

AMENDMENT TO RULES COMMITTEE PRINT 118-

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OFFERED BY MR. WITTMAN OF VIRGINIA

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

1 **SEC. 8__ . ESTABLISHMENT OF OFFICE OF STRATEGIC**
2 **CAPITAL.**

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

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

7 “(a) ESTABLISHMENT.—There is in the Office of the
8 Secretary of Defense an office to be known as the Office
9 of Strategic Capital (in this section referred to as the ‘Office’).
10

11 “(b) DIRECTOR.—The Office shall be headed by an
12 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
13
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15
16 (as defined in section 3132 of title 5).

17 “(c) DUTIES.—The Office shall—

1 “(1) identify, accelerate, and sustain the estab-
2 lishment, research, development, construction, pro-
3 curement, leasing, consolidation, alteration, improve-
4 ment, or repair of tangible and intangible assets
5 vital to national security;

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

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

11 “(d) APPLICATIONS.—An eligible entity seeking cap-
12 ital assistance for an eligible investment shall submit to
13 the Director an application at such time, in such manner,
14 and containing such information as the Director may re-
15 quire.

16 “(e) SELECTION OF INVESTMENTS.—The Director
17 shall establish criteria for selecting among eligible invest-
18 ments for which applications are submitted under sub-
19 section (d). Such criteria shall include—

20 “(1) the extent to which an investment is sig-
21 nificant to the national security of the United
22 States;

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

24 “(3) the likelihood that capital assistance pro-
25 vided for an investment would enable the investment

1 to proceed sooner than the investment would other-
2 wise be able to proceed.

3 “(f) CAPITAL ASSISTANCE.—The Secretary of De-
4 fense is authorized to provide capital assistance within this
5 section.

6 “(1) LOANS AND LOAN GUARANTEES.—

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

11 “(B) ADMINISTRATION OF LOANS.—

12 “(i) INTEREST RATE.—

13 “(I) IN GENERAL.—Except as
14 provided by subclause (II), the inter-
15 est rate on a loan provided under sub-
16 paragraph (A) shall be not less than
17 the yield on marketable United States
18 Treasury securities of a similar matu-
19 rity to the maturity of the loan on the
20 date of execution of the loan agree-
21 ment.

22 “(II) EXCEPTION.—The Director
23 may waive the requirement under sub-
24 clause (I) with respect to an invest-
25 ment if the investment is determined

1 by the Secretary of Defense to be vital
2 to the national security of the United
3 States.

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

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

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

19 “(iv) NONSUBORDINATION.—

20 “(I) IN GENERAL.—A loan pro-
21 vided under subparagraph (A) shall
22 not be subordinated to the claims of
23 any holder of investment obligations
24 in the event of bankruptcy, insolvency,
25 or liquidation of the obligor.

1 “(II) WAIVER.—The Director
2 may waive the requirement under sub-
3 clause (I) with respect to the invest-
4 ment in order to mitigate risks to loan
5 repayment.

6 “(v) SALE OF LOANS.—For which a
7 loan is provided under subparagraph (A)
8 and after notifying the obligor, the Direc-
9 tor may sell to another entity or reoffer
10 into the capital markets a loan for the in-
11 vestment if the Director determines that
12 the sale or reoffering can be made on fa-
13 vorable terms.

14 “(vi) LOAN GUARANTEES.—

15 “(I) IN GENERAL.—If the Direc-
16 tor determines that the holder of a
17 loan guaranteed by the Office de-
18 faulted on the loan, the Director shall
19 pay the holder as specified in the loan
20 guarantee agreement.

21 “(II) LOAN GUARANTEE PER-
22 CENTAGE.—A loan guarantee agree-
23 ment entered into by the Office under
24 this paragraph shall specify the per-
25 centage of the principal amount of the

1 loan guaranteed by the Office under
2 such agreement.

3 “(vii) TERMS AND CONDITIONS.—

4 Loans and loan guarantees provided under
5 subparagraph (A) shall be subject to such
6 other terms and conditions and contain
7 such other covenants, representations, war-
8 ranties, and requirements (including re-
9 quirements for audits) as the Director de-
10 termines appropriate.

11 “(viii) INVESTMENT-GRADE RATING.—

12 The Director shall establish a credit rating
13 system to ensure a reasonable likelihood of
14 repayment of loans made or guaranteed
15 under this subsection. The credit rating
16 system may include the use of existing
17 credit rating agencies as the Director de-
18 termines appropriate.

19 “(ix) APPLICABILITY OF FEDERAL

20 CREDIT REFORM ACT OF 1990.—Loans and
21 loan guarantees provided under subpara-
22 graph (A) shall be subject to the require-
23 ments of the Federal Credit Reform Act of
24 1990 (2 U.S.C. 661 et seq.).

