

118TH CONGRESS
1ST SESSION

S. 1618

To amend the Small Business Investment Act of 1958 to establish an employee equity investment facility, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 16, 2023

Mr. VAN HOLLEN (for himself, Mr. RUBIO, Ms. BALDWIN, Mr. YOUNG, Mrs. SHAHEEN, and Mr. BRAUN) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Investment Act of 1958 to establish an employee equity investment facility, 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 “Employee Equity In-
5 vestment Act of 2023”.

6 **SEC. 2. EMPLOYEE EQUITY INVESTMENT FACILITY.**

7 (a) DEFINITIONS.—Section 103 of the Small Busi-
8 ness Investment Act of 1958 (15 U.S.C. 662) is amend-
9 ed—

1 (1) in paragraph (19), by striking “and” at the
2 end;

3 (2) in paragraph (20), by striking the period at
4 the end and inserting a semicolon; and

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

6 “(21) the term ‘covered investment’ means,
7 with respect to an investment in a covered small
8 business concern—

9 “(A) the provision of capital to finance the
10 sale of an ownership interest of a covered small
11 business concern, including a covered small
12 business concern created as a result of a cor-
13 porate divestiture, to an employee stock owner-
14 ship plan or eligible worker-owned cooperative if
15 such sale results in—

16 “(i) the employee stock ownership
17 plan or eligible worker-owned cooperative,
18 respectively, holding a majority interest of
19 the outstanding stock of the covered small
20 business concern; and

21 “(ii) with respect to such a sale to an
22 employee stock ownership plan, the ap-
23 pointment of an independent trustee for
24 the transaction; or

1 “(B) the provision of capital to finance a
2 covered small business concern if—

3 “(i) an employee stock ownership plan
4 or eligible worker-owned cooperative holds
5 a majority interest of the outstanding
6 stock of the covered small business con-
7 cern, prior to and immediately following
8 the provision of capital; and

9 “(ii) the provision of capital does not
10 reduce the percentage of stock of the cov-
11 ered small business concern held by the
12 employee stock ownership plan or eligible
13 worker-owned cooperative (as applicable),
14 excluding any synthetic equity;

15 “(22) the term ‘covered small business con-
16 cern’—

17 “(A) means a small business concern; and

18 “(B) with respect to an employee equity
19 investment company that is not a Protege
20 EEIC, includes an entity that is not more than
21 300 percent larger than the size standards es-
22 tablished for categorizing a business concern as
23 a small business concern under section 3(a) of
24 the Small Business Act (15 U.S.C. 632(a));

1 “(23) the term ‘eligible worker-owned coopera-
2 tive’ has the meaning given that term in section
3 1042(c) of the Internal Revenue Code of 1986;

4 “(24) the term ‘employee equity investment
5 company’ means a small business investment com-
6 pany—

7 “(A) that identifies at the time of applica-
8 tion for licensure under section 301 an intent to
9 be licensed as an employee equity investment
10 company; and

11 “(B) for which—

12 “(i) not less than 75 percent of the
13 total capital managed by the investment
14 firm shall be invested in covered invest-
15 ments;

16 “(ii) not less than 50 percent of the
17 total capital managed by the investment
18 firm shall be invested in covered invest-
19 ments described in paragraph (21)(A);

20 “(iii) covered investment returns are
21 obtained from debt, synthetic equity, or a
22 combination thereof, including returns ob-
23 tained from cash interest, payment-in-kind
24 interest, and stock warrants; and

1 “(iv) any investment that is not a cov-
2 ered investment is an investment in a
3 small business concern;

4 “(25) the term ‘employee stock ownership plan’
5 has the meaning given that term in section 4975(e)
6 of the Internal Revenue Code of 1986;

7 “(26) the term ‘independent trustee’ means a
8 trustee that—

9 “(A) is in the profession of serving as a fi-
10 duciary for employee stock ownership plans;

11 “(B) has never—

12 “(i) performed services for or on be-
13 half of any party selling an ownership in-
14 terest in the covered small business con-
15 cern to the employee stock ownership plan
16 involved in the transaction the trustee is
17 considering; or

18 “(ii) been a director, officer, or em-
19 ployee of the covered small business con-
20 cern;

21 “(C) has not performed services for or on
22 behalf of the covered small business concern at
23 any time during the 5-year period ending on the
24 date of execution of the transaction the trustee
25 is considering, unless such services solely con-

1 sisted of acting as a fiduciary of an employee
2 benefit plan (including an employee stock own-
3 ership plan) under the Employee Retirement
4 Income Security Act of 1974 (29 U.S.C. 1001
5 et seq.);

6 “(D) has not performed services related to
7 the transaction the trustee is considering, for or
8 on behalf of—

9 “(i) the employee equity investment
10 company that is preparing to or has al-
11 ready allocated capital to the covered small
12 business; or

13 “(ii) any other entity that is struc-
14 turing or financing the transaction for any
15 party other than the employee stock owner-
16 ship plan; and

17 “(E) does not have a familial or corporate
18 relationship (such as a parent-subsidiary rela-
19 tionship) to any person or entity described in
20 subparagraph (B), (C), or (D);

