

Union Calendar No. 452

106TH CONGRESS
2^D SESSION

H. R. 4530

[Report No. 106-785]

To amend the Small Business Investment Act of 1958 to direct the Administrator of the Small Business Administration to establish a New Markets Venture Capital Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2000

Ms. VELAZQUEZ (for herself, Mr. TALENT, Mr. KING, Ms. MILLENDER-MCDONALD, Mrs. KELLY, Mr. DAVIS of Illinois, Mr. ENGLISH, Mrs. MCCARTHY of New York, Mrs. BONO, Mr. PASCARELL, Mr. SWEENEY, Mr. HINOJOSA, Mrs. CHRISTENSEN, Mr. BRADY of Pennsylvania, Mr. UDALL of New Mexico, Mr. MOORE, Mrs. JONES of Ohio, Mr. GONZALEZ, Mr. PHELPS, Mrs. NAPOLITANO, Mr. BAIRD, Ms. BERKLEY, Mr. UDALL of Colorado, Ms. STABENOW, Mr. KANJORSKI, and Mr. BARRETT of Wisconsin) introduced the following bill; which was referred to the Committee on Small Business

JULY 25, 2000

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend the Small Business Investment Act of 1958 to direct the Administrator of the Small Business Administration to establish a New Markets Venture Capital Program, and for other purposes.

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 “New Markets Venture
5 Capital Program Act of 2000”.

6 **SEC. 2. NEW MARKETS VENTURE CAPITAL PROGRAM.**

7 Title III of the Small Business Investment Act of
8 1958 (15 U.S.C. 681 et seq.) is amended—

9 (1) in the heading for the title, by striking
10 “SMALL BUSINESS INVESTMENT COMPA-
11 NIES” and inserting “INVESTMENT DIVISION
12 PROGRAMS”;

13 (2) by inserting before the heading for section
14 301 the following:

15 “PART A—SMALL BUSINESS INVESTMENT COMPANIES”⁵

16 ; and

17 (3) by adding at the end the following:

18 “PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

19 **“SEC. 351. DEFINITIONS.**

20 “In this part, the following definitions apply:

21 “(1) DEVELOPMENTAL VENTURE CAPITAL.—

22 The term ‘developmental venture capital’ means cap-
23 ital in the form of equity investments in businesses
24 made with a primary objective of fostering economic

1 development in low- or moderate-income geographic
2 areas.

3 “(2) LOW- OR MODERATE-INCOME GEOGRAPHIC
4 AREA.—The term ‘low- or moderate-income geo-
5 graphic area’ means—

6 “(A) a census tract, or the equivalent
7 county division as defined by the Bureau of the
8 Census for purposes of defining poverty areas,
9 in which—

10 “(i) the poverty rate is not less than
11 20 percent;

12 “(ii) in the case of a census tract or
13 division located within a metropolitan area,
14 the median family income for such tract or
15 division does not exceed the greater of 80
16 percent of the statewide median family in-
17 come or 80 percent of the metropolitan
18 area median family income; or

19 “(iii) in the case of a census tract or
20 division not located within a metropolitan
21 area, the median family income for such
22 tract or division does not exceed 80 per-
23 cent of the statewide median family in-
24 come; or

25 “(B) any area located within—

1 “(i) a historically underutilized busi-
2 ness zone (HUBZone), as defined in sec-
3 tion 3(p) of the Small Business Act (15
4 U.S.C. 632(p));

5 “(ii) an urban empowerment zone or
6 an urban enterprise community, as des-
7 ignated by the Secretary of the Depart-
8 ment of Housing and Urban Development;
9 or

10 “(iii) a rural empowerment zone or a
11 rural enterprise community, as designated
12 by the Secretary of the Department of Ag-
13 riculture.

14 “(3) NEW MARKETS VENTURE CAPITAL COM-
15 PANY.—The term ‘New Markets Venture Capital
16 company’ means a company that—

17 “(A) has been granted final approval by
18 the Administration under section 354(e); and

19 “(B) has entered into a participation
20 agreement with the Administration.

21 “(4) OPERATIONAL ASSISTANCE.—The term
22 ‘operational assistance’ means management, mar-
23 keting, and other technical assistance that assists a
24 small business concern with business development.

1 “(5) PARTICIPATION AGREEMENT.—The term
2 ‘participation agreement’ means an agreement, be-
3 tween the Administration and a company granted
4 final approval under section 354(e), that—

5 “(A) details the company’s operating plan
6 and investment criteria; and

7 “(B) requires the company to make invest-
8 ments in smaller enterprises at least 80 percent
9 of which are located in low- or moderate-income
10 geographic areas.

