

114TH CONGRESS  
2D SESSION

# S. 2867

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.

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## IN THE SENATE OF THE UNITED STATES

APRIL 27, 2016

Ms. HEITKAMP (for herself, Mr. HELLER, and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## 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 THE OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION AND THE SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE.**

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3  
4  
5 (a) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—Section 4 of the Securities  
6 Exchange Act of 1934 (15 U.S.C. 78d) is amended by  
7 adding at the end the following:  
8

9 “(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

11 “(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (in this  
12 subsection referred to as the ‘Office’).  
13  
14

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

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

20 “(i) report directly to the Commission;

21 and

22 “(ii) be appointed by the Commission,  
23 from among individuals having experience  
24 in—

25 “(I) advocating for the interests  
26 of small businesses; and

1                   “(II) encouraging small business  
2                   capital formation.

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

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

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 that the businesses and investors may  
2           have with the Commission or with self-regu-  
3           latory organizations;

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 faced by minor-  
12          ity-owned and women-owned small businesses;

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

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

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

1           “(E) conduct outreach to small businesses  
2           and small business investors, including through  
3           regional roundtables, in order to solicit views on  
4           relevant capital formation issues;

5           “(F) to the extent practicable, propose to  
6           the Commission changes in the regulations or  
7           orders of the Commission and to Congress any  
8           legislative, administrative, or personnel changes  
9           that may be appropriate to—

10                  “(i) mitigate problems identified  
11                  under this paragraph; and

12                  “(ii) promote the interests of small  
13                  businesses and small business investors;

14           “(G) consult with the Investor Advocate on  
15           proposed recommendations made under sub-  
16           paragraph (F); and

17           “(H) advise the Investor Advocate on  
18           issues related to small businesses and small  
19           business investors.

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

1 “(6) ANNUAL REPORT ON ACTIVITIES.—

2 “(A) IN GENERAL.—Not later than De-  
3 cember 31 of each year beginning in 2016, the  
4 Advocate for Small Business Capital Formation  
5 shall submit to the Committee on Banking,  
6 Housing, and Urban Affairs of the Senate and  
7 the Committee on Financial Services of the  
8 House of Representatives a report on the activi-  
9 ties of the Advocate for Small Business Capital  
10 Formation during the immediately preceding  
11 fiscal year.

12 “(B) CONTENTS.—Each report required  
13 under subparagraph (A) shall include—

14 “(i) appropriate statistical information  
15 and full and substantive analysis;

16 “(ii) information on steps that the  
17 Advocate for Small Business Capital For-  
18 mation has taken during the reporting pe-  
19 riod to improve—

20 “(I) small business services; and

21 “(II) the responsiveness of the  
22 Commission and self-regulatory orga-  
23 nizations with respect to small busi-  
24 nesses and small business investor  
25 concerns;

1           “(iii) a summary of the most serious  
2 issues encountered by small businesses and  
3 small business investors, including any  
4 unique issues encountered by minority-  
5 owned and women-owned small businesses  
6 and investors in those small businesses,  
7 during the reporting period;

8           “(iv) an inventory of the items sum-  
9 marized under clause (iii), including—

10           “(I) items summarized under  
11 that clause for any prior reporting pe-  
12 riod—

13           “(aa) on which no action  
14 has been taken; or

15           “(bb) that have not been re-  
16 solved to the satisfaction of the  
17 Advocate for Small Business  
18 Capital Formation as of the be-  
19 ginning of the reporting period  
20 covered by the report;

21           “(II) identification of any action  
22 taken by the Commission or the self-  
23 regulatory organization and the result  
24 of the action;

1                   “(III) the length of time that  
2                   each item has remained on the inven-  
3                   tory; and

4                   “(IV) for items on which no ac-  
5                   tion has been taken—

6                   “(aa) the reasons for the in-  
7                   action; and

8                   “(bb) an identification of  
9                   any official who is responsible for  
10                  taking action;

11                  “(v) recommendations for legislative  
12                  actions and changes to the regulations,  
13                  guidance, and orders of the Commission  
14                  that may be appropriate to—

15                  “(I) resolve problems with the  
16                  Commission and self-regulatory orga-  
17                  nizations encountered by small busi-  
18                  nesses and small business investors;  
19                  and

20                  “(II) encourage small business  
21                  capital formation; and

22                  “(vi) any other information, as deter-  
23                  mined appropriate by the Advocate for  
24                  Small Business Capital Formation.