21 “(27) the term ‘independent financial advisor’
22 means a financial or valuation advisor that—

23 “(A) is in the profession of serving as a fi-
24 nancial or valuation advisor for transactions in-
25 volving employee stock ownership plans;

1 “(B) has never—

2 “(i) performed services, including a
3 preliminary valuation, for or on behalf of—

4 “(I) any party selling an owner-
5 ship interest in the covered small
6 business concern to the employee
7 stock ownership plan involved in the
8 transaction the advisor is evaluating;
9 or

10 “(II) the covered small business
11 concern, unless the services were pro-
12 vided solely to an existing employee
13 stock ownership plan sponsored by the
14 covered small business concern; or

15 “(ii) been a director, officer, or em-
16 ployee of the covered small business con-
17 cern;

18 “(C) has not performed services related to
19 the transaction the advisor is evaluating, includ-
20 ing a preliminary valuation, for or on behalf
21 of—

22 “(i) the employee equity investment
23 company that is preparing to or has al-
24 ready allocated capital to the covered small
25 business; or

1 “(ii) any other entity that is struc-
2 turing or financing the transaction for any
3 party other than the employee stock owner-
4 ship plan; and

5 “(D) does not have a familial or corporate
6 relationship (such as a parent-subsidary rela-
7 tionship) to any of person or entity described in
8 subparagraph (B) or (C);

9 “(28) the term ‘non-EEIC company’ means a
10 small business investment company that—

11 “(A) is licensed under section 301;

12 “(B) is selected to receive leverage from
13 the facility established under section 321; and

14 “(C) is not an employee equity investment
15 company;

16 “(29) the term ‘outstanding stock’ means
17 shares of stock, including synthetic equity;

18 “(30) the term ‘Protege EEIC’ means an entity
19 licensed under section 301 as an employee equity in-
20 vestment company and selected in accordance with
21 section 322(c)—

22 “(A) for which the managers of the firm
23 have a documented record of successful busi-
24 ness experience; and

1 “(B) that has an investment track record
2 that does not meet the requirements to be li-
3 censed under section 301; and

4 “(31) the term ‘synthetic equity’ has the mean-
5 ing given that term in section 409(p)(6) of the In-
6 ternal Revenue Code of 1986.”.

7 (b) EMPLOYEE EQUITY INVESTMENT FACILITY.—
8 Part A of title III of the Small Business Investment Act
9 of 1958 (15 U.S.C. 681 et seq.) is amended by adding
10 at the end the following:

11 **“SEC. 321. EMPLOYEE EQUITY INVESTMENT FACILITY.**

12 “(a) DEFINITION OF FACILITY.—In this section, the
13 term ‘facility’ means the facility established under sub-
14 section (b).

15 “(b) ESTABLISHMENT.—The Administrator, acting
16 through the Associate Administrator of the Office of In-
17 vestment and Innovation of the Administration, shall es-
18 tablish and carry out a facility to provide leverage to li-
19 censed employee equity investment companies and non-
20 EEIC companies for the purpose of encouraging covered
21 investments.

22 “(c) APPLICATION.—

23 “(1) IN GENERAL.—An investment firm desir-
24 ing to participate in the facility shall submit to the
25 Administrator an application—

1 “(A) to be licensed to participate in the fa-
2 cility as an employee equity investment com-
3 pany (including as a Protege EEIC); or

4 “(B) to be selected to participate as a non-
5 EEIC company.

6 “(2) ROLLING BASIS.—The Administrator shall
7 accept applications under paragraph (1) on a rolling
8 basis.

9 “(3) ELECTRONIC SUBMISSIONS.—The Admin-
10 istrator shall allow an applicant under this section to
11 electronically submit any document required by this
12 section and to provide an electronic signature for
13 any signature that is required on such a document.

14 “(4) APPLICATION PROCESS.—An investment
15 firm shall identify an intent to be licensed as an em-
16 ployee equity investment company at the time the in-
17 vestment firm applies to be licensed as a small busi-
18 ness investment company under section 301.

19 “(d) PROVISIONAL APPROVAL.—The Administrator
20 may provide provisional approval for a license to partici-
21 pate in the facility as an employee equity investment com-
22 pany for a period not to exceed 1 year to an investment
23 firm submitting an application under subsection (c)—

24 “(1) that does not meet the minimum private
25 capital requirements under section 302 necessary for

1 licensing under section 301 at the time of applica-
2 tion;

3 “(2) that states an intent to more effectively
4 raise capital commitments in private markets with a
5 license; and

6 “(3) that states an intent to more precisely re-
7 quest the desired amount of leverage contingent on
8 securing capital from private market investors.

9 “(e) COMBINED LEVERAGE.—The Administrator
10 may not provide leverage to employee equity investment
11 companies and non-EEIC companies under the facility in
12 a total amount that is more than \$5,000,000,000 for a
13 fiscal year. Not more than 20 percent of such total amount
14 may be provided to non-EEIC companies.