11 “(6) SPECIALIZED SMALL BUSINESS INVEST-
12 MENT COMPANY.—The term ‘specialized small busi-
13 ness investment company’ means any small business
14 investment company that—

15 “(A) invests solely in small business con-
16 cerns that contribute to a well-balanced na-
17 tional economy by facilitating ownership in such
18 concerns by persons whose participation in the
19 free enterprise system is hampered because of
20 social or economic disadvantages;

21 “(B) is organized or chartered under State
22 business or nonprofit corporations statutes, or
23 formed as a limited partnership; and

24 “(C) was licensed under section 301(d), as
25 in effect before September 30, 1996.

1 **“SEC. 352. PURPOSES.**

2 “The purposes of the New Markets Venture Capital
3 Program established under this part are—

4 “(1) to promote economic development and the
5 creation of wealth and job opportunities in low- or
6 moderate-income geographic areas and among indi-
7 viduals living in such areas by encouraging develop-
8 mental venture capital investments in smaller enter-
9 prises primarily located in such areas; and

10 “(2) to establish a developmental venture cap-
11 ital program, with the mission of addressing the
12 unmet equity investment needs of small enterprises
13 located in low- and moderate-income geographic
14 areas, to be administered by the Administration—

15 “(A) to enter into participation agreements
16 with New Markets Venture Capital companies;

17 “(B) to guarantee debentures of New Mar-
18 kets Venture Capital companies to enable each
19 such company to make developmental venture
20 capital investments in smaller enterprises in
21 low- or moderate-income geographic areas; and

22 “(C) to make grants to New Markets Ven-
23 ture Capital companies, and to other entities,
24 for the purpose of providing operational assist-
25 ance to smaller enterprises financed, or ex-
26 pected to be financed, by such companies.

1 **“SEC. 353. ESTABLISHMENT.**

2 “In accordance with this part, the Administration
3 shall establish a New Markets Venture Capital Program,
4 under which the Administration may—

5 “(1) enter into participation agreements with
6 companies granted final approval under section
7 354(e) for the purposes set forth in section 352;

8 “(2) guarantee the debentures issued by New
9 Markets Venture Capital companies as provided in
10 section 355; and

11 “(3) make grants to New Markets Venture
12 Capital companies, and to other entities, under sec-
13 tion 358.

14 **“SEC. 354. SELECTION OF NEW MARKETS VENTURE CAP-**
15 **ITAL COMPANIES.**

16 “(a) **ELIGIBILITY.**—A company shall be eligible to
17 apply to participate, as a New Markets Venture Capital
18 company, in the program established under this part if—

19 “(1) the company is a newly formed for-profit
20 entity or a newly formed for-profit subsidiary of an
21 existing entity;

22 “(2) the company has a management team with
23 experience in community development financing or
24 relevant venture capital financing; and

1 “(3) the company has a primary objective of
2 economic development of low- or moderate-income
3 geographic areas.

4 “(b) APPLICATION.—To participate, as a New Mar-
5 kets Venture Capital company, in the program established
6 under this part a company meeting the eligibility require-
7 ments set forth in subsection (a) shall submit an applica-
8 tion to the Administration that includes—

9 “(1) a business plan describing how the com-
10 pany intends to make successful developmental ven-
11 ture capital investments in identified low- or mod-
12 erate-income geographic areas;

13 “(2) information regarding the community de-
14 velopment finance or relevant venture capital quali-
15 fications and general reputation of the company’s
16 management;

17 “(3) a description of how the company intends
18 to work with community organizations and to seek
19 to address the unmet capital needs of the commu-
20 nities served;

21 “(4) a proposal describing how the company
22 will use the grant funds provided under this part to
23 provide operational assistance to smaller enterprises
24 financed by the company, including information re-
25 garding whether the company will use licensed pro-

1 professionals, where applicable, on the company’s staff
2 or from an outside entity;

3 “(5) with respect to binding commitments to be
4 made to the company under this part, an estimate
5 of the ratio of cash to in-kind contributions;

6 “(6) a description of the criteria to be used to
7 evaluate whether and to what extent the company
8 meets the objectives of the program established
9 under this part;

10 “(7) information regarding the management
11 and financial strength of any parent firm, affiliated
12 firm, or any other firm essential to the success of
13 the company’s business plan; and

14 “(8) such other information as the Administra-
15 tion may require.

16 “(c) CONDITIONAL APPROVAL.—

17 “(1) IN GENERAL.—From among companies
18 submitting applications under subsection (b), the
19 Administration shall, in accordance with this sub-
20 section, conditionally approve companies to partici-
21 pate in the New Markets Venture Capital Program.

