AMENDMENT TO RULES COMMITTEE PRINT 118-10

OFFERED BY MR. WITTMAN OF VIRGINIA

Add at the end of subtitle D of title VIII the following:

SEC. 8. ESTABLISHMENT OF OFFICE OF STRATEGIC CAPITAL.

(a) IN GENERAL.—Chapter 4 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 148. Office of Strategic Capital

“(a) ESTABLISHMENT.—There is in the Office of the Secretary of Defense an office to be known as the Office of Strategic Capital (in this section referred to as the ‘Office’).

“(b) DIRECTOR.—The Office shall be headed by an Executive Director (in this section referred to as the ‘Director’), who shall be appointed by the Secretary of Defense from among employees of the Department of Defense in Senior Executive Service or equivalent positions (as defined in section 3132 of title 5).

“(c) DUTIES.—The Office shall—
“(1) identify, accelerate, and sustain the establishment, research, development, construction, procurement, leasing, consolidation, alteration, improvement, or repair of tangible and intangible assets vital to national security;

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

“(3) provide capital assistance to eligible entities engaged in eligible investments.

“(d) APPLICATIONS.—An eligible entity seeking capital assistance for an eligible investment shall submit to the Director an application at such time, in such manner, and containing such information as the Director may require.

“(e) SELECTION OF INVESTMENTS.—The Director shall establish criteria for selecting among eligible investments for which applications are submitted under subsection (d). Such criteria shall include—

“(1) the extent to which an investment is significant to the national security of the United States;

“(2) the creditworthiness of an investment; and

“(3) the likelihood that capital assistance provided for an investment would enable the investment
to proceed sooner than the investment would otherwise be able to proceed.

“(f) CAPITAL ASSISTANCE.—The Secretary of Defense is authorized to provide capital assistance within this section.

“(1) LOANS AND LOAN GUARANTEES.—

“(A) IN GENERAL.—The Office may provide loans or loan guarantees to finance or refinance the costs of an eligible investment selected pursuant to subsection (e).

“(B) ADMINISTRATION OF LOANS.—

“(i) INTEREST RATE.—

“(I) IN GENERAL.—Except as provided by subclause (II), the interest rate on a loan provided under subparagraph (A) shall be not less than the yield on marketable United States Treasury securities of a similar maturity to the maturity of the loan on the date of execution of the loan agreement.

“(II) EXCEPTION.—The Director may waive the requirement under subclause (I) with respect to an investment if the investment is determined
by the Secretary of Defense to be vital
to the national security of the United
States.

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

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

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

“(iv) NONSUBORDINATION.—

“(I) IN GENERAL.—A loan pro-
vided under subparagraph (A) shall
not be subordinated to the claims of
any holder of investment obligations
in the event of bankruptcy, insolvency,
or liquidation of the obligor.
“(II) WAIVER.—The Director may waive the requirement under subclause (I) with respect to the investment in order to mitigate risks to loan repayment.

“(v) SALE OF LOANS.—For which a loan is provided under subparagraph (A) and after notifying the obligor, the Director may sell to another entity or reoffer into the capital markets a loan for the investment if the Director determines that the sale or reoffering can be made on favorable terms.

“(vi) LOAN GUARANTEES.—

“(I) IN GENERAL.—If the Director determines that the holder of a loan guaranteed by the Office defaulted on the loan, the Director shall pay the holder as specified in the loan guarantee agreement.

“(II) LOAN GUARANTEE PERCENTAGE.—A loan guarantee agreement entered into by the Office under this paragraph shall specify the percentage of the principal amount of the
loan guaranteed by the Office under such agreement.

“(vii) TERMS AND CONDITIONS.—
Loans and loan guarantees provided under subparagraph (A) shall be subject to such other terms and conditions and contain such other covenants, representations, warranties, and requirements (including requirements for audits) as the Director determines appropriate.

“(viii) INVESTMENT-GRADE RATING.—
The Director shall establish a credit rating system to ensure a reasonable likelihood of repayment of loans made or guaranteed under this subsection. The credit rating system may include the use of existing credit rating agencies as the Director determines appropriate.

“(ix) APPLICABILITY OF FEDERAL CREDIT REFORM ACT OF 1990.—Loans and loan guarantees provided under subparagraph (A) shall be subject to the requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

“(2) EQUITY INVESTMENTS.—
“(A) IN GENERAL.—The Director may, as a minority investor and subject to the availability of appropriations this purpose, support an eligible investment selected pursuant to subsection (e) with funds or use other mechanisms for the purpose of purchasing, and may make and fund commitments to purchase, invest in, make pledges in respect of, or otherwise acquire, equity, warrants, or quasi-equity securities or shares or financial interests of the eligible entity receiving support for the eligible investment, including as a limited partner or other investor in investment funds, upon such terms and conditions as the Director may determine.