15 “(f) TRANSACTION REQUIREMENTS.—

16 “(1) IN GENERAL.—With respect to a covered
17 investment described in section 103(21)(A) involving
18 a sale to an employee stock ownership plan, an inde-
19 pendent trustee for the employee stock ownership
20 plan shall be appointed before the execution of the
21 covered investment for a period of time that is suffi-
22 cient for the independent trustee to fully evaluate
23 the proposed transaction.

24 “(2) FAIRNESS OPINION.—An independent
25 trustee appointed under paragraph (1) shall obtain

1 a fairness opinion on the proposed covered invest-
2 ment from an independent financial advisor, which
3 shall evaluate whether the price, terms, and cost of
4 financing of the proposed covered investment are fi-
5 nancially fair to the employee stock ownership plan.

6 “(g) PROHIBITIONS.—

7 “(1) FINANCING.—

8 “(A) IN GENERAL.—An employee of a cov-
9 ered small business concern may not provide
10 personal financing of any kind for a covered in-
11 vestment, including through a wage concession
12 or rollover of a retirement plan.

13 “(B) EXCEPTIONS.—Subparagraph (A)
14 shall not apply to—

15 “(i) financing provided by an em-
16 ployee for the sale of an ownership interest
17 held by the employee in a covered small
18 business concern; or

19 “(ii) employee capital contributions or
20 membership fees paid by members of an el-
21 igible worker-owned cooperative, if such
22 amounts are reasonable and customary
23 and not used for the purchase of the cov-
24 ered small business concern.

1 “(2) CONTROL.—An employee equity invest-
2 ment company or non-EEIC company shall not exer-
3 cise control over a covered small business concern in
4 which the employee equity investment company or
5 non-EEIC company, respectively, has made a cov-
6 ered investment.

7 “(h) EMPLOYEE ALLOCATIONS.—With respect to a
8 covered investment described in section 103(21)(A) made
9 by an employee equity investment company that involves
10 an employee stock ownership plan, the employee stock
11 ownership plan shall include a requirement that in the
12 event of a sale to a third party of the covered small busi-
13 ness concern in which the covered investment is made, the
14 proceeds that the employee stock ownership plan receives
15 from the sale shall be distributed as though all shares of
16 stock held by the employee stock ownership plan prior to
17 the sale were fully allocated.

18 “(i) RECIRCULATION OF SHARES.—

19 “(1) SHARE COUNT.—With respect to a covered
20 investment described in section 103(21)(A) made by
21 an employee equity investment company that in-
22 volves an employee stock ownership plan, the num-
23 ber of shares held by the employee stock ownership
24 plan on the final date of each plan year shall not be
25 less than the number of shares held by the employee

1 stock ownership plan on the execution date of the
2 covered investment.

3 “(2) LIMITATION.—The requirements under
4 paragraph (1) shall apply only with respect to the
5 period during which the employee equity investment
6 company has an interest in the covered small busi-
7 ness concern.

8 “(3) EXCEPTION.—The requirement under
9 paragraph (1) may be waived by the independent
10 trustee for the applicable employee stock ownership
11 plan.

12 “(j) INDEPENDENT TRUSTEES.—With respect to a
13 covered investment described in section 103(21)(A) made
14 by an employee equity investment company that involves
15 an employee stock ownership plan, the employee stock
16 ownership plan shall have an independent trustee during
17 the period that the employee equity investment company
18 has an interest in the covered small business concern.

19 “(k) SMALLER ENTERPRISES.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), section 303(d) shall not apply to em-
22 ployee equity investment companies.

23 “(2) PROTEGEE EEICS.—Section 303(d) shall
24 apply to a Protegee EEIC.

1 “(1) PROCEDURES RELATED TO A SALE OF A COV-
2 ERED SMALL BUSINESS CONCERN.—

3 “(1) IN GENERAL.—Subject to paragraph (2),
4 an employee equity investment company shall re-
5 quire as a condition of making a covered investment
6 described in section 103(21)(A) involving an em-
7 ployee stock ownership plan that—

8 “(A) before any stock sale or the execution
9 of any corporate matter listed in section
10 409(e)(3) of the Internal Revenue Code of
11 1986, the employee stock ownership plan
12 shall—

13 “(i) appoint an independent trustee
14 for the transaction; and

15 “(ii) require that the independent
16 trustee obtain a fairness opinion from an
17 independent financial advisor, which shall
18 evaluate whether the price, terms, and cost
19 of financing of the proposed covered invest-
20 ment are financially fair to the employee
21 stock ownership plan; and

22 “(B) the employee stock ownership plan
23 requires that—

24 “(i) in addition to the corporate mat-
25 ters listed in section 409(e)(3) of the In-

1 ternal Revenue Code of 1986, each partici-
2 pant or beneficiary in the employee stock
3 ownership plan is entitled to direct the em-
4 ployee stock ownership plan as to the man-
5 ner in which voting rights under securities
6 of the employer which are allocated to the
7 account of such participant or beneficiary
8 are to be exercised with respect to the ap-
9 proval or disapproval of any stock sale;