22 “(2) SELECTION CRITERIA.—In selecting com-
23 panies under paragraph (1), the Administration
24 shall consider the following:

1 “(A) The likelihood that the company will
2 meet the goals of its business plan.

3 “(B) The experience and background of
4 the company’s management team.

5 “(C) The need for developmental venture
6 capital investments in the geographic areas in
7 which the company intends to invest.

8 “(D) The extent to which the company will
9 concentrate its activities on serving the geo-
10 graphic areas in which it intends to invest.

11 “(E) The likelihood that the company will
12 be able to satisfy the conditions under sub-
13 section (d).

14 “(F) The extent to which the activities
15 proposed by the company will expand economic
16 opportunities in the geographic areas in which
17 the company intends to invest.

18 “(G) The strength of the company’s pro-
19 posal to provide operational assistance under
20 this part as the proposal relates to the ability
21 of the applicant to meet applicable cash require-
22 ments and properly utilize in-kind contribu-
23 tions, including the use of resources for the
24 services of licensed professionals whether pro-

1 vided by persons on the company’s staff or by
2 persons outside of the company.

3 “(H) Any other factors deemed appro-
4 priate by the Administration.

5 “(3) NATIONWIDE DISTRIBUTION.—The Admin-
6 istration shall select companies under paragraph (1)
7 in such a way that promotes investment nationwide.

8 “(d) REQUIREMENTS TO BE MET FOR FINAL AP-
9 PROVAL.—The Administration shall grant each condi-
10 tionally approved company a period of time, not to exceed
11 2 years, to satisfy the following requirements:

12 “(1) CAPITAL REQUIREMENT.—Each condi-
13 tionally approved company must raise not less than
14 \$5,000,000 of private capital or binding capital com-
15 mitments from 1 or more investors (other than
16 agencies or departments of the Federal Government)
17 who meet criteria established by the Administration.

18 “(2) NONADMINISTRATION RESOURCES FOR
19 OPERATIONAL ASSISTANCE.—In order to provide
20 operational assistance to smaller enterprises ex-
21 pected to be financed by the company, each condi-
22 tionally approved company—

23 “(A) must have binding commitments (for
24 contribution in cash or in kind)—

1 “(i) from any sources other than the
2 Administration that meet criteria estab-
3 lished by the Administration;

4 “(ii) payable or available over a
5 multiyear period acceptable to the Admin-
6 istration (not to exceed 10 years); and

7 “(iii) in an amount not less than 30
8 percent of the total amount of capital and
9 commitments raised under paragraph (1);
10 “(B) must have purchased an annuity—

11 “(i) from an insurance company ac-
12 ceptable to the Administration;

13 “(ii) using funds (other than the
14 funds raised under paragraph (1)) from
15 any source other than the Administration;
16 and

17 “(iii) that yields cash payments over a
18 multiyear period acceptable to the Admin-
19 istration (not to exceed 10 years) in an
20 amount not less than 30 percent of the
21 total amount of capital and commitments
22 raised under paragraph (1); or

23 “(C) must have binding commitments (for
24 contributions in cash or in kind) of the type de-
25 scribed in subparagraph (A) and must have

1 purchased an annuity of the type described in
2 subparagraph (B), which in the aggregate make
3 available, over a multiyear period acceptable to
4 the Administration (not to exceed 10 years), an
5 amount not less than 30 percent of the total
6 amount of capital and commitments raised
7 under paragraph (1).

8 “(e) FINAL APPROVAL.—The Administration shall
9 grant to a company conditionally approved under sub-
10 section (c) final approval to participate in the program es-
11 tablished under this part after the company has met the
12 requirements set forth in subsection (d).

13 **“SEC. 355. DEBENTURES.**

14 “(a) IN GENERAL.—The Administration may guar-
15 antee the timely payment of principal and interest, as
16 scheduled, on debentures issued by any New Markets Ven-
17 ture Capital company.

18 “(b) TERMS AND CONDITIONS.—The Administration
19 may make guarantees under this section on such terms
20 and conditions as it deems appropriate, except that the
21 term of any debenture guaranteed under this section shall
22 not exceed 15 years.

23 “(c) FULL FAITH AND CREDIT OF THE UNITED
24 STATES.—The full faith and credit of the United States

1 is pledged to pay all amounts that may be required to be
2 paid under any guarantee under this part.