1           “(C) CONFIDENTIALITY.—No report re-  
2           quired under subparagraph (A) may contain  
3           confidential information.

4           “(D) INDEPENDENCE.—Each report re-  
5           quired under subparagraph (A) shall be pro-  
6           vided directly to the committees of Congress  
7           listed in that subparagraph without any prior  
8           review or comment from the Commission, any  
9           commissioner, any other officer or employee of  
10          the Commission, or the Office of Management  
11          and Budget.

12          “(7) REGULATIONS.—The Commission shall es-  
13          tablish procedures requiring a formal response to all  
14          recommendations submitted to the Commission by  
15          the Advocate for Small Business Capital Formation,  
16          not later than 3 months after the date of the sub-  
17          mission.

18          “(8) GOVERNMENT-BUSINESS FORUM ON SMALL  
19          BUSINESS CAPITAL FORMATION.—The Advocate for  
20          Small Business Capital Formation shall be respon-  
21          sible for planning, organizing, and executing the an-  
22          nual Government-Business Forum on Small Busi-  
23          ness Capital Formation described in section 503 of  
24          the Small Business Investment Incentive Act of  
25          1980 (15 U.S.C. 80c-1).



1 “(2) FUNCTIONS.—

2 “(A) IN GENERAL.—The Committee shall  
3 provide the Commission with advice on the  
4 rules, regulations, and policies of the Commis-  
5 sion with regard to the mission of the Commis-  
6 sion of protecting investors, maintaining fair,  
7 orderly, and efficient markets, and facilitating  
8 capital formation, as those rules, regulations,  
9 and policies relate to—

10 “(i) capital raising—

11 “(I) by—

12 “(aa) emerging companies;

13 and

14 “(bb) smaller public compa-

15 nies; and

16 “(II) through securities offerings,

17 including—

18 “(aa) private and limited of-

19 ferings; and

20 “(bb) initial and other pub-

21 lic offerings;

22 “(ii) trading in the securities of

23 emerging companies and smaller public

24 companies; and

1           “(iii) public reporting and corporate  
2           governance requirements of emerging com-  
3           panies and smaller public companies.

4           “(B) LIMITATION.—The Committee shall  
5           not provide any advice with respect to any poli-  
6           cies, practices, actions, or decisions concerning  
7           the enforcement program of the Commission.

8           “(c) MEMBERSHIP.—

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

11           “(A) the Advocate for Small Business Cap-  
12          ital Formation;

13           “(B) not fewer than 10, and not more than  
14          20, members appointed by the Commission,  
15          from among individuals who—

16           “(i) represent emerging companies en-  
17          gaging in private and limited securities of-  
18          ferings or considering an IPO, including  
19          the officers and directors of the emerging  
20          companies;

21           “(ii) represent the professional advi-  
22          sors of emerging companies, including—

23           “(I) attorneys;

24           “(II) accountants;

25           “(III) investment bankers; and

- 1                   “(IV) financial advisors;
- 2                   “(iii) represent the investors in emerg-
- 3                   ing companies, including—
- 4                   “(I) angel investors;
- 5                   “(II) venture capital funds; and
- 6                   “(III) family offices;
- 7                   “(iv) are officers or directors of mi-
- 8                   nority-owned small businesses and women-
- 9                   owned small businesses;
- 10                  “(v) represent smaller public compa-
- 11                  nies, including the officers and directors of
- 12                  the companies;
- 13                  “(vi) represent the professional advi-
- 14                  sors of smaller public companies, includ-
- 15                  ing—
- 16                  “(I) attorneys;
- 17                  “(II) auditors;
- 18                  “(III) underwriters; and
- 19                  “(IV) financial advisors;
- 20                  “(vii) represent the pre-IPO and post-
- 21                  IPO investors in smaller public companies,
- 22                  which include investors that are—
- 23                  “(I) institutional, such as venture
- 24                  capital funds; and