10 “(ii) the requirements of section
11 409(e)(3) of the Internal Revenue Code of
12 1986 and clause (i) of this subparagraph
13 shall be met using the procedures de-
14 scribed in section 409(e)(5) of the Internal
15 Revenue Code of 1986;

16 “(iii) unless the parties agree other-
17 wise, with respect to unallocated shares,
18 the independent trustee shall be directed to
19 vote or tender such unallocated shares in
20 the same proportion as allocated shares for
21 which the independent trustee has received
22 voting or tender instructions from partici-
23 pants in the employee stock ownership
24 plan; and

1 “(iv) with respect to allocated shares
2 that the independent trustee does not re-
3 ceive voting or tender instructions from
4 participants in the employee stock owner-
5 ship plan, the independent trustee shall
6 have voting discretion over such shares.

7 “(2) VOTING DISCRETION.—Nothing in para-
8 graph (1)(B) shall limit the ability of an inde-
9 pendent trustee to exercise voting discretion in ac-
10 cordance with the fiduciary obligations of the inde-
11 pendent trustee under the Employee Retirement In-
12 come Security Act of 1974 (29 U.S.C. 1001 et seq.).

13 “(3) LIMITATION.—The requirements under
14 paragraph (1) shall apply only with respect to the
15 period during which the employee equity investment
16 company has an interest in the covered small busi-
17 ness concern.

18 “(m) REPORTS.—In addition to the reporting re-
19 quirements in 310(b), each employee equity investment
20 company (including each Protege EEIC licensed to oper-
21 ate as an employee equity investment company) and each
22 non-EEIC company that has outstanding leverage received
23 from the facility shall submit to the Administrator an an-
24 nual report, which shall include, for the year covered by
25 the report, the following information, disaggregated by

1 covered investments made under subparagraph (A) and
2 (B) of section 103(21):

3 “(1) Whether the covered investment was made
4 with respect to an employee stock ownership plan or
5 eligible worker-owned cooperative.

6 “(2) For an employee stock ownership plan—

7 “(A) the effective date of the plan;

8 “(B) the number of active plan partici-
9 pants;

10 “(C) the number of employees of the cov-
11 ered small business concern for which the em-
12 ployee stock ownership plan is established;

13 “(D) the total value of employer securities,
14 as determined by an independent appraiser
15 hired by the independent trustee of the em-
16 ployee stock ownership plan;

17 “(E) the total plan assets;

18 “(F) the total contributions during the
19 plan year;

20 “(G) the total distributions during the plan
21 year;

22 “(H) the median account asset balance;

23 and

1 “(I) demographic information of plan par-
 2 ticipants, disaggregated by race, gender, and
 3 State.

4 “(3) For an eligible worker-owned coopera-
 5 tive—

6 “(A) the number of member-owners;

7 “(B) the number of employees of the cov-
 8 ered small business concern for which the eligi-
 9 ble worker-owned cooperative is established;

10 “(C) the total value of employer securities;

11 “(D) the aggregate assets of all member-
 12 ship accounts of the cooperative;

13 “(E) the median membership account bal-
 14 ance; and

15 “(F) demographic information of member-
 16 ship base, disaggregated by race, gender, and
 17 State.

18 “(n) IMPLEMENTATION MILESTONES.—

19 “(1) IN GENERAL.—Not later than 180 days
 20 after the date of enactment of this section, the Ad-
 21 ministrator shall begin accepting applications to be
 22 licensed to participate in the facility as an employee
 23 equity investment company (including as a Protege
 24 EEIC).

1 “(2) EXCLUSION OF LEVERAGE.—Not later
2 than 1 year after the date of enactment of this sec-
3 tion, the Administrator shall begin excluding from
4 the calculation of outstanding leverage, as described
5 in section 303(b)(2)(F), covered investments de-
6 scribed in clause (iii) of such section.

7 “(3) LICENSE TIMELINE.—Not later than 1
8 year after the date of enactment of this section, the
9 Administrator shall approve the first tranche of li-
10 censes to participate in the facility as an employee
11 equity investment company (including as a Protege
12 EEIC) with respect to applicants that satisfy the ap-
13 plicable eligibility criteria.

14 “(o) SUNSET.—

15 “(1) DEFINITION.—In this subsection, the term
16 ‘sunset date’ means the first day of the twentieth
17 calendar year that begins after the date on which
18 the Administrator approves the first license to par-
19 ticipate in the facility as an employee equity invest-
20 ment company (including as a Protege EEIC).

21 “(2) TERMINATION OF AUTHORITY.—On and
22 after the sunset date, the Administrator may not li-
23 cense an entity to participate in the facility as an
24 employee equity investment company (including as a

1 Protege EEIC) or select an entity to participate in
2 the facility as a non-EEIC company.

3 “(3) CONTINUED PARTICIPATION BY EXISTING
4 ENTITIES.—Nothing in paragraph (2) shall be con-
5 strued to prohibit—

6 “(A) an employee equity investment com-
7 pany from continuing to draw leverage on and
8 after the sunset date that was committed to the
9 entity through the facility before the sunset
10 date; or

11 “(B) a non-EEIC company from con-
12 tinuing to receive an exclusion in the calculation
13 of outstanding leverage by the Administrator,
14 as described in section 303(b)(2)(F), for cov-
15 ered investments described in clause (iii) of
16 such section made to a covered small business
17 before the sunset date.

