

Suspend the Rules and Pass the Bill, HR. 3784, with An Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

114TH CONGRESS
2D SESSION

H. R. 3784

To amend the Securities Exchange Act of 1934 to establish an Office of the Advocate for Small Business Capital Formation and a Small Business Capital Formation Advisory Committee, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2015

Mr. CARNEY (for himself, Mr. DUFFY, Mr. QUIGLEY, and Mr. CRENSHAW) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to establish an Office of the Advocate for Small Business Capital Formation and a Small Business Capital Formation Advisory Committee, 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 “SEC Small Business
5 Advocate Act of 2016”.

1 **SEC. 2. ESTABLISHMENT OF OFFICE OF THE ADVOCATE**
2 **FOR SMALL BUSINESS CAPITAL FORMATION**
3 **AND SMALL BUSINESS CAPITAL FORMATION**
4 **ADVISORY COMMITTEE.**

5 (a) OFFICE OF THE ADVOCATE FOR SMALL BUSI-
6 NESS CAPITAL FORMATION.—Section 4 of the Securities
7 Exchange Act of 1934 (15 U.S.C. 78d) is amended by
8 adding at the end the following:

9 “(j) OFFICE OF THE ADVOCATE FOR SMALL BUSI-
10 NESS CAPITAL FORMATION.—

11 “(1) OFFICE ESTABLISHED.—There is estab-
12 lished within the Commission the Office of the Advo-
13 cate for Small Business Capital Formation (here-
14 after in this subsection referred to as the ‘Office’).

15 “(2) ADVOCATE FOR SMALL BUSINESS CAPITAL
16 FORMATION.—

17 “(A) IN GENERAL.—The head of the Of-
18 fice shall be the Advocate for Small Business
19 Capital Formation, who shall—

20 “(i) report directly to the Commission;
21 and

22 “(ii) be appointed by the Commission,
23 from among individuals having experience
24 in advocating for the interests of small
25 businesses and encouraging small business
26 capital formation.

1 “(B) COMPENSATION.—The annual rate of
2 pay for the Advocate for Small Business Cap-
3 ital Formation shall be equal to the highest rate
4 of annual pay for other senior executives who
5 report directly to the Commission.

6 “(C) NO CURRENT EMPLOYEE OF THE
7 COMMISSION.—An individual may not be ap-
8 pointed as the Advocate for Small Business
9 Capital Formation if the individual is currently
10 employed by the Commission.

11 “(3) STAFF OF OFFICE.—The Advocate for
12 Small Business Capital Formation, after consulta-
13 tion with the Commission, may retain or employ
14 independent counsel, research staff, and service
15 staff, as the Advocate for Small Business Capital
16 Formation determines to be necessary to carry out
17 the functions of the Office.

18 “(4) FUNCTIONS OF THE ADVOCATE FOR
19 SMALL BUSINESS CAPITAL FORMATION.—The Advo-
20 cate for Small Business Capital Formation shall—

21 “(A) assist small businesses and small
22 business investors in resolving significant prob-
23 lems such businesses and investors may have
24 with the Commission or with self-regulatory or-
25 ganizations;

1 “(B) identify areas in which small busi-
2 nesses and small business investors would ben-
3 efit from changes in the regulations of the
4 Commission or the rules of self-regulatory orga-
5 nizations;

6 “(C) identify problems that small busi-
7 nesses have with securing access to capital, in-
8 cluding any unique challenges to minority-
9 owned and women-owned small businesses;

10 “(D) analyze the potential impact on small
11 businesses and small business investors of—

12 “(i) proposed regulations of the Com-
13 mission that are likely to have a significant
14 economic impact on small businesses and
15 small business capital formation; and

16 “(ii) proposed rules that are likely to
17 have a significant economic impact on
18 small businesses and small business capital
19 formation of self-regulatory organizations
20 registered under this title;

21 “(E) conduct outreach to small businesses
22 and small business investors, including through
23 regional roundtables, in order to solicit views on
24 relevant capital formation issues;

1 “(F) to the extent practicable, propose to
2 the Commission changes in the regulations or
3 orders of the Commission and to Congress any
4 legislative, administrative, or personnel changes
5 that may be appropriate to mitigate problems
6 identified under this paragraph and to promote
7 the interests of small businesses and small busi-
8 ness investors;

9 “(G) consult with the Investor Advocate on
10 proposed recommendations made under sub-
11 paragraph (F); and

12 “(H) advise the Investor Advocate on
13 issues related to small businesses and small
14 business investors.

15 “(5) ACCESS TO DOCUMENTS.—The Commis-
16 sion shall ensure that the Advocate for Small Busi-
17 ness Capital Formation has full access to the docu-
18 ments and information of the Commission and any
19 self-regulatory organization, as necessary to carry
20 out the functions of the Office.

21 “(6) ANNUAL REPORT ON ACTIVITIES.—

22 “(A) IN GENERAL.—Not later than De-
23 cember 31 of each year after 2015, the Advo-
24 cate for Small Business Capital Formation shall
25 submit to the Committee on Banking, Housing,

1 and Urban Affairs of the Senate and the Com-
2 mittee on Financial Services of the House of
3 Representatives a report on the activities of the
4 Advocate for Small Business Capital Formation
5 during the immediately preceding fiscal year.

