the
11 participating financial institution in connection with
12 loans made under the Program.

13 (e) ADDITIONAL REQUIREMENTS.—

14 (1) BORROWERS.—The Administration may
15 only make contributions under this Act in connection
16 with a loan made to a borrower—

17 (A) that is—

18 (i) a small business concern; and

19 (ii) a corporation, partnership, joint
20 venture, sole proprietorship, cooperative, or
21 other entity (whether such entity is a non-
22 profit entity or an entity established for
23 profit), that is authorized to conduct busi-
24 ness in the participating State; and

1 (B) that has its primary business location
2 within the boundaries of a participating State.

3 (2) LOAN USE RESTRICTION.—A loan made
4 under this Act may not be used to finance passive
5 real estate ownership.

6 (3) WRITTEN ASSURANCES.—Prior to receiving
7 a loan under this Act, each borrower shall sign a
8 written representation to the participating financial
9 institution that the borrower has no legal, beneficial,
10 or equitable interest in the nonrefundable premium
11 charges or any other funds credited to the reserve
12 fund established by a participating State.

13 **SEC. 7. LOAN TERMS AND CONDITIONS.**

14 (a) DESIGNATION OF FINANCIAL INSTITUTIONS.—A
15 financial institution located in a participating State shall
16 be considered a participating financial institution and may
17 enroll loans in accordance with this Act if—

18 (1) the institution has agreed to all terms and
19 conditions set forth in this Act and any terms and
20 conditions set forth by the participating State;

21 (2) the appropriate Federal banking agency for
22 the financial institution has approved the institution
23 for participation in the Program, after consideration
24 of the safety and soundness, the applicable capital-

1 ization requirements, and the overall financial health
2 of the institution; and

3 (3) the participating State has agreed to estab-
4 lish, or has established, a reserve fund in the name
5 of the institution.

6 (b) NEGOTIATED LOAN TERMS.—Loans made under
7 the Program may be made with such interest rates, fees,
8 and other terms and conditions as agreed upon by the par-
9 ticipating financial institution and the borrower.

10 (c) ENROLLMENT OF LOANS.—

11 (1) PROCESS.—A participating financial institu-
12 tion shall file each loan made under the Program for
13 enrollment—

14 (A) by notifying the Administration and
15 the State administrative agency or office re-
16 sponsible for the reserve funds of—

17 (i) the disbursement of the loan;

18 (ii) the dollar amount of the loan en-
19 rolled;

20 (iii) the interest rate applicable to and
21 the term of the loan; and

22 (iv) the amount of the agreed upon
23 premium; and

24 (B) by transmitting the nonrefundable pre-
25 mium charges of the participating financial in-

1 stitution and the borrower as provided in sec-
2 tion 8.

3 (2) SPECIFICATION OF PROGRAM COVERAGE
4 AMOUNT.—When filing a loan for enrollment under
5 this section, the participating financial institution
6 may specify an amount to be covered under the Pro-
7 gram that is less than the total amount of the loan.

8 (3) LINES OF CREDIT.—A loan may be made
9 under this Act in the form of a line of credit, in
10 which case the amount of the loan enrolled shall be
11 considered to be the maximum amount that can be
12 drawn against the line of credit.

13 (4) TIME LIMITATION.—The participating fi-
14 nancial institution shall file the loan for enrollment
15 not later than 10 days after the date on which the
16 loan is made.

17 **SEC. 8. REQUIRED PAYMENTS AND TRANSFERS TO THE RE-**
18 **SERVE FUND.**

19 (a) BORROWER AND LENDER PREMIUM PAY-
20 MENTS.—

21 (1) BORROWER PAYMENTS.—The premium
22 charges payable to the reserve fund by the partici-
23 pating financial institution and the borrower in con-
24 nection with a loan made under the Program shall
25 be prescribed by the institution. The premium

1 amount paid by the borrower shall be not less than
2 1.5 percent and not more than 3.5 percent of the
3 amount of the loan, as agreed upon by the institu-
4 tion and the borrower.

5 (2) LENDER PAYMENTS.—The premium
6 amount paid by the participating financial institu-
7 tion, in connection with a loan made under the Pro-
8 gram, shall be equal to the premium amount paid by
9 the borrower.

10 (3) RECOVERY OF COSTS.—The participating fi-
11 nancial institution may recover from the borrower
12 the cost of its payments to the fund through the fi-
13 nancing of the loan, upon the agreement of the insti-
14 tution and the borrower.

15 (b) REQUIRED FEDERAL AND STATE CONTRIBU-
16 TIONS.—The Administration and each participating State
17 shall each deposit into the reserve fund, on an immediate
18 or deferred basis, one-half of—

19 (1) an amount equal to 150 percent of the com-
20 bined amounts paid into the reserve fund by the bor-
21 rower and the participating financial institution for
22 each enrolled loan, if the amount of any loan, plus
23 the amount of loans previously enrolled under the
24 Program from a participating financial institution, is
25 less than \$2,000,000;

1 (2) an amount equal to the combined amounts
2 paid into the reserve fund by the borrower and the
3 participating financial institution for each enrolled
4 loan if, prior to the enrollment of the loan, the
5 amount of loans previously enrolled under the Pro-
6 gram is not less than \$2,000,000; or

7 (3) an amount equal to a percentage of the
8 combined amount paid by the participating financial
9 institution and the borrower, determined—

10 (A) by multiplying by 150 that portion of
11 the loan which, when added to the amount of
12 all previously enrolled loans, equals \$2,000,000;

13 (B) by multiplying the balance of the loan
14 by 100; and

15 (C) by adding together the products of
16 such computations and dividing the sum by the
17 total amount of the loan, if the amount of loans
18 previously enrolled under the Program is less
19 than \$2,000,000, but the enrollment of a loan
20 will cause the aggregate amount of all enrolled
21 loans to exceed \$2,000,000.