18 “(4) APPLICATION.—The Administrator shall
19 not consider paragraph (2) as a factor in the deci-
20 sion to license an entity to participate in the facility
21 as an employee equity investment company (includ-
22 ing as a Protege EEIC) or to select an entity to par-
23 ticipate in the facility as a non-EEIC company be-
24 fore the sunset date.”.

1 (c) EMPLOYEE EQUITY INVESTMENT COMPANY PRO-
2 CEDURES.—Title III of the Small Business Investment
3 Act of 1958 (15 U.S.C. 681 et seq.) is amended—

4 (1) in section 301(c) (15 U.S.C. 681(c)), by
5 striking paragraph (3) and inserting the following:

6 “(3) MATTERS CONSIDERED.—

7 “(A) IN GENERAL.—In reviewing and proc-
8 essing any application under this subsection,
9 the Administrator—

10 “(i) shall determine whether—

11 “(I) the applicant meets the re-
12 quirements of subsections (a) and (c)
13 of section 302; and

14 “(II) the management of the ap-
15 plicant is qualified and has the knowl-
16 edge, experience, and capability nec-
17 essary to comply with this Act;

18 “(ii) shall take into consideration—

19 “(I) the need for and availability
20 of financing for small business con-
21 cerns in the geographic area in which
22 the applicant is to commence busi-
23 ness;

1 “(II) the general business reputa-
2 tion of the owners and management of
3 the applicant; and

4 “(III) the probability of success-
5 ful operations of the applicant, includ-
6 ing adequate profitability and finan-
7 cial soundness;

8 “(iii) shall not take into consideration
9 any projected shortage or unavailability of
10 leverage; and

11 “(iv) shall give first priority to an ap-
12 plicant that is located in an underlicensed
13 State with below median financing, as de-
14 termined by the Administrator.

15 “(B) ADDITIONAL MATTERS CONSIDERED
16 FOR EMPLOYEE EQUITY INVESTMENT COMPA-
17 NIES.—

18 “(i) INVESTMENT TRACK RECORD.—
19 Except as provided in clause (ii), an appli-
20 cant for a license to operate as an em-
21 ployee equity investment company shall
22 submit to the Administrator proof that the
23 managers of the applicant have a track
24 record of managing investments, including
25 structured investments, realized or unreal-

1 ized, in an employee stock ownership plan
2 or eligible worker-owned cooperative.

3 “(ii) ADVISORY REQUIREMENT.—An
4 applicant that does not have an investment
5 track record described in clause (i) or that
6 is a Protege EEIC shall submit to the Ad-
7 ministrator evidence that the applicant has
8 retained or will retain a legal, accounting,
9 or financial advisory firm with at least 5
10 years of experience in structuring employee
11 stock ownership plans or eligible worker-
12 owned cooperatives.

13 “(iii) LIMITATION.—The Adminis-
14 trator may not reject an applicant for a li-
15 cense to operate as an employee equity in-
16 vestment company solely because the appli-
17 cant lacks a sufficient track record in real-
18 ized investments if the applicant dem-
19 onstrates an otherwise successful invest-
20 ment track record that includes unrealized
21 covered investments.”; and

22 (2) in section 303(b)(2) (15 U.S.C.
23 683(b)(2))—

24 (A) in subparagraph (A), in the matter
25 preceding clause (i), by striking “The max-

1 imum” and inserting “Except as provided oth-
2 erwise in this paragraph, the maximum”; and

3 (B) by adding at the end the following—

4 “(E) EMPLOYEE EQUITY INVESTMENT
5 COMPANIES.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in subparagraph (G), the maximum
8 amount of outstanding leverage made
9 available to any 1 employee equity invest-
10 ment company may not exceed the lesser
11 of—

12 “(I) 100 percent of the private
13 capital of such company; or

14 “(II) \$350,000,000.

15 “(ii) MULTIPLE LICENSES UNDER
16 COMMON CONTROL.—The maximum
17 amount of outstanding leverage made
18 available to 2 or more employee equity in-
19 vestment companies that are commonly
20 controlled (as determined by the Adminis-
21 trator) and not under capital impairment
22 may not exceed \$700,000,000.

23 “(F) NON-EEIC COMPANY EMPLOYEE
24 OWNERSHIP INVESTMENTS.—

1 “(i) IN GENERAL.—A non-EEIC com-
2 pany may access leverage from the facility
3 established under section 321 in addition
4 to any leverage such non-EEIC company is
5 otherwise eligible to receive solely for the
6 purpose described in clause (ii) and subject
7 to the limitation under clause (iv).

8 “(ii) PURPOSE.—The purpose de-
9 scribed in this clause is for the purpose of
10 making covered investments described in
11 section 103(21)(B) (excluding synthetic eq-
12 uity).