3 “(d) **MAXIMUM GUARANTEE.**—

4 “(1) **IN GENERAL.**—Under this section, the Ad-
5 ministration may guarantee the debentures issued by
6 a New Markets Venture Capital company only to the
7 extent that the total face amount of outstanding
8 guaranteed debentures of such company does not ex-
9 ceed 150 percent of the private capital of the com-
10 pany, as determined by the Administration.

11 “(2) **TREATMENT OF CERTAIN FEDERAL**
12 **FUNDS.**—For the purposes of paragraph (1), private
13 capital shall include capital that is considered to be
14 Federal funds, if such capital is contributed by an
15 investor other than an agency or department of the
16 Federal Government.

17 **“SEC. 356. ISSUANCE AND GUARANTEE OF TRUST CERTIFI-**
18 **CATES.**

19 “(a) **ISSUANCE.**—The Administration may issue trust
20 certificates representing ownership of all or a fractional
21 part of debentures issued by a New Markets Venture Cap-
22 ital company and guaranteed by the Administration under
23 this part, if such certificates are based on and backed by
24 a trust or pool approved by the Administration and com-
25 posed solely of guaranteed debentures.

1 “(b) GUARANTEE.—

2 “(1) IN GENERAL.—The Administration may,
3 under such terms and conditions as it deems appro-
4 priate, guarantee the timely payment of the principal
5 of and interest on trust certificates issued by the
6 Administration or its agents for purposes of this sec-
7 tion.

8 “(2) LIMITATION.—Each guarantee under this
9 subsection shall be limited to the extent of principal
10 and interest on the guaranteed debentures that com-
11 pose the trust or pool.

12 “(3) PREPAYMENT OR DEFAULT.—In the event
13 that a debenture in a trust or pool is prepaid, or in
14 the event of default of such a debenture, the guar-
15 antee of timely payment of principal and interest on
16 the trust certificates shall be reduced in proportion
17 to the amount of principal and interest such prepaid
18 debenture represents in the trust or pool. Interest on
19 prepaid or defaulted debentures shall accrue and be
20 guaranteed by the Administration only through the
21 date of payment of the guarantee. At any time dur-
22 ing its term, a trust certificate may be called for re-
23 demption due to prepayment or default of all deben-
24 tures.

1 “(c) FULL FAITH AND CREDIT OF THE UNITED
2 STATES.—The full faith and credit of the United States
3 is pledged to pay all amounts that may be required to be
4 paid under any guarantee of a trust certificate issued by
5 the Administration or its agents under this section.

6 “(d) FEES.—The Administration shall not collect a
7 fee for any guarantee of a trust certificate under this sec-
8 tion, but any agent of the Administration may collect a
9 fee approved by the Administration for the functions de-
10 scribed in subsection (f)(2).

11 “(e) SUBROGATION AND OWNERSHIP RIGHTS.—

12 “(1) SUBROGATION.—In the event the Adminis-
13 tration pays a claim under a guarantee issued under
14 this section, it shall be subrogated fully to the rights
15 satisfied by such payment.

16 “(2) OWNERSHIP RIGHTS.—No Federal, State,
17 or local law shall preclude or limit the exercise by
18 the Administration of its ownership rights in the de-
19 bentures residing in a trust or pool against which
20 trust certificates are issued under this section.

21 “(f) MANAGEMENT AND ADMINISTRATION.—

22 “(1) REGISTRATION.—

23 “(A) IN GENERAL.—The Administration
24 may provide for a central registration of all
25 trust certificates issued under this section.

1 “(B) FORMS OF REGISTRATION.—Nothing
2 in this subsection shall prohibit the use of a
3 book entry or other electronic form of registra-
4 tion for trust certificates.

5 “(2) CONTRACTING OF FUNCTIONS.—

6 “(A) IN GENERAL.—The Administration
7 may contract with an agent or agents to carry
8 out on behalf of the Administration the pooling
9 and the central registration functions provided
10 for in this section including, notwithstanding
11 any other provision of law—

12 “(i) maintenance, on behalf of and
13 under the direction of the Administration,
14 of such commercial bank accounts or in-
15 vestments in obligations of the United
16 States as may be necessary to facilitate the
17 creation of trusts or pools backed by de-
18 bentures guaranteed under this part; and

19 “(ii) the issuance of trust certificates
20 to facilitate the creation of such trusts or
21 pools.

22 “(B) FIDELITY BOND OR INSURANCE RE-
23 QUIREMENT.—Any agent performing functions
24 on behalf of the Administration under this
25 paragraph shall provide a fidelity bond or insur-

1 ance in such amounts as the Administration de-
2 termines to be necessary to fully protect the in-
3 terests of the United States.