22 (c) MAXIMUM PAYMENT.—The combined amount to
23 be deposited by the participating financial institution into
24 any individual reserve fund over the 3-year period, in con-
25 nection with any single borrower or any group of borrow-

1 ers among which a common enterprise exists, shall be not
2 more than \$150,000.

3 **SEC. 9. OWNERSHIP, CONTROL, AND INVESTMENT OF RE-**
4 **SERVE FUND.**

5 (a) OWNERSHIP.—All payments to the reserve fund
6 in a participating State shall be the exclusive property of
7 and solely controlled by that State.

8 (b) WITHDRAWAL RESTRICTION.—The participating
9 State may not withdraw amounts from the reserve fund
10 except as specifically provided for in this Act.

11 (c) INVESTMENT AUTHORITY.—In the case of reserve
12 fund payments that are not deposited by the participating
13 State in an account held by the participating financial in-
14 stitution, such payments shall be invested or reinvested
15 by the participating State—

16 (1) in direct obligations of the Federal Govern-
17 ment or the participating State; or

18 (2) in obligations the principal and interest of
19 which are unconditionally guaranteed by the Federal
20 Government or the participating State.

21 (d) INCOME OF THE FUND.—

22 (1) IN GENERAL.—Interest or income earned on
23 the funds credited to the reserve fund shall be
24 deemed to be part of the reserve fund.

1 (2) WITHDRAWAL OF FUND INCOME.—A par-
2 ticipating State may withdraw at any time from the
3 reserve fund not more than 50 percent of all interest
4 or other income that has been credited to the reserve
5 fund, except that subsequent to the first such with-
6 drawal, the participating State may not withdraw
7 more than 50 percent of all interest or other income
8 that has been credited to the reserve fund since the
9 time of the last such withdrawal. Any withdrawal
10 made under this paragraph may be made prior to
11 paying any claim under section 8, and shall be used
12 for the sole purposes of offsetting administrative
13 costs associated with carrying out this Act.

14 **SEC. 10. CLAIMS, DISBURSEMENTS, RECOVERY, AND SUB-**
15 **ROGATION.**

16 (a) CLAIMS.—

17 (1) IN GENERAL.—A participating financial in-
18 stitution that charges off all or part of an enrolled
19 loan to the reserve fund may file a claim with the
20 participating State—

21 (A) if the claim occurs contemporaneously
22 with the action of the institution to charge off
23 all or part of the loan; and

24 (B) if the charge off on an enrolled loan is
25 made in a manner that is consistent with the

1 institution's usual method for making such de-
2 terminations on business loans that are not en-
3 rolled loans.

4 (2) CLAIM AMOUNTS.—The participating finan-
5 cial institution's claim may include, in addition to
6 the amount of principal charged off plus accrued in-
7 terest, an amount that represents its reasonable out-
8 of-pocket expenses incurred in pursuing its collection
9 efforts, including preservation of collateral, but only
10 if proper documentation of such expenses is pre-
11 sented at the time of the claim.

12 (3) MULTIPLE CLAIMS.—If a participating fi-
13 nancial institution files 2 or more claims contem-
14 poraneously, and there are insufficient funds in the
15 reserve fund at that time to cover the entire amount
16 of such claims, the institution may designate the
17 order of priority in which the claims shall be paid.

18 (b) DISBURSEMENTS.—

19 (1) IN GENERAL.—Each participating State
20 shall disburse funds from the reserve fund in con-
21 nection with claims made in accordance with this
22 section.

23 (2) PARTIAL PAYMENT OF CLAIMS.—If there
24 are insufficient funds in the reserve fund to cover
25 the entire amount of a participating financial insti-

1 tution's claim, the participating State shall pay to
2 the institution an amount equal to the current bal-
3 ance in the reserve fund, and—

4 (A) if the enrolled loan for which the claim
5 has been filed is not an early loan, such pay-
6 ment shall be deemed to fully satisfy the claim
7 and the institution shall have no other or fur-
8 ther right to receive any amount from the re-
9 serve fund with respect to such claim; or

10 (B) if the enrolled loan is an early loan,
11 such partial payment shall not be deemed to
12 satisfy the institution's claim, and at such time
13 as the remaining balance of the claim is not
14 greater than 75 percent of the balance in the
15 reserve fund at that time, the participating
16 State shall, upon the request of the institution,
17 pay any remaining balance of the claim.

18 (c) RECOVERY.—If, subsequent to payment of a
19 claim by the participating State, a participating financial
20 institution recovers from a borrower any amount for which
21 payment of the claim was made, the institution shall
22 promptly pay to the participating State for deposit into
23 the reserve fund the amount recovered, less any reasonable
24 out-of-pocket expenses incurred in collection of such
25 amount.

1 (d) ASSIGNMENT OF RIGHTS.—In any case in which
2 the payment of a claim under this section has fully covered
3 a participating financial institution's loss on an enrolled
4 loan, the participating financial institution shall assign to
5 the participating State and the Administration any right,
6 title, or interest to any collateral, security, or other right
7 of recovery in connection with a loan made under the Pro-
8 gram.

9 **SEC. 11. REGULATIONS.**

10 The Administrator, in consultation with the Board,
11 shall promulgate appropriate regulations to implement
12 this Act.

13 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated to the Ad-
15 ministration such sums as may be necessary to carry out
16 this Act.

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S 396 IS—2