13 “(iii) OUTSTANDING LEVERAGE.—
14 Subject to the limitation under clause (iv),
15 in calculating the outstanding leverage of a
16 non-EEIC company for purposes of sub-
17 paragraphs (A)(ii) and (B), the Adminis-
18 trator shall exclude the amount of leverage
19 outstanding to covered small business con-
20 cerns for a covered investment described in
21 section 103(21)(B) (excluding synthetic eq-
22 uity) made by such non-EEIC company.

23 “(iv) LIMITATION.—The amount of le-
24 verage provided under clause (i) that is ex-

1 cluded under clause (iii) may not exceed
2 \$50,000,000.

3 “(G) PROTEGE EEICS.—The maximum
4 amount of outstanding leverage made available
5 under the facility established under section 321
6 to any 1 Protege EEIC may not to exceed the
7 lesser of—

8 “(i) 100 percent of the private capital
9 of the Protege EEIC; or

10 “(ii) \$100,000,000.”.

11 (d) CONFORMING AMENDMENT.—Section 308(g) of
12 the Small Business Investment Act of 1958 (15 U.S.C.
13 687(g)) is amended by adding at the end the following:

14 “(4) In its annual report for the year ending on De-
15 cember 31, 2023, and in each succeeding annual report
16 made pursuant to section 10(a) of the Small Business Act,
17 the Administration shall include full and detailed aggre-
18 gate data regarding—

19 “(A) employee stock ownership plans created by
20 an employee equity investment company, including—

21 “(i) the total number of active plan partici-
22 pants;

23 “(ii) the total number of employees of the
24 covered small business concerns with such em-
25 ployee stock ownership plans;

1 “(iii) the total value of employer securities,
2 as determined by the independent appraisers
3 hired by the independent trustee of each em-
4 ployee stock ownership plan;

5 “(iv) the total plan assets;

6 “(v) the total contributions during the plan
7 year;

8 “(vi) the total distributions during the plan
9 year;

10 “(vii) the median account asset balance;
11 and

12 “(viii) demographic information of plan
13 participants, disaggregated by race, gender,
14 State;

15 “(B) eligible worker-owned cooperatives created
16 by employee equity investment companies, includ-
17 ing—

18 “(i) the number of member-owners;

19 “(ii) the total number of employees of the
20 covered small business concern with such eligi-
21 ble worker-owned cooperatives;

22 “(iii) the total value of employer securities;

23 “(iv) the assets of all membership ac-
24 counts;

1 “(v) the median membership account bal-
2 ance; and

3 “(vi) demographic information of member-
4 ship base, disaggregated by race, gender, and
5 State; and

6 “(C) non-EEIC companies that received lever-
7 age from the facility, including—

8 “(i) the total amount of such leverage ex-
9 cluded by the Administrator pursuant to section
10 321(e)(3)(C);

11 “(ii) the number of employee stock owner-
12 ship plans and eligible worker-owned coopera-
13 tives that received capital from a non-EEIC
14 company during the year covered by the report;
15 and

16 “(iii) the geographic location of each em-
17 ployee stock ownership plan and eligible worker-
18 owned cooperative described in clause (ii).”.

19 **SEC. 3. PROTEGE EEIC PROGRAM.**

20 Part A of title III of the Small Business Investment
21 Act of 1958 (15 U.S.C. 681 et seq.), as amended by sec-
22 tion 2, is further amended by adding at the end the fol-
23 lowing:

1 **“SEC. 322. PROTEGE EEIC PROGRAM.**

2 “(a) ESTABLISHMENT.—The Administrator shall es-
3 tablish a program to be known as the ‘Protege EEIC Pro-
4 gram’ under which a manager with substantial experience
5 in operating small business investment companies may
6 enter into a written agreement approved by the Adminis-
7 trator to provide guidance and assistance to a Protege
8 EEIC with respect to—

9 “(1) applying for a license for the Protege
10 EEIC to operate as an employee equity investment
11 company; and

12 “(2) management of the employee equity invest-
13 ment company after licensure.

14 “(b) APPLICATION.—After entering into a written
15 agreement described in subsection (a), the Protege EEIC
16 shall apply for a license under section 301.

17 “(c) SELECTION.—The Administrator may grant a li-
18 cense to a Protege EEIC to operate as an employee equity
19 investment company under section 301 based on the in-
20 vestment track record of one or more of the managers that
21 have entered into a written agreement described in sub-
22 section (a) with the applicant Protege EEIC.

23 “(d) REQUIREMENTS FOR MANAGERS.—If a manager
24 enters into a written agreement described under sub-
25 section (a)—

1 “(1) the manager may hold a minority financial
2 interest in the employee equity investment company
3 that is to be managed by the Protege EEIC;

4 “(2) the otherwise applicable maximum amount
5 of outstanding leverage that may be made available
6 to any one licensed company of the manager under
7 section 303(b)(2)(A) shall be increased by
8 \$17,500,000; and

9 “(3) the otherwise applicable maximum amount
10 of outstanding leverage that may be made available
11 to any two or more licensed companies that are com-
12 monly controlled by the manager under section
13 303(b)(2)(B) shall be increased by \$35,000,000.”.