4 “(3) APPLICABILITY OF THE SECURITIES EX-
5 CHANGE ACT OF 1934.—Notwithstanding section
6 3(a)(42) of the Securities Exchange Act of 1934 (15
7 U.S.C. 78c(a)(42)), trust certificates issued under
8 this section shall not be treated as government secu-
9 rities for the purposes of that Act.

10 **“SEC. 357. FEES.**

11 “Except as provided in section 356(d), the Adminis-
12 tration may charge such fees as it deems appropriate with
13 respect to any guarantee or grant issued under this part.

14 **“SEC. 358. OPERATIONAL ASSISTANCE GRANTS.**

15 “(a) IN GENERAL.—

16 “(1) AUTHORITY.—In accordance with this sec-
17 tion, the Administration may make grants to New
18 Markets Venture Capital companies and to other en-
19 tities, as authorized by this part, to provide oper-
20 ational assistance to smaller enterprises financed, or
21 expected to be financed, by such companies or other
22 entities.

23 “(2) TERMS.—Grants made under this sub-
24 section shall be made over a multiyear period not to

1 exceed 10 years, under such other terms as the Ad-
2 ministration may require.

3 “(3) GRANTS TO SPECIALIZED SMALL BUSINESS
4 INVESTMENT COMPANIES.—

5 “(A) AUTHORITY.—In accordance with
6 this section, the Administration may make
7 grants to specialized small business investment
8 companies to provide operational assistance to
9 smaller enterprises financed, or expected to be
10 financed, by such companies after the effective
11 date of the New Markets Venture Capital Pro-
12 gram Act of 2000.

13 “(B) USE OF FUNDS.—

14 “(i) IN GENERAL.—The proceeds of a
15 grant made under this paragraph may be
16 used by the company receiving such grant
17 only to provide operational assistance in
18 connection with an equity investment
19 (made with capital raised after the effec-
20 tive date of the New Markets Venture Cap-
21 ital Program Act of 2000) in a business lo-
22 cated in a low- or moderate-income geo-
23 graphic area.

24 “(ii) ADDITIONAL LIMITATION.—
25 Operational assistance referred to in clause

1 (i) may not be provided in connection with
2 more than 1 equity investment.

3 “(C) SUBMISSION OF PLANS.—A special-
4 ized small business investment company shall
5 be eligible for a grant under this section only if
6 the company submits to the Administrator, in
7 such form and manner as the Administrator
8 may require, a plan for use of the grant.

9 “(4) GRANT AMOUNT.—

10 “(A) NEW MARKETS VENTURE CAPITAL
11 COMPANIES.—The amount of a grant made
12 under this subsection to a New Markets Ven-
13 ture Capital company shall be equal to the re-
14 sources (in cash or in kind) raised by the com-
15 pany under section 354(d)(2).

16 “(B) OTHER ENTITIES.—The amount of a
17 grant made under this subsection to any entity
18 other than a New Markets Venture capital com-
19 pany shall be equal to the resources (in cash or
20 in kind) raised by the entity in accordance with
21 the requirements applicable to New Markets
22 Venture Capital companies set forth in section
23 354(d)(2).

24 “(5) PRO RATA REDUCTIONS.—If the amount
25 made available to carry out this section is insuffi-

1 cient for the Administration to provide grants in the
2 amounts provided for in paragraph (4), the Adminis-
3 tration shall make pro rata reductions in the
4 amounts otherwise payable to each company and en-
5 tity under such paragraph.

6 “(b) SUPPLEMENTAL GRANTS.—

7 “(1) IN GENERAL.—The Administration may
8 make supplemental grants to New Markets Venture
9 Capital companies and to other entities, as author-
10 ized by this part, under such terms as the Adminis-
11 tration may require, to provide additional oper-
12 ational assistance to smaller enterprises financed, or
13 expected to be financed, by the companies.

14 “(2) MATCHING REQUIREMENT.—The Adminis-
15 tration may require, as a condition of any supple-
16 mental grant made under this subsection, that the
17 company or entity receiving the grant provide from
18 resources (in cash or in kind), other than those pro-
19 vided by the Administration, a matching contribu-
20 tion equal to the amount of the supplemental grant.

21 “(c) LIMITATION.—None of the assistance made
22 available under this section may be used for any operating
23 expense of a New Markets Venture Capital company or
24 a specialized small business investment company.

1 **“SEC. 359. BANK PARTICIPATION.**

2 “(a) IN GENERAL.—Except as provided in subsection
3 (b), any national bank, any member bank of the Federal
4 Reserve System, and (to the extent permitted under appli-
5 cable State law) any insured bank that is not a member
6 of such system, may invest in any New Markets Venture
7 Capital company, or in any entity established to invest
8 solely in New Markets Venture Capital companies.