6 “(B) CONTENTS.—Each report required
7 under subparagraph (A) shall include—

8 “(i) appropriate statistical information
9 and full and substantive analysis;

10 “(ii) information on steps that the
11 Advocate for Small Business Capital For-
12 mation has taken during the reporting pe-
13 riod to improve small business services and
14 the responsiveness of the Commission and
15 self-regulatory organizations to small busi-
16 ness and small business investor concerns;

17 “(iii) a summary of the most serious
18 issues encountered by small businesses and
19 small business investors, including any
20 unique issues encountered by minority-
21 owned and women-owned small businesses
22 and their investors, during the reporting
23 period;

24 “(iv) an inventory of the items sum-
25 marized under clause (iii) (including items

1 summarized under such clause for any
2 prior reporting period on which no action
3 has been taken or that have not been re-
4 solved to the satisfaction of the Advocate
5 for Small Business Capital Formation as
6 of the beginning of the reporting period
7 covered by the report) that includes—

8 “(I) identification of any action
9 taken by the Commission or the self-
10 regulatory organization and the result
11 of such action;

12 “(II) the length of time that each
13 item has remained on such inventory;
14 and

15 “(III) for items on which no ac-
16 tion has been taken, the reasons for
17 inaction, and an identification of any
18 official who is responsible for such ac-
19 tion;

20 “(v) recommendations for such
21 changes to the regulations, guidance and
22 orders of the Commission and such legisla-
23 tive actions as may be appropriate to re-
24 solve problems with the Commission and
25 self-regulatory organizations encountered

1 by small businesses and small business in-
2 vestors and to encourage small business
3 capital formation; and

4 “(vi) any other information, as deter-
5 mined appropriate by the Advocate for
6 Small Business Capital Formation.

7 “(C) CONFIDENTIALITY.—No report re-
8 quired by subparagraph (A) may contain con-
9 fidential information.

10 “(D) INDEPENDENCE.—Each report re-
11 quired under subparagraph (A) shall be pro-
12 vided directly to the committees of Congress
13 listed in such subparagraph without any prior
14 review or comment from the Commission, any
15 commissioner, any other officer or employee of
16 the Commission, or the Office of Management
17 and Budget.

18 “(7) REGULATIONS.—The Commission shall es-
19 tablish procedures requiring a formal response to all
20 recommendations submitted to the Commission by
21 the Advocate for Small Business Capital Formation,
22 not later than 3 months after the date of such sub-
23 mission.

24 “(8) GOVERNMENT-BUSINESS FORUM ON SMALL
25 BUSINESS CAPITAL FORMATION.—The Advocate for

1 Small Business Capital Formation shall be respon-
2 sible for planning, organizing, and executing the an-
3 nual Government-Business Forum on Small Busi-
4 ness Capital Formation described in section 503 of
5 the Small Business Investment Incentive Act of
6 1980 (15 U.S.C. 80c-1).

7 “(9) RULE OF CONSTRUCTION.—Nothing in
8 this subsection may be construed as replacing or re-
9 ducing the responsibilities of the Investor Advocate
10 with respect to small business investors.”.

11 (b) SMALL BUSINESS CAPITAL FORMATION ADVI-
12 SORY COMMITTEE.—Title I of the Securities Exchange
13 Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding
14 at the end the following:

15 **“SEC. 40. SMALL BUSINESS CAPITAL FORMATION ADVISORY**
16 **COMMITTEE.**

17 “(a) ESTABLISHMENT AND PURPOSE.—

18 “(1) ESTABLISHMENT.—There is established
19 within the Commission the Small Business Capital
20 Formation Advisory Committee (hereafter in this
21 section referred to as the ‘Committee’).

22 “(2) FUNCTIONS.—

23 “(A) IN GENERAL.—The Committee shall
24 provide the Commission with advice on the
25 Commission’s rules, regulations, and policies

1 with regard to the Commission’s mission of pro-
2 tecting investors, maintaining fair, orderly, and
3 efficient markets, and facilitating capital forma-
4 tion, as such rules, regulations, and policies re-
5 late to—

6 “(i) capital raising by emerging, pri-
7 vately held small businesses (‘emerging
8 companies’) and publicly traded companies
9 with less than \$250,000,000 in public mar-
10 ket capitalization (‘smaller public compa-
11 nies’) through securities offerings, includ-
12 ing private and limited offerings and initial
13 and other public offerings;

14 “(ii) trading in the securities of
15 emerging companies and smaller public
16 companies; and

17 “(iii) public reporting and corporate
18 governance requirements of emerging com-
19 panies and smaller public companies.

20 “(B) LIMITATION.—The Committee shall
21 not provide any advice with respect to any poli-
22 cies, practices, actions, or decisions concerning
23 the Commission’s enforcement program.