14 **SEC. 4. OFFICE OF EMPLOYEE OWNERSHIP.**

15 Part A of title III of the Small Business Investment
16 Act of 1958 (15 U.S.C. 681 et. seq.), as amended by sec-
17 tion 3, is further amended by adding at the end the fol-
18 lowing:

19 **“SEC. 323. OFFICE OF EMPLOYEE OWNERSHIP.**

20 “(a) ESTABLISHMENT.—There is established in the
21 Administration an Office of Employee Ownership (in this
22 section referred to as the ‘Office’) which shall be respon-
23 sible for—

1 “(1) developing expertise in employee stock
2 ownership plans and eligible worker-owned coopera-
3 tives; and

4 “(2) assisting small business concerns in proc-
5 esses relating to a sale of such concerns to an em-
6 ployee stock ownership plan or eligible worker-owned
7 cooperative.

8 “(b) DUTIES.—The Office shall—

9 “(1) provide outreach and educational materials
10 to small business investment companies about the
11 facility established under section 321;

12 “(2) maintain and publish a list of legal, ac-
13 counting, or financial advisory firms with at least 5
14 years of experience in structuring employee stock
15 ownership plans or eligible worker-owned coopera-
16 tives;

17 “(3) establish a Small Business Employee Own-
18 ership and Cooperatives Promotion Program to offer
19 technical assistance and training to employee-owned
20 business concerns (as defined in section 21(c)(3)(U)
21 of the Small Business Act (15 U.S.C. 648(c)(3)(U))
22 on the transition to employee ownership;

23 “(4) coordinate with small business develop-
24 ment centers on implementing the requirements re-
25 lating to employee-owned business concerns under

1 section 21(c)(3) of the Small Business Act (15
2 U.S.C. 648(c)(3)); and

3 “(5) coordinate with leaders in the field, as de-
4 termined by the Administrator, to develop outreach
5 and educational materials on employee ownership in
6 multiple languages.”.

7 **SEC. 5. MODIFYING UNCONDITIONAL OWNERSHIP AND**
8 **CONTROL REQUIREMENTS FOR CERTAIN EM-**
9 **PLOYEE-OWNED SMALL BUSINESS CON-**
10 **CERNS.**

11 (a) REPORT ON OWNERSHIP AND CONTROL
12 THROUGH AN EMPLOYEE STOCK OWNERSHIP PLAN OR
13 ELIGIBLE WORKER-OWNED COOPERATIVE RELATING TO
14 SET-ASIDE PROCUREMENT.—

15 (1) DEFINITIONS.—In this subsection—

16 (A) the term “Administrator” means the
17 Administrator of the Small Business Adminis-
18 tration;

19 (B) the term “eligible worker-owned coop-
20 erative” has the meaning given that term in
21 section 1042(c) of the Internal Revenue Code of
22 1986; and

23 (C) the term “employee stock ownership
24 plan” has the meaning given that term in sec-

1 tion 4975(e) of the Internal Revenue Code of
2 1986.

3 (2) SENSE OF CONGRESS.—It is the sense of
4 Congress that—

5 (A) employee stock ownership plans and el-
6 igible worker-owned cooperatives have unique
7 ownership structures that create barriers to ac-
8 cessing set-aside procurement programs due to
9 unconditional ownership and control require-
10 ments; and

11 (B) the ownership structures of an em-
12 ployee stock ownership plan or an eligible work-
13 er-owned cooperative should not prevent an oth-
14 erwise eligible entity from accessing set-aside
15 procurement programs.

16 (3) STUDY AND REPORT.—

17 (A) STUDY.—The Administrator, in coordi-
18 nation with stakeholders, including women-
19 owned small business third-party certifiers and
20 relevant Federal agencies, shall study and rec-
21 ommend alternatives to unconditional ownership
22 and control requirements for employee stock
23 ownership plans and eligible worker-owned co-
24 operatives that would enable access to set-aside
25 procurement programs.

1 (B) REPORT.—Not later than 180 days
2 after the date of enactment of this Act, the Ad-
3 ministrator shall submit to Congress the rec-
4 ommendations developed under subparagraph
5 (A) and a plan to implement the recommenda-
6 tions for all set-aside procurement programs,
7 including identifying any applicable statutory
8 changes necessary to implement such rec-
9 ommendations.

10 (b) RULEMAKING.—Not later than 180 days after the
11 submission of the report required under subsection
12 (a)(3)(B), the Administrator of the Small Business Ad-
13 ministration shall issue or revise any applicable rules to
14 carry out the recommendations formed in the report.