9 “(b) LIMITATION.—No bank described in subsection
10 (a) may make investments described in such subsection
11 that are greater than 5 percent of the capital and surplus
12 of the bank.

13 **“SEC. 360. FEDERAL FINANCING BANK.**

14 “Section 318 shall not apply to any debenture issued
15 by a New Markets Venture Capital company under this
16 part.

17 **“SEC. 361. REPORTING REQUIREMENTS.**

18 “Each New Markets Venture Capital company that
19 participates in the program established under this part
20 shall provide to the Administration such information as
21 the Administration may require, including—

22 “(1) information related to the measurement
23 criteria that the company proposed in its program
24 application; and

25 “(2) in each case in which the company under
26 this part makes an investment in, or a loan or grant

1 to, a business that is not located in a low- or mod-
2 erate-income geographic area, a report on the num-
3 ber and percentage of employees of the business who
4 reside in such areas.

5 **“SEC. 362. EXAMINATIONS.**

6 “(a) IN GENERAL.—Each New Markets Venture
7 Capital company that participates in the program estab-
8 lished under this part shall be subject to examinations
9 made at the direction of the Investment Division of the
10 Administration in accordance with this section.

11 “(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—
12 Examinations under this section may be conducted with
13 the assistance of a private sector entity that has both the
14 qualifications and the expertise necessary to conduct such
15 examinations.

16 “(c) COSTS.—

17 “(1) ASSESSMENT.—

18 “(A) IN GENERAL.—The Administration
19 may assess the cost of examinations under this
20 section, including compensation of the exam-
21 iners, against the company examined.

22 “(B) PAYMENT.—Any company against
23 which the Administration assesses costs under
24 this paragraph shall pay such costs.

1 “(2) DEPOSIT OF FUNDS.—Funds collected
2 under this section shall be deposited in the account
3 for salaries and expenses of the Administration.

4 **“SEC. 363. INJUNCTIONS AND OTHER ORDERS.**

5 “(a) IN GENERAL.—Whenever, in the judgment of
6 the Administration, a New Markets Venture Capital com-
7 pany or any other person has engaged or is about to en-
8 gage in any acts or practices which constitute or will con-
9 stitute a violation of any provision of this Act, or of any
10 rule or regulation under this Act, or of any order issued
11 under this Act, the Administration may make application
12 to the proper district court of the United States or a
13 United States court of any place subject to the jurisdiction
14 of the United States for an order enjoining such acts or
15 practices, or for an order enforcing compliance with such
16 provision, rule, regulation, or order, and such courts shall
17 have jurisdiction of such actions and, upon a showing by
18 the Administration that such New Markets Venture Cap-
19 ital company or other person has engaged or is about to
20 engage in any such acts or practices, a permanent or tem-
21 porary injunction, restraining order, or other order, shall
22 be granted without bond.

23 “(b) JURISDICTION.—In any proceeding under sub-
24 section (a), the court as a court of equity may, to such
25 extent as it deems necessary, take exclusive jurisdiction

1 of the New Market Venture Capital company and the as-
2 sets thereof, wherever located, and the court shall have
3 jurisdiction in any such proceeding to appoint a trustee
4 or receiver to hold or administer under the direction of
5 the court the assets so possessed.

6 “(c) ADMINISTRATION AS TRUSTEE OR RECEIVER.—

7 “(1) AUTHORITY.—The Administration may act
8 as trustee or receiver of a New Markets Venture
9 Capital company.

10 “(2) APPOINTMENT.—Upon request of the Ad-
11 ministration, the court may appoint the Administra-
12 tion to act as a trustee or receiver of a New Markets
13 Venture Capital company unless the court deems
14 such appointment inequitable or otherwise inappro-
15 priate by reason of the special circumstances in-
16 volved.

17 **“SEC. 364. ADDITIONAL PENALTIES FOR NONCOMPLIANCE.**

18 “(a) IN GENERAL.—With respect to any New Mar-
19 kets Venture Capital company that violates or fails to
20 comply with any of the provisions of this Act, of any regu-
21 lation issued under this Act, or of any participation agree-
22 ment entered into under this Act, the Administration may
23 in accordance with this section—

24 “(1) void the participation agreement between
25 the Administration and the company; and

1 “(2) cause the company to forfeit all of the
2 rights and privileges derived by the company from
3 this Act.