24 “(b) MEMBERSHIP.—

1 “(1) IN GENERAL.—The members of the Com-
2 mittee shall be—

3 “(A) the Advocate for Small Business Cap-
4 ital Formation;

5 “(B) not fewer than 10, and not more than
6 20, members appointed by the Commission,
7 from among individuals—

8 “(i) who represent—

9 “(I) emerging companies engag-
10 ing in private and limited securities
11 offerings or considering initial public
12 offerings (‘IPO’) (including the com-
13 panies’ officers and directors);

14 “(II) the professional advisors of
15 such companies (including attorneys,
16 accountants, investment bankers, and
17 financial advisors); and

18 “(III) the investors in such com-
19 panies (including angel investors, ven-
20 ture capital funds, and family offices);

21 “(ii) who are officers or directors of
22 minority-owned small businesses or
23 women-owned small businesses;

24 “(iii) who represent—

1 “(I) smaller public companies
2 (including the companies’ officers and
3 directors);

4 “(II) the professional advisors of
5 such companies (including attorneys,
6 auditors, underwriters, and financial
7 advisors); and

8 “(III) the pre-IPO and post-IPO
9 investors in such companies (both in-
10 stitutional, such as venture capital
11 funds, and individual, such as angel
12 investors); and

13 “(iv) who represent participants in the
14 marketplace for the securities of emerging
15 companies and smaller public companies,
16 such as securities exchanges, alternative
17 trading systems, analysts, information
18 processors, and transfer agents; and

19 “(C) 3 non-voting members—

20 “(i) 1 of whom shall be appointed by
21 the Investor Advocate;

22 “(ii) 1 of whom shall be appointed by
23 the North American Securities Administra-
24 tors Association; and

1 “(iii) 1 of whom shall be appointed by
2 the Administrator of the Small Business
3 Administration.

4 “(2) TERM.—Each member of the Committee
5 appointed under subparagraph (B), (C)(ii), or
6 (C)(iii) of paragraph (1) shall serve for a term of 4
7 years.

8 “(3) MEMBERS NOT COMMISSION EMPLOY-
9 EES.—Members appointed under subparagraph (B),
10 (C)(ii), or (C)(iii) of paragraph (1) shall not be
11 treated as employees or agents of the Commission
12 solely because of membership on the Committee.

13 “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-
14 SISTANT SECRETARY.—

15 “(1) IN GENERAL.—The members of the Com-
16 mittee shall elect, from among the members of the
17 Committee—

18 “(A) a chairman;

19 “(B) a vice chairman;

20 “(C) a secretary; and

21 “(D) an assistant secretary.

22 “(2) TERM.—Each member elected under para-
23 graph (1) shall serve for a term of 3 years in the
24 capacity for which the member was elected under
25 paragraph (1).

1 “(d) MEETINGS.—

2 “(1) FREQUENCY OF MEETINGS.—The Com-
3 mittee shall meet—

4 “(A) not less frequently than four times
5 annually, at the call of the chairman of the
6 Committee; and

7 “(B) from time to time, at the call of the
8 Commission.

9 “(2) NOTICE.—The chairman of the Committee
10 shall give the members of the Committee written no-
11 tice of each meeting, not later than 2 weeks before
12 the date of the meeting.

13 “(e) COMPENSATION AND TRAVEL EXPENSES.—
14 Each member of the Committee who is not a full-time em-
15 ployee of the United States shall—

16 “(1) be entitled to receive compensation at a
17 rate not to exceed the daily equivalent of the annual
18 rate of basic pay in effect for a position at level V
19 of the Executive Schedule under section 5316 of title
20 5, United States Code, for each day during which
21 the member is engaged in the actual performance of
22 the duties of the Committee; and

23 “(2) while away from the home or regular place
24 of business of the member in the performance of
25 services for the Committee, be allowed travel ex-

1 penses, including per diem in lieu of subsistence, in
2 the same manner as persons employed intermittently
3 in the Government service are allowed expenses
4 under section 5703 of title 5, United States Code.

5 “(f) STAFF.—The Commission shall make available
6 to the Committee such staff as the chairman of the Com-
7 mittee determines are necessary to carry out this section.

8 “(g) REVIEW BY COMMISSION.—The Commission
9 shall—

10 “(1) review the findings and recommendations
11 of the Committee; and

12 “(2) each time the Committee submits a finding
13 or recommendation to the Commission, promptly
14 issue a public statement—

15 “(A) assessing the finding or recommenda-
16 tion of the Committee; and

17 “(B) disclosing the action, if any, the Com-
18 mission intends to take with respect to the find-
19 ing or recommendation.

20 “(h) FEDERAL ADVISORY COMMITTEE ACT.—The
21 Federal Advisory Committee Act (5 U.S.C. App.) shall not
22 apply with respect to the Committee and its activities.”.

23 (c) ANNUAL GOVERNMENT-BUSINESS FORUM ON
24 SMALL BUSINESS CAPITAL FORMATION.—Section 503(a)
25 of the Small Business Investment Incentive Act of 1980

1 (15 U.S.C. 80c-1(a)) is amended by inserting “(acting
2 through the Office of the Advocate for Small Business
3 Capital Formation and in consultation with the Small
4 Business Capital Formation Advisory Committee)” after
5 “Securities and Exchange Commission”.