

118TH CONGRESS
1ST SESSION

H. R. 4952

To amend title 10, United States Code, to establish the Office of Strategic Capital in the Office of the Secretary of Defense, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2023

Mr. WITTMAN (for himself, Mr. KHANNA, and Mr. MILLS) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to establish the Office of Strategic Capital in the Office of the Secretary of Defense, 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. ESTABLISHMENT OF OFFICE OF STRATEGIC**
4 **CAPITAL.**

5 (a) IN GENERAL.—Chapter 4 of title 10, United
6 States Code, is amended by adding at the end the fol-
7 lowing new section:

8 **“§ 148. Office of Strategic Capital**

9 “(a) ESTABLISHMENT.—There is in the Office of the
10 Secretary of Defense an office to be known as the Office

1 of Strategic Capital (in this section referred to as the ‘Of-
2 fice’).

3 “(b) DIRECTOR.—The Office shall be headed by an
4 Executive Director (in this section referred to as the ‘Di-
5 rector’), who shall be appointed by the Secretary of De-
6 fense from among employees of the Department of De-
7 fense in Senior Executive Service or equivalent positions
8 (as defined in section 3132 of title 5).

9 “(c) DUTIES.—The Office shall—

10 “(1) identify, accelerate, and sustain the estab-
11 lishment, research, development, construction, pro-
12 curement, leasing, consolidation, alteration, improve-
13 ment, or repair of tangible and intangible assets
14 vital to national security;

15 “(2) protect vital tangible and intangible assets
16 from theft, acquisition, and transfer by countries
17 that are adversaries of the United States; and

18 “(3) provide capital assistance to eligible enti-
19 ties engaged in eligible investments.

20 “(d) APPLICATIONS.—An eligible entity seeking cap-
21 ital assistance for an eligible investment shall submit to
22 the Director an application at such time, in such manner,
23 and containing such information as the Director may re-
24 quire.

1 “(e) SELECTION OF INVESTMENTS.—The Director
2 shall establish criteria for selecting among eligible invest-
3 ments for which applications are submitted under sub-
4 section (d). Such criteria shall include—

5 “(1) the extent to which an investment is sig-
6 nificant to the national security of the United
7 States;

8 “(2) the creditworthiness of an investment; and

9 “(3) the likelihood that capital assistance pro-
10 vided for an investment would enable the investment
11 to proceed sooner than the investment would other-
12 wise be able to proceed.

13 “(f) CAPITAL ASSISTANCE.—The Secretary of De-
14 fense is authorized to provide capital assistance within this
15 section.

16 “(1) LOANS AND LOAN GUARANTEES.—

17 “(A) IN GENERAL.—The Office may pro-
18 vide loans or loan guarantees to finance or refi-
19 nance the costs of an eligible investment se-
20 lected pursuant to subsection (e).

21 “(B) ADMINISTRATION OF LOANS.—

22 “(i) INTEREST RATE.—

23 “(I) IN GENERAL.—Except as
24 provided by subclause (II), the inter-
25 est rate on a loan provided under sub-

1 paragraph (A) shall be not less than
2 the yield on marketable United States
3 Treasury securities of a similar matu-
4 rity to the maturity of the loan on the
5 date of execution of the loan agree-
6 ment.

7 “(II) EXCEPTION.—The Director
8 may waive the requirement under sub-
9 clause (I) with respect to an invest-
10 ment if the investment is determined
11 by the Secretary of Defense to be vital
12 to the national security of the United
13 States.

14 “(III) CRITERIA.—The Director
15 shall establish separate and distinct
16 criteria for the interest rates for loan
17 guarantees with private sector lending
18 institutions.

19 “(ii) FINAL MATURITY DATE.—The
20 final maturity date of a loan provided
21 under subparagraph (A) shall be not later
22 than 50 years after the date of substantial
23 completion of the investment for which the
24 loan was provided.

1 “(iii) PREPAYMENT.—A loan provided
2 under subparagraph (A) may be paid ear-
3 lier than is provided for under the loan
4 agreement without a penalty.

5 “(iv) NONSUBORDINATION.—

6 “(I) IN GENERAL.—A loan pro-
7 vided under subparagraph (A) shall
8 not be subordinated to the claims of
9 any holder of investment obligations
10 in the event of bankruptcy, insolvency,
11 or liquidation of the obligor.

12 “(II) WAIVER.—The Director
13 may waive the requirement under sub-
14 clause (I) with respect to the invest-
15 ment in order to mitigate risks to loan
16 repayment.

17 “(v) SALE OF LOANS.—For which a
18 loan is provided under subparagraph (A)
19 and after notifying the obligor, the Direc-
20 tor may sell to another entity or reoffer
21 into the capital markets a loan for the in-
22 vestment if the Director determines that
23 the sale or reoffering can be made on fa-
24 vorable terms.

25 “(vi) LOAN GUARANTEES.—

1 “(I) IN GENERAL.—If the Direc-
2 tor determines that the holder of a
3 loan guaranteed by the Office de-
4 faulted on the loan, the Director shall
5 pay the holder as specified in the loan
6 guarantee agreement.