4 “(b) ADJUDICATION OF NONCOMPLIANCE.—

5 “(1) IN GENERAL.—Before the Administration
6 may cause a New Markets Venture Capital company
7 to forfeit rights or privileges under subsection (a), a
8 court of the United States of competent jurisdiction
9 must find that the company committed a violation,
10 or failed to comply, in a cause of action brought for
11 that purpose in the district, territory, or other place
12 subject to the jurisdiction of the United States, in
13 which the principal office of the company is located.

14 “(2) PARTIES AUTHORIZED TO FILE CAUSES OF
15 ACTION.—Each cause of action brought by the
16 United States under this subsection shall be brought
17 by the Administration or by the Attorney General.

18 **“SEC. 365. UNLAWFUL ACTS AND OMISSIONS; BREACH OF**
19 **FIDUCIARY DUTY.**

20 “(a) PARTIES DEEMED TO COMMIT A VIOLATION.—
21 Whenever any New Markets Venture Capital company vio-
22 lates any provision of this Act, of a regulation issued
23 under this Act, or of a participation agreement entered
24 into under this Act, by reason of its failure to comply with
25 its terms or by reason of its engaging in any act or prac-

1 tice that constitutes or will constitute a violation thereof,
2 such violation shall also be deemed to be a violation and
3 an unlawful act committed by any person who, directly
4 or indirectly, authorizes, orders, participates in, causes,
5 brings about, counsels, aids, or abets in the commission
6 of any acts, practices, or transactions that constitute or
7 will constitute, in whole or in part, such violation.

8 “(b) FIDUCIARY DUTIES.—It shall be unlawful for
9 any officer, director, employee, agent, or other participant
10 in the management or conduct of the affairs of a New
11 Markets Venture Capital company to engage in any act
12 or practice, or to omit any act or practice, in breach of
13 the person’s fiduciary duty as such officer, director, em-
14 ployee, agent, or participant if, as a result thereof, the
15 company suffers or is in imminent danger of suffering fi-
16 nancial loss or other damage.

17 “(c) UNLAWFUL ACTS.—Except with the written con-
18 sent of the Administration, it shall be unlawful—

19 “(1) for any person to take office as an officer,
20 director, or employee of any New Markets Venture
21 Capital company, or to become an agent or partici-
22 pant in the conduct of the affairs or management of
23 such a company, if the person—

1 “(A) has been convicted of a felony, or any
2 other criminal offense involving dishonesty or
3 breach of trust, or

4 “(B) has been found civilly liable in dam-
5 ages, or has been permanently or temporarily
6 enjoined by an order, judgment, or decree of a
7 court of competent jurisdiction, by reason of
8 any act or practice involving fraud, or breach of
9 trust; and

10 “(2) for any person continue to serve in any of
11 the capacities described in paragraph (1), if—

12 “(A) the person is convicted of a felony, or
13 any other criminal offense involving dishonesty
14 or breach of trust, or

15 “(B) the person is found civilly liable in
16 damages, or is permanently or temporarily en-
17 joined by an order, judgment, or decree of a
18 court of competent jurisdiction, by reason of
19 any act or practice involving fraud or breach of
20 trust.

21 **“SEC. 366. REMOVAL OR SUSPENSION OF DIRECTORS OR**
22 **OFFICERS.**

23 “Using the procedures for removing or suspending a
24 director or an officer of a licensee set forth in section 313
25 (to the extent such procedures are not inconsistent with

1 the requirements of this part), the Administration may re-
2 move or suspend any director or officer of any New Mar-
3 kets Venture Capital company.

4 **“SEC. 367. REGULATIONS.**

5 “The Administration may issue such regulations as
6 it deems necessary to carry out the provisions of this part
7 in accordance with its purposes.

8 **“SEC. 368. AUTHORIZATIONS OF APPROPRIATIONS.**

9 “(a) IN GENERAL.—For fiscal years 2000 through
10 2005, the Administration is authorized to be appropriated,
11 to remain available until expended—

12 “(1) such subsidy budget authority as may be
13 necessary to guarantee \$150,000,000 of debentures
14 under this part; and

15 “(2) \$30,000,000 to make grants under this
16 part.

17 “(b) FUNDS COLLECTED FOR EXAMINATIONS.—

18 Funds deposited under section 362(c)(2) are authorized
19 to be appropriated only for the costs of examinations
20 under section 362 and for the costs of other oversight ac-
21 tivities with respect to the program established under this
22 part.”.

1 **SEC. 3. CONFORMING AMENDMENT.**

2 Section 20(e)(1)(C) of the Small Business Act (15
3 U.S.C. 631 note) is amended by inserting “part A of” be-
4 fore “title III”.