“(B) SALES AND LIQUIDATION OF POSITION.—The Office shall seek to sell and liquidate any support for an investment provided under subparagraph (A) as soon as commercially feasible, commensurate with other similar investors in the investment and taking into consideration the national security interests of the United States.

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

“(4) TERMS AND CONDITIONS.—

“(A) FEES.—The Director may charge fees for the provision of capital assistance under this subsection to cover the administrative costs to the Office of providing such assistance.

“(B) USE OF FEES.—Fees collected pursuant to subparagraph (A) may only be used to pay for the cost of administering the activities authorized by this section.

“(C) AMOUNT OF CAPITAL ASSISTANCE.—
The Director shall provide to an eligible investment selected pursuant to subsection (e) the minimum amount of assistance necessary to carry out the investment.

“(D) USE OF UNITED STATES DOLLAR.—
All financial transactions conducted under this subsection shall be conducted in United States dollars.

“(g) ESTABLISHMENT OF ACCOUNTS.—
“(1) CREDIT PROGRAM ACCOUNT.—

“(A) ESTABLISHMENT.—There is established in the Treasury of the United States an account to be known as the ‘Department of Defense Credit Program Account’ (in this subsection referred to as the ‘Credit Program Account’) to make loans and loan guarantees under this section in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

“(B) FUNDING.—The Credit Program Account shall consist of amounts appropriated to the Credit Program Account pursuant to an authorization of appropriations and all fees as described in subparagraph (C).

“(C) FEE AUTHORITY.—

“(i) IN GENERAL.—The Secretary may charge and collect fees for providing capital assistance in an amount to be determined by the Secretary to cover the costs to the Office of providing such capital assistance.

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

“(iii) USE OF FEES.—Fees collected pursuant to clause (i) may only be used to pay for the cost of administering the activities authorized by this section.

“(2) EQUITY ACCOUNT.—

“(A) ESTABLISHMENT.—There is established in the Treasury of the United States an account to be known as the ‘Department of Defense Strategic Capital Equity Account’ (in this subsection referred to as the ‘Strategic Capital Equity Account’).

“(B) FUNDING.—The Strategic Capital Equity Account shall consist of all amounts appropriated to the Strategic Capital Equity Account pursuant to an authorization of appropriations.

“(3) USE OF FUNDS.—Subject to appropriations Acts, the Secretary is authorized to pay, from the Credit Program Account or the Strategic Capital Equity Account—

“(A) the cost, as defined in section 502 of the Federal Credit Reform Act of 1990 (2
(d) The Secretary of Defense shall prescribe regulations as are necessary to carry out this section.

(h) Regulations.—

(1) In general.—The Secretary of Defense shall prescribe such regulations as are necessary to carry out this section.

(2) Limitation on authorities.—The Secretary of Defense may not exercise the authorities under this section prior to promulgating the regulations required by paragraph (1).

(i) Annual report.—Not later than the first Monday in February of each year, the Secretary of Defense shall submit to the congressional defense committees an annual report describing the activities of the Office in the preceding fiscal year and the goals of the Office for the next fiscal year.
“(j) CONGRESSIONAL NOTIFICATION.—Not later than 30 days after the Director exercises the authority under subsection (f) to make a loan or equity investment or to provide a loan guarantee, insurance, or reinsurance, the Secretary of Defense shall notify the congressional defense committees of such exercise of authority.

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

“(l) DEFINITIONS.—In this section:

“(1) CAPITAL ASSISTANCE.—The term ‘capital assistance’ means loans, loan guarantees, equity investments, or technical assistance provided under subsection (f).

“(2) ELIGIBLE ENTITY.—The term ‘eligible entity’ means—

“(A) an individual;

“(B) a corporation, including a limited liability corporation;

“(C) a partnership, including a public-private, limited, and general partnership;

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

“(E) a trust;

“(F) a State, including a political subdivision or any other instrumentality of a State;
“(G) a Tribal government or consortium of Tribal governments;

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

“(I) a multi-State or multijurisdictional group of public entities.

“(3) ELIGIBLE INVESTMENT.—The term ‘eligible investment’ means an investment that facilitates the efforts of the Office—

“(A) to identify, accelerate, and sustain the establishment, research, development, construction, procurement, leasing, consolidation, alteration, improvement, or repair of tangible and intangible assets vital to national security; or

“(B) to protect vital tangible and intangible assets from theft, acquisition, and transfer by countries that are adversaries of the United States.

“(4) INVESTMENT-GRADE RATING.—The Director shall establish a credit rating system to ensure a reasonable reassurance of repayment. This may in-
include use of existing credit rating agencies where appropriate.

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

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

“(7) **SUBSIDY AMOUNT.**—The term ‘subsidy amount’ means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a loan—

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

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

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

“148. Office of Strategic Capital.”.