7 “(II) LOAN GUARANTEE PER-
8 CENTAGE.—A loan guarantee agree-
9 ment entered into by the Office under
10 this paragraph shall specify the per-
11 centage of the principal amount of the
12 loan guaranteed by the Office under
13 such agreement.

14 “(vii) TERMS AND CONDITIONS.—
15 Loans and loan guarantees provided under
16 subparagraph (A) shall be subject to such
17 other terms and conditions and contain
18 such other covenants, representations, war-
19 ranties, and requirements (including re-
20 quirements for audits) as the Director de-
21 termines appropriate.

22 “(viii) INVESTMENT-GRADE RATING.—
23 The Director shall establish a credit rating
24 system to ensure a reasonable likelihood of
25 repayment of loans made or guaranteed

1 under this subsection. The credit rating
2 system may include the use of existing
3 credit rating agencies as the Director de-
4 termines appropriate.

5 “(ix) APPLICABILITY OF FEDERAL
6 CREDIT REFORM ACT OF 1990.—Loans and
7 loan guarantees provided under subpara-
8 graph (A) shall be subject to the require-
9 ments of the Federal Credit Reform Act of
10 1990 (2 U.S.C. 661 et seq.).

11 “(2) EQUITY INVESTMENTS.—

12 “(A) IN GENERAL.—The Director may, as
13 a minority investor and subject to the avail-
14 ability of appropriations this purpose, support
15 an eligible investment selected pursuant to sub-
16 section (e) with funds or use other mechanisms
17 for the purpose of purchasing, and may make
18 and fund commitments to purchase, invest in,
19 make pledges in respect of, or otherwise ac-
20 quire, equity, warrants, or quasi-equity securi-
21 ties or shares or financial interests of the eligi-
22 ble entity receiving support for the eligible in-
23 vestment, including as a limited partner or
24 other investor in investment funds, upon such

1 terms and conditions as the Director may deter-
2 mine.

3 “(B) SALES AND LIQUIDATION OF POSI-
4 TION.—The Office shall seek to sell and liq-
5 uidate any support for an investment provided
6 under subparagraph (A) as soon as commer-
7 cially feasible, commensurate with other similar
8 investors in the investment and taking into con-
9 sideration the national security interests of the
10 United States.

11 “(3) TECHNICAL ASSISTANCE.—Subject to the
12 availability of appropriations, the Director may pro-
13 vide technical assistance with respect to developing
14 and financing investments to eligible entities seeking
15 capital assistance for eligible investments and eligi-
16 ble entities receiving capital assistance under this
17 subsection.

18 “(4) TERMS AND CONDITIONS.—

19 “(A) FEES.—The Director may charge
20 fees for the provision of capital assistance
21 under this subsection to cover the administra-
22 tive costs to the Office of providing such assist-
23 ance.

24 “(B) USE OF FEES.—Fees collected pursu-
25 ant to subparagraph (A) may only be used to

1 pay for the cost of administering the activities
2 authorized by this section.

3 “(C) AMOUNT OF CAPITAL ASSISTANCE.—

4 The Director shall provide to an eligible invest-
5 ment selected pursuant to subsection (e) the
6 minimum amount of assistance necessary to
7 carry out the investment.

8 “(D) USE OF UNITED STATES DOLLAR.—

9 All financial transactions conducted under this
10 subsection shall be conducted in United States
11 dollars.

12 “(g) ESTABLISHMENT OF ACCOUNTS.—

13 “(1) CREDIT PROGRAM ACCOUNT.—

14 “(A) ESTABLISHMENT.—There is estab-
15 lished in the Treasury of the United States an
16 account to be known as the ‘Department of De-
17 fense Credit Program Account’ (in this sub-
18 section referred to as the ‘Credit Program Ac-
19 count’) to make loans and loan guarantees
20 under this section in accordance with the Fed-
21 eral Credit Reform Act of 1990 (2 U.S.C. 661
22 et seq.).

23 “(B) FUNDING.—The Credit Program Ac-
24 count shall consist of amounts appropriated to
25 the Credit Program Account pursuant to an au-

1 thorization of appropriations and all fees as de-
2 scribed in subparagraph (C).

3 “(C) FEE AUTHORITY.—

4 “(i) IN GENERAL.—The Secretary
5 may charge and collect fees for providing
6 capital assistance in an amount to be de-
7 termined by the Secretary to cover the
8 costs to the Office of providing such cap-
9 ital assistance.

10 “(ii) AMOUNT.—The amount of the
11 fees under clause (i) shall equal, but not
12 exceed, the costs to the Office of providing
13 capital assistance.

14 “(iii) USE OF FEES.—Fees collected
15 pursuant to clause (i) may only be used to
16 pay for the cost of administering the ac-
17 tivities authorized by this section.