5 **SEC. 4. CALCULATION OF MAXIMUM AMOUNT OF SBIC LE-**
6 **VERAGE.**

7 (a) **MAXIMUM LEVERAGE.**—Section 303(b)(2) of the
8 Small Business Investment Act of 1958 (15 U.S.C.
9 683(b)(2)) is amended to read as follows:

10 “(2) **MAXIMUM LEVERAGE.**—

11 “(A) **IN GENERAL.**—After March 31,
12 1993, the maximum amount of outstanding le-
13 verage made available to a company licensed
14 under section 301(c) of this Act shall be deter-
15 mined by the amount of such company’s private
16 capital—

17 “(i) if the company has private capital
18 of not more than \$15,000,000, the total
19 amount of leverage shall not exceed 300
20 percent of private capital;

21 “(ii) if the company has private cap-
22 ital of more than \$15,000,000 but not
23 more than \$30,000,000, the total amount
24 of leverage shall not exceed \$45,000,000
25 plus 200 percent of the amount of private
26 capital over \$15,000,000; and

1 “(iii) if the company has private cap-
2 ital of more than \$30,000,000, the total
3 amount of leverage shall not exceed
4 \$75,000,000 plus 100 percent of the
5 amount of private capital over \$30,000,000
6 but not to exceed an additional
7 \$15,000,000.

8 “(B) ADJUSTMENTS.—

9 “(i) IN GENERAL.—The dollar
10 amounts in clauses (i), (ii), and (iii) of
11 subparagraph (A) shall be adjusted annu-
12 ally to reflect increases in the Consumer
13 Price Index established by the Bureau of
14 Labor Statistics of the Department of
15 Labor.

16 “(ii) INITIAL ADJUSTMENTS.—The
17 initial adjustments made under this sub-
18 paragraph after the date of enactment of
19 the Small Business Reauthorization Act of
20 1997 shall reflect only increases from
21 March 31, 1993.

22 “(C) INVESTMENTS IN LOW- OR MOD-
23 ERATE INCOME AREAS.—In calculating the out-
24 standing leverage of a company for the pur-
25 poses of subparagraph (A), the Administrator

1 shall not include the amount of the cost basis
2 of any equity investment made by the company
3 in a smaller enterprise located in a low- or mod-
4 erate-income geographic area (as defined in sec-
5 tion 351), to the extent that the total of such
6 amounts does not exceed 50 percent of the com-
7 pany's private capital.”.

8 (b) MAXIMUM AGGREGATE LEVERAGE.—Section
9 303(b)(4) of the Small Business Investment Act of 1958
10 (15 U.S.C. 683(b)(4)) is amended by adding at the end
11 the following new subparagraph:

12 “(D) INVESTMENTS IN LOW- OR MOD-
13 ERATE INCOME AREAS.—In calculating the ag-
14 gregate outstanding leverage of a company for
15 the purposes of subparagraph (A), the Adminis-
16 trator shall not include the amount of the cost
17 basis of any equity investment made by the
18 company in a smaller enterprise located in a
19 low- or moderate-income geographic area (as
20 defined in section 351), to the extent that the
21 total of such amounts does not exceed 50 per-
22 cent of the company's private capital.”.

1 **SEC. 5. BANKRUPTCY EXEMPTION FOR NEW MARKETS VEN-**
2 **TURE CAPITAL COMPANIES.**

3 Section 109(b)(2) of title 11, United States Code, is
4 amended by inserting “a New Markets Venture Capital
5 company as defined in section 351 of the Small Business
6 Investment Act of 1958,” after “homestead association,”.

7 **SEC. 6. FEDERAL SAVINGS ASSOCIATIONS.**

8 Section 5(c)(4) of the Home Owners’ Loan Act (12
9 U.S.C. 1464(c)(4)) is amended by adding at the end the
10 following:

11 “(F) NEW MARKETS VENTURE CAPITAL
12 COMPANIES.—A Federal savings association
13 may invest in stock, obligations, or other securi-
14 ties of any New Markets Venture Capital com-
15 pany as defined in section 351 of the Small
16 Business Investment Act of 1958, except that a
17 Federal savings association may not make any
18 investment under this subparagraph if its ag-
19 gregate outstanding investment under this sub-
20 paragraph would exceed 5 percent of the capital
21 and surplus of such savings association.”.

Union Calendar No. 452

106TH CONGRESS
2D SESSION

H. R. 4530

[Report No. 106-785]

A BILL

To amend the Small Business Investment Act of 1958 to direct the Administrator of the Small Business Administration to establish a New Markets Venture Capital Program, and for other purposes.

JULY 25, 2000

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed