

114TH CONGRESS
2D SESSION

H. R. 3784

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2016

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “SEC Small Business
3 Advocate Act of 2016”.

4 **SEC. 2. ESTABLISHMENT OF OFFICE OF THE ADVOCATE**
5 **FOR SMALL BUSINESS CAPITAL FORMATION**
6 **AND SMALL BUSINESS CAPITAL FORMATION**
7 **ADVISORY COMMITTEE.**

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

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

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

18 “(2) ADVOCATE FOR SMALL BUSINESS CAPITAL
19 FORMATION.—

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

23 “(i) report directly to the Commission;
24 and

25 “(ii) be appointed by the Commission,
26 from among individuals having experience

1 in advocating for the interests of small
2 businesses and encouraging small business
3 capital formation.

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

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

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

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

24 “(A) assist small businesses and small
25 business investors in resolving significant prob-

1 lems such businesses and investors may have
2 with the Commission or with self-regulatory or-
3 ganizations;

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

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

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

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

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

24 “(E) conduct outreach to small businesses
25 and small business investors, including through

1 regional roundtables, in order to solicit views on
2 relevant capital formation issues;

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

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

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

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

23 “(6) ANNUAL REPORT ON ACTIVITIES.—

24 “(A) IN GENERAL.—Not later than De-
25 cember 31 of each year after 2015, the Advo-

1 cate for Small Business Capital Formation shall
2 submit to the Committee on Banking, Housing,
3 and Urban Affairs of the Senate and the Com-
4 mittee on Financial Services of the House of
5 Representatives a report on the activities of the
6 Advocate for Small Business Capital Formation
7 during the immediately preceding fiscal year.

8 “(B) CONTENTS.—Each report required
9 under subparagraph (A) shall include—

10 “(i) appropriate statistical information
11 and full and substantive analysis;

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

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

1 “(iv) an inventory of the items sum-
2 marized under clause (iii) (including items
3 summarized under such clause for any
4 prior reporting period on which no action
5 has been taken or that have not been re-
6 solved to the satisfaction of the Advocate
7 for Small Business Capital Formation as
8 of the beginning of the reporting period
9 covered by the report) that includes—

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

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

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

22 “(v) recommendations for such
23 changes to the regulations, guidance and
24 orders of the Commission and such legisla-
25 tive actions as may be appropriate to re-

1 solve problems with the Commission and
2 self-regulatory organizations encountered
3 by small businesses and small business in-
4 vestors and to encourage small business
5 capital formation; and

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

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

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

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

1 “(8) GOVERNMENT-BUSINESS FORUM ON SMALL
2 BUSINESS CAPITAL FORMATION.—The Advocate for
3 Small Business Capital Formation shall be respon-
4 sible for planning, organizing, and executing the an-
5 nual Government-Business Forum on Small Busi-
6 ness Capital Formation described in section 503 of
7 the Small Business Investment Incentive Act of
8 1980 (15 U.S.C. 80c–1).

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

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

17 **“SEC. 40. SMALL BUSINESS CAPITAL FORMATION ADVISORY**
18 **COMMITTEE.**

19 “(a) ESTABLISHMENT AND PURPOSE.—

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

24 “(2) FUNCTIONS.—

1 “(A) IN GENERAL.—The Committee shall
2 provide the Commission with advice on the
3 Commission’s rules, regulations, and policies
4 with regard to the Commission’s mission of pro-
5 tecting investors, maintaining fair, orderly, and
6 efficient markets, and facilitating capital forma-
7 tion, as such rules, regulations, and policies re-
8 late to—

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

17 “(ii) trading in the securities of
18 emerging companies and smaller public
19 companies; and

20 “(iii) public reporting and corporate
21 governance requirements of emerging com-
22 panies and smaller public companies.

23 “(B) LIMITATION.—The Committee shall
24 not provide any advice with respect to any poli-

1 cies, practices, actions, or decisions concerning
2 the Commission’s enforcement program.