15 (c) GRACE PERIOD.—

16 (1) SMALL BUSINESS CONCERNS OWNED AND
17 CONTROLLED BY SOCIALLY AND ECONOMICALLY DIS-
18 ADVANTAGED INDIVIDUALS.—Section 8(a) of the
19 Small Business Act (15 U.S.C. 637(a)) is amended
20 by adding at the end the following:

21 “(22) CONCERNS OWNED BY EMPLOYEE STOCK
22 OWNERSHIP PLANS OR ELIGIBLE WORKER-OWNED
23 COOPERATIVES.—

24 “(A) IN GENERAL.—For the purposes of
25 determining ownership and control of a concern

1 under this subsection for award of a contract
2 through a competition restricted to small busi-
3 ness concerns owned and controlled by socially
4 and economically disadvantaged individuals, any
5 interest in such concern held by an employee
6 stock ownership plan or an eligible worker-
7 owned cooperative shall be treated in the same
8 manner as an interest held by the socially and
9 economically disadvantaged individuals upon
10 whom eligibility is based if—

11 “(i) such concern was a socially and
12 economically disadvantaged small business
13 concern prior to the sale to an employee
14 stock ownership plan or an eligible worker-
15 owned cooperative; and

16 “(ii) the chief corporate officer and a
17 majority of the board of directors of such
18 concern are socially and economically dis-
19 advantaged individuals.

20 “(B) APPLICABILITY.—The requirements
21 of subparagraph (A) shall apply for the 2-year
22 period beginning on the date on which the ma-
23 jority of the stock of such concern was acquired
24 by an employee stock ownership plan or eligible
25 worker-owned cooperative.”.

1 (d) SMALL BUSINESS CONCERNS OWNED AND CON-
2 TROLLED BY WOMEN.—Section 8(m) of the Small Busi-
3 ness Act (15 U.S.C. 637(m)) is amended by adding at the
4 end the following:

5 “(9) CONCERNS OWNED BY EMPLOYEE STOCK
6 OWNERSHIP PLANS OR ELIGIBLE WORKER-OWNED
7 COOPERATIVES.—

8 “(A) IN GENERAL.—Notwithstanding any
9 other provision of law, for the purposes of de-
10 termining ownership and control of a concern
11 under this subsection for award of a contract
12 through a competition restricted to small busi-
13 ness concerns owned and controlled by women,
14 any interest in such concern held by an em-
15 ployee stock ownership plan or an eligible work-
16 er-owned cooperative, shall be treated in the
17 same manner as an interest held by the women
18 upon whom eligibility is based if—

19 “(i) such concern was a small busi-
20 ness concern owned and controlled by
21 women prior to the sale to an employee
22 stock ownership plan or an eligible worker-
23 owned cooperative; and

1 “(ii) the chief corporate officer and a
2 majority of the board of directors of such
3 concern are women.

4 “(B) APPLICABILITY.—The requirements
5 of subparagraph (A) shall apply for the 2-year
6 period beginning on the date on which the ma-
7 jority of the stock of such concern was acquired
8 by an employee stock ownership plan or eligible
9 worker-owned cooperative.”.

10 (e) SMALL BUSINESS CONCERNS OWNED AND CON-
11 TROLLED BY SERVICE-DISABLED VETERANS.—Section 36
12 of the Small Business Act (15 U.S.C. 657f) by adding at
13 the end the following:

14 “(j) CONCERNS OWNED BY EMPLOYEE STOCK OWN-
15 ERSHIP PLANS OR ELIGIBLE WORKER-OWNED COOPERA-
16 TIVES.—

17 “(1) IN GENERAL.—Notwithstanding any other
18 provision of law, for the purposes of determining
19 ownership and control of a concern under this sec-
20 tion for award of a contract through a competition
21 restricted to small business concerns owned and con-
22 trolled by service-disabled veterans, any interest in
23 such concern held by an employee stock ownership
24 plan or an eligible worker-owned cooperative, shall
25 be treated in the same manner as an interest held

1 by the service-disabled veterans upon whom eligi-
 2 bility is based if—

3 “(A) such concern was a small business
 4 concern owned and controlled by service-dis-
 5 abled veterans prior to the sale to an employee
 6 stock ownership plan or an eligible worker-
 7 owned cooperative; and

8 “(B) the chief corporate officer and a ma-
 9 jority of the board of directors of such concern
 10 are service-disabled veterans.

11 “(2) APPLICABILITY.—The requirements of
 12 paragraph (1) shall apply for the 2-year period be-
 13 ginning on the date on which the majority of the
 14 stock of such concern was acquired by an employee
 15 stock ownership plan or eligible worker-owned coop-
 16 erative.”.

17 (f) DEFINITIONS.—Section 3 of the Small Business
 18 Act (15 U.S.C. 632) is amended by adding at the end the
 19 following:

20 “(gg) EMPLOYEE STOCK OWNERSHIP PLAN.—In this
 21 Act, the term ‘employee stock ownership plan’ has the
 22 meaning given that term in section 4975(e)(7) of the In-
 23 ternal Revenue Code of 1986 (26 U.S.C. 4975(e)(7)).

24 “(hh) ELIGIBLE WORKER-OWNED COOPERATIVE.—
 25 In this Act, the term ‘eligible worker-owned cooperative’

- 1 has the meaning given that term in section 1042(c) of the
- 2 Internal Revenue Code of 1986.”.

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