

H.R. 3784 The SEC Small Business Advocate Act of 2015

**Congressman John Carney (D-DE) Congressman Sean Duffy (R-WI)
Congressman Ander Crenshaw (R-FL) Congressman Mike Quigley (D-IL)**

Background:

Small businesses are a driver of economic growth and job creation. Historically, small businesses have created about two-thirds of our country's net new jobs. Small firms employ almost half of the private sector workforce. Most importantly, they are a major source of both innovation and economic stability. Not to mention opportunity for upward mobility.

Despite the huge importance of small businesses to the US economy, collectively, they continue to face challenges being heard here in Washington. Small businesses are at times underrepresented in many facets of the lawmaking and regulatory process. This lack of attention doesn't just harm small business; it also adversely impacts investors and the public at large.

The SEC has the ability to pursue meaningful reforms that could significantly improve the outcomes for small business across the regulatory spectrum. A good place for the SEC to start would be to create an Office of the Advocate for Small Business Capital Formation. This office would maintain a designated representative with small business expertise to advocate on behalf of small business issues. It would open clear avenues of communication to SEC leadership on issues affecting small business owners, investors, and stakeholders. It would also help continue the reforms and progress Congress made in passing the JOBS Act. This includes issues such as equity crowdfunding, venture exchanges, the Tick Size pilot, Regulation A+, Rule 144, private placement registration, and the definition of accredited investor, to name a few.

Small business issues merit serious and careful reflection by the SEC. The Office of the Advocate for Small Business Capital Formation will help focus attention to the challenges facing small businesses and assist the SEC with adopting policies that encourage small business growth, innovation, and investment.

Section by Section Summary of the Small Business Advocate Act:

Short Summary:

- (1) Establishes an Office of the Advocate for Small Business Capital Formation within the SEC that will report directly to the SEC and assist small businesses and small business investors with resolving problems, providing feedback on proposed and final regulations and orders, and updating policy as it relates to small businesses
- (2) Establishes the Small Business Capital Formation Advisory Committee within the SEC which will be led by the Advocate for Small Business Capital Formation and provide small business stakeholders and investors with both a forum and clear line of communication to discuss small business issues with the SEC staff and the Chair.

Section 1: Establishment of Office of the Advocate for Small Business Capital Formation and Small Business Capital Formation Advisory Committee

This section establishes the Office of the Advocate for Small Business Capital Formation and details the structure and functions of the office.

Establishment of the Office

- The head of the Office shall be the Advocate for Small Business Capital Formation appointed by the SEC from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.
 - The Advocate for Small Business Capital Formation shall report directly to the SEC and must not be currently employed by the SEC.

- The Advocate for Small Business Capital Formation may retain or employ independent counsel, research staff and service staff as they determines to be necessary for functions of the Office.

Functions of the Advocate for Small Business Capital Formation

- The Advocate for Small Business Capital Formation shall:
 - Assist small businesses and small business investors in resolving problems small businesses and investors may have with the SEC and self-regulatory organizations;
 - Identify areas of regulation that should be updated or changed to encourage small business capital formation;
 - Identify problems that small businesses have with securing access to capital;
 - Analyze the potential impact of proposed regulations of the SEC and rules of self-regulatory organizations on small businesses and small business investors;
 - Conduct outreach to small businesses and small business investors via regional roundtables to solicit views to be shared with the SEC;
 - Propose any regulatory changes to the SEC and to Congress that may be appropriate to mitigate problems and promote the interests of small businesses and small business investors;
 - Consult with the Investor Advocate to ensure the recommendations do not harm investor protections; and
 - Advise the Investor Advocate on issues related to small businesses and small business investors.
- The Advocate will have full access to documents and information of the SEC as necessary to carry out the functions of the office.

Annual Reports

- Each year the Advocate shall submit to the Senate Banking, Housing and Urban Affairs Committee and the House Financial Services Committee a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.
- Each report shall include:
 - Appropriate statistical information and full and substantive analysis;
 - Information on steps that the Advocate took during that year to improve small business services and the responsiveness of the regulatory organizations to small businesses and their investors concerns;
 - A summary and inventory of the most serious issues encountered by small businesses and small business investors during that year; and
 - Recommendations for changes to the regulations of the SEC and legislative actions that may be appropriate to resolve any problems experienced by small businesses and their investors.
- Each report shall be provided directly to the Congressional committees without any prior review or comment from the SEC, any officer or employee of the SEC, or the Office of Management and Budget.
- The SEC must establish procedures requiring a formal response to all recommendations submitted by the Advocate no later than 3 months after the date of each submission.

Government-Business Forum on Small Business Capital Formation

- The Advocate is responsible for planning, organizing and executing the annual Government-Business Forum on Small Business Capital Formation.

Sec. 40: Small Business Capital Formation Advisory Committee

This section establishes the Small Business Capital Formation Advisory Committee within the SEC and details its membership structure and functions.

Establishment and Purpose

- The Small Business Capital Formation Advisory Committee shall be formed to provide the SEC advice on their rules, regulations, and policies with regard to their mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.
 - Such rules, regulations and politics relate to (1) capital raising by emerging, privately-held small businesses ('emerging companies') and publicly traded companies with less than \$250,000,000 in public market capitalization ('smaller public companies') through securities offerings, (2) trading in the securities of emerging companies and smaller public companies, and (3) public reporting and corporate governance requirements of emerging growth companies and smaller public companies.
 - The Committee shall not provide any advice with respect to anything concerning the SEC's enforcement program.

Membership

- The members of the Committee will include the Advocate for Small Business Capital Formation, between 10 and 20 members appointed by the SEC, and 3 non-voting members.
 - The members appointed by the SEC should represent:
 - Emerging companies engaging in private and limited securities offerings or considering initial public offerings as well as the professional advisors and investors of such companies;
 - Smaller public companies as well as the professional advisors and pre-IPO and post-IPO investors of such companies; and
 - Participants in the marketplace for the securities of emerging companies and smaller public companies.
 - The 3 non-voting members shall include:
 - 1 appointed by the Investor Advocate;
 - 1 appointed by the North American Securities Administrators Association; and
 - 1 appointed by the Administrator of the Small Business Administration.
- Each member of the Committee will serve a term of 4 years and are not treated as employees or agents of the SEC.
- The Committee shall elect, from among its members a chairman, vice chairman, secretary, and assistant secretary to serve a term of 3 years.
- The Committee is required to meet at least 4 times a year at the call of the chairman and from time to time at the call of the SEC.
- Each member of the Committee who is not a full-time employee of the United States shall receive compensation for each day the member is engaged in the duties of the Committee and travel expenses in the performance of services for the Committee.

Review by Commission

- The SEC shall review and assess the findings and recommendations of the Committee and promptly issue a public statement that assesses these findings or recommendations and discloses the action, if any, the SEC plans to take on the recommendations.

Federal Advisory Committee Act

- The Federal Advisory Committee Act shall not apply with respect to this committee and its activities.