3 “(b) MEMBERSHIP.—

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

6 “(A) the Advocate for Small Business Cap-
7 ital Formation;

8 “(B) not fewer than 10, and not more than
9 20, members appointed by the Commission,
10 from among individuals—

11 “(i) who represent—

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

17 “(II) the professional advisors of
18 such companies (including attorneys,
19 accountants, investment bankers, and
20 financial advisors); and

21 “(III) the investors in such com-
22 panies (including angel investors, ven-
23 ture capital funds, and family offices);

1 “(ii) who are officers or directors of
2 minority-owned small businesses or
3 women-owned small businesses;

4 “(iii) who represent—

5 “(I) smaller public companies
6 (including the companies’ officers and
7 directors);

8 “(II) the professional advisors of
9 such companies (including attorneys,
10 auditors, underwriters, and financial
11 advisors); and

12 “(III) the pre-IPO and post-IPO
13 investors in such companies (both in-
14 stitutional, such as venture capital
15 funds, and individual, such as angel
16 investors); and

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

23 “(C) three non-voting members—

24 “(i) one of whom shall be appointed
25 by the Investor Advocate;

1 “(ii) one of whom shall be appointed
2 by the North American Securities Adminis-
3 trators Association; and

4 “(iii) one of whom shall be appointed
5 by the Administrator of the Small Busi-
6 ness Administration.

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

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

16 “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-
17 SISTANT SECRETARY.—

18 “(1) IN GENERAL.—The members of the Com-
19 mittee shall elect, from among the members of the
20 Committee—

21 “(A) a chairman;

22 “(B) a vice chairman;

23 “(C) a secretary; and

24 “(D) an assistant secretary.

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

5 “(d) MEETINGS.—

6 “(1) FREQUENCY OF MEETINGS.—The Com-
7 mittee shall meet—

8 “(A) not less frequently than four times
9 annually, at the call of the chairman of the
10 Committee; and

11 “(B) from time to time, at the call of the
12 Commission.

13 “(2) NOTICE.—The chairman of the Committee
14 shall give the members of the Committee written no-
15 tice of each meeting, not later than 2 weeks before
16 the date of the meeting.

17 “(e) COMPENSATION AND TRAVEL EXPENSES.—

18 Each member of the Committee who is not a full-time em-
19 ployee of the United States shall—

20 “(1) be entitled to receive compensation at a
21 rate not to exceed the daily equivalent of the annual
22 rate of basic pay in effect for a position at level V
23 of the Executive Schedule under section 5316 of title
24 5, United States Code, for each day during which

1 the member is engaged in the actual performance of
2 the duties of the Committee; and

3 “(2) while away from the home or regular place
4 of business of the member in the performance of
5 services for the Committee, be allowed travel ex-
6 penses, including per diem in lieu of subsistence, in
7 the same manner as persons employed intermittently
8 in the Government service are allowed expenses
9 under section 5703 of title 5, United States Code.

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

13 “(g) REVIEW BY COMMISSION.—The Commission
14 shall—

15 “(1) review the findings and recommendations
16 of the Committee; and

17 “(2) each time the Committee submits a finding
18 or recommendation to the Commission, promptly
19 issue a public statement—

20 “(A) assessing the finding or recommenda-
21 tion of the Committee; and

22 “(B) disclosing the action, if any, the Com-
23 mission intends to take with respect to the find-
24 ing or recommendation.

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

4 (c) ANNUAL GOVERNMENT-BUSINESS FORUM ON
5 SMALL BUSINESS CAPITAL FORMATION.—Section 503(a)
6 of the Small Business Investment Incentive Act of 1980
7 (15 U.S.C. 80c–1(a)) is amended by inserting “(acting
8 through the Office of the Advocate for Small Business
9 Capital Formation and in consultation with the Small
10 Business Capital Formation Advisory Committee)” after
11 “Securities and Exchange Commission”.

Passed the House of Representatives February 1,
2016.

Attest:

KAREN L. HAAS,

Clerk.