1 “(II) individual, such as angel in-  
2 vestors; and

3 “(viii) represent participants in the  
4 marketplace for the securities of emerging  
5 companies and smaller public companies,  
6 including—

7 “(I) securities exchanges;

8 “(II) alternative trading systems;

9 “(III) analysts;

10 “(IV) information processors;

11 and

12 “(V) transfer agents; and

13 “(C) 3 non-voting members—

14 “(i) 1 of whom shall be appointed by  
15 the Investor Advocate;

16 “(ii) 1 of whom shall be appointed by  
17 the North American Securities Administra-  
18 tors Association; and

19 “(iii) 1 of whom shall be appointed by  
20 the Administrator of the Small Business  
21 Administration.

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

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

6           “(d) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-  
7           SISTANT SECRETARY.—

8           “(1) IN GENERAL.—The members of the Com-  
9           mittee shall elect, from among the members of the  
10          Committee—

11                   “(A) a chairman;

12                   “(B) a vice chairman;

13                   “(C) a secretary; and

14                   “(D) an assistant secretary.

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

19          “(e) MEETINGS.—

20                   “(1) FREQUENCY OF MEETINGS.—The Com-  
21          mittee shall meet—

22                           “(A) not less frequently than 4 times an-  
23                           nually, at the call of the chairman of the Com-  
24                           mittee; and

1           “(B) from time to time, at the call of the  
2           Commission.

3           “(2) NOTICE.—The chairman of the Committee  
4           shall give the members of the Committee written no-  
5           tice of each meeting, not later than 2 weeks before  
6           the date of the meeting.

7           “(f) COMPENSATION AND TRAVEL EXPENSES.—  
8           Each member of the Committee who is not a full-time em-  
9           ployee of the United States shall—

10           “(1) be entitled to receive compensation at a  
11           rate not to exceed the daily equivalent of the annual  
12           rate of basic pay in effect for a position at level V  
13           of the Executive Schedule under section 5316 of title  
14           5, United States Code, for each day during which  
15           the member is engaged in the actual performance of  
16           the duties of the Committee; and

17           “(2) while away from the home or regular place  
18           of business of the member in the performance of  
19           services for the Committee, be allowed travel ex-  
20           penses, including per diem in lieu of subsistence, in  
21           the same manner as persons employed intermittently  
22           in the Government service are allowed expenses  
23           under section 5703 of title 5, United States Code.



1       “(g) STAFF.—The Commission shall make available  
2 to the Committee such staff as the chairman of the Com-  
3 mittee determines is necessary to carry out this section.

4       “(h) REVIEW BY COMMISSION.—The Commission  
5 shall—

6               “(1) review the findings and recommendations  
7 of the Committee; and

8               “(2) each time the Committee submits a finding  
9 or recommendation to the Commission, promptly  
10 issue a public statement—

11                       “(A) assessing the finding or recommenda-  
12 tion of the Committee; and

13                       “(B) disclosing the action, if any, the Com-  
14 mission intends to take with respect to the find-  
15 ing or recommendation.

16       “(i) FEDERAL ADVISORY COMMITTEE ACT.—The  
17 Federal Advisory Committee Act (5 U.S.C. App.) shall not  
18 apply with respect to the Committee and the activities of  
19 the Committee.”.

20       (c) ANNUAL GOVERNMENT-BUSINESS FORUM ON  
21 SMALL BUSINESS CAPITAL FORMATION.—Section 503(a)  
22 of the Small Business Investment Incentive Act of 1980  
23 (15 U.S.C. 80e–1(a)) is amended by inserting “, acting  
24 through the Office of the Advocate for Small Business  
25 Capital Formation and in consultation with the Small

- 1 Business Capital Formation Advisory Committee,” after
- 2 “Securities and Exchange Commission”.

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