18 “(2) EQUITY ACCOUNT.—

19 “(A) ESTABLISHMENT.—There is estab-
20 lished in the Treasury of the United States an
21 account to be known as the ‘Department of De-
22 fense Strategic Capital Equity Account’ (in this
23 subsection referred to as the ‘Strategic Capital
24 Equity Account’).

1 “(B) FUNDING.—The Strategic Capital
2 Equity Account shall consist of all amounts ap-
3 propriated to the Strategic Capital Equity Ac-
4 count pursuant to an authorization of appro-
5 priations.

6 “(3) USE OF FUNDS.—Subject to appropria-
7 tions Acts, the Secretary is authorized to pay, from
8 the Credit Program Account or the Strategic Capital
9 Equity Account—

10 “(A) the cost, as defined in section 502 of
11 the Federal Credit Reform Act of 1990 (2
12 U.S.C. 661a), of loans and loan guarantees and
13 other capital assistance;

14 “(B) administrative expenses of the Office
15 associated with activities under this section;

16 “(C) project-specific transaction costs
17 under this section;

18 “(D) the cost of providing support author-
19 ized by this section; and

20 “(E) the costs of equity investments under
21 this section.

22 “(h) REGULATIONS.—

23 “(1) IN GENERAL.—The Secretary of Defense
24 shall prescribe such regulations as are necessary to
25 carry out this section.

1 “(2) LIMITATION ON AUTHORITIES.—The Sec-
2 retary of Defense may not exercise the authorities
3 under this section prior to promulgating the regula-
4 tions required by paragraph (1).

5 “(i) ANNUAL REPORT.—Not later than the first Mon-
6 day in February of each year, the Secretary of Defense
7 shall submit to the congressional defense committees an
8 annual report describing the activities of the Office in the
9 preceding fiscal year and the goals of the Office for the
10 next fiscal year.

11 “(j) CONGRESSIONAL NOTIFICATION.—Not later
12 than 30 days after the Director exercises the authority
13 under subsection (f) to make a loan or equity investment
14 or to provide a loan guarantee, insurance, or reinsurance,
15 the Secretary of Defense shall notify the congressional de-
16 fense committees of such exercise of authority.

17 “(k) SUNSET.—The authorities provided under this
18 section shall expire on October 1, 2028.

19 “(l) DEFINITIONS.—In this section:

20 “(1) CAPITAL ASSISTANCE.—The term ‘capital
21 assistance’ means loans, loan guarantees, equity in-
22 vestments, or technical assistance provided under
23 subsection (f).

24 “(2) ELIGIBLE ENTITY.—The term ‘eligible en-
25 tity’ means—

1 “(A) an individual;

2 “(B) a corporation, including a limited li-
3 ability corporation;

4 “(C) a partnership, including a public-pri-
5 vate, limited, and general partnership;

6 “(D) a joint venture, including a strategic
7 alliance;

8 “(E) a trust;

9 “(F) a State, including a political subdivi-
10 sion or any other instrumentality of a State;

11 “(G) a Tribal government or consortium of
12 Tribal governments;

13 “(H) any other governmental entity or
14 public agency in the United States, including a
15 special purpose district or public authority, in-
16 cluding a port authority; or

17 “(I) a multi-State or multi-jurisdictional
18 group of public entities.

19 “(3) ELIGIBLE INVESTMENT.—The term ‘eligi-
20 ble investment’ means an investment that facilitates
21 the efforts of the Office—

22 “(A) to identify, accelerate, and sustain
23 the establishment, research, development, con-
24 struction, procurement, leasing, consolidation,
25 alteration, improvement, or repair of tangible

1 and intangible assets vital to national security;
2 or

3 “(B) to protect vital tangible and intan-
4 gible assets from theft, acquisition, and transfer
5 by countries that are adversaries of the United
6 States.

7 “(4) INVESTMENT-GRADE RATING.—The Direc-
8 tor shall establish a credit rating system to ensure
9 a reasonable reassurance of repayment. This may in-
10 clude use of existing credit rating agencies where ap-
11 propriate.

12 “(5) OBLIGOR.—The term ‘obligor’ means a
13 party that is primarily liable for payment of the
14 principal of or interest on a loan.

15 “(6) RATING AGENCY.—The term ‘rating agen-
16 cy’ means a credit rating agency registered with the
17 Securities and Exchange Commission as a nationally
18 recognized statistical rating organization (as that
19 term is defined in section 3(a) of the Securities Ex-
20 change Act of 1934 (15 U.S.C. 78c(a))).

21 “(7) SUBSIDY AMOUNT.—The term ‘subsidy
22 amount’ means the amount of budget authority suf-
23 ficient to cover the estimated long-term cost to the
24 Federal Government of a loan—

1 “(A) calculated on a net present value
2 basis; and

3 “(B) excluding administrative costs and
4 any incidental effects on governmental receipts
5 or outlays in accordance with the Federal Cred-
6 it Reform Act of 1990 (2 U.S.C. 661 et seq.)”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 at the beginning of chapter 4 of such title is amended by
9 adding at the end the following new item:

“148. Office of Strategic Capital.”.

○