25 “(2) EQUITY INVESTMENTS.—

1 “(A) IN GENERAL.—The Director may, as
2 a minority investor and subject to the avail-
3 ability of appropriations this purpose, support
4 an eligible investment selected pursuant to sub-
5 section (e) with funds or use other mechanisms
6 for the purpose of purchasing, and may make
7 and fund commitments to purchase, invest in,
8 make pledges in respect of, or otherwise ac-
9 quire, equity, warrants, or quasi-equity securi-
10 ties or shares or financial interests of the eligi-
11 ble entity receiving support for the eligible in-
12 vestment, including as a limited partner or
13 other investor in investment funds, upon such
14 terms and conditions as the Director may deter-
15 mine.

16 “(B) SALES AND LIQUIDATION OF POSI-
17 TION.—The Office shall seek to sell and liq-
18 uidate any support for an investment provided
19 under subparagraph (A) as soon as commer-
20 cially feasible, commensurate with other similar
21 investors in the investment and taking into con-
22 sideration the national security interests of the
23 United States.

24 “(3) TECHNICAL ASSISTANCE.—Subject to the
25 availability of appropriations, the Director may pro-

1 vide technical assistance with respect to developing
2 and financing investments to eligible entities seeking
3 capital assistance for eligible investments and eligi-
4 ble entities receiving capital assistance under this
5 subsection.

6 “(4) TERMS AND CONDITIONS.—

7 “(A) FEES.—The Director may charge
8 fees for the provision of capital assistance
9 under this subsection to cover the administra-
10 tive costs to the Office of providing such assist-
11 ance.

12 “(B) USE OF FEES.—Fees collected pursu-
13 ant to subparagraph (A) may only be used to
14 pay for the cost of administering the activities
15 authorized by this section.

16 “(C) AMOUNT OF CAPITAL ASSISTANCE.—
17 The Director shall provide to an eligible invest-
18 ment selected pursuant to subsection (e) the
19 minimum amount of assistance necessary to
20 carry out the investment.

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

25 “(g) ESTABLISHMENT OF ACCOUNTS.—

1 “(1) CREDIT PROGRAM ACCOUNT.—

2 “(A) ESTABLISHMENT.—There is estab-
3 lished in the Treasury of the United States an
4 account to be known as the ‘Department of De-
5 fense Credit Program Account’ (in this sub-
6 section referred to as the ‘Credit Program Ac-
7 count’) to make loans and loan guarantees
8 under this section in accordance with the Fed-
9 eral Credit Reform Act of 1990 (2 U.S.C. 661
10 et seq.).

11 “(B) FUNDING.—The Credit Program Ac-
12 count shall consist of amounts appropriated to
13 the Credit Program Account pursuant to an au-
14 thorization of appropriations and all fees as de-
15 scribed in subparagraph (C).

16 “(C) FEE AUTHORITY.—

17 “(i) IN GENERAL.—The Secretary
18 may charge and collect fees for providing
19 capital assistance in an amount to be de-
20 termined by the Secretary to cover the
21 costs to the Office of providing such cap-
22 ital assistance.

23 “(ii) AMOUNT.—The amount of the
24 fees under clause (i) shall equal, but not

1 exceed, the costs to the Office of providing
2 capital assistance.

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

7 “(2) EQUITY ACCOUNT.—

8 “(A) ESTABLISHMENT.—There is estab-
9 lished in the Treasury of the United States an
10 account to be known as the ‘Department of De-
11 fense Strategic Capital Equity Account’ (in this
12 subsection referred to as the ‘Strategic Capital
13 Equity Account’).

14 “(B) FUNDING.—The Strategic Capital
15 Equity Account shall consist of all amounts ap-
16 propriated to the Strategic Capital Equity Ac-
17 count pursuant to an authorization of appro-
18 priations.

19 “(3) USE OF FUNDS.—Subject to appropria-
20 tions Acts, the Secretary is authorized to pay, from
21 the Credit Program Account or the Strategic Capital
22 Equity Account—

23 “(A) the cost, as defined in section 502 of
24 the Federal Credit Reform Act of 1990 (2

1 U.S.C. 661a), of loans and loan guarantees and
2 other capital assistance;

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

5 “(C) project-specific transaction costs
6 under this section;

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

9 “(E) the costs of equity investments under
10 this section.

11 “(h) REGULATIONS.—

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

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

19 “(i) ANNUAL REPORT.—Not later than the first Mon-
20 day in February of each year, the Secretary of Defense
21 shall submit to the congressional defense committees an
22 annual report describing the activities of the Office in the
23 preceding fiscal year and the goals of the Office for the
24 next fiscal year.

1 “(j) CONGRESSIONAL NOTIFICATION.—Not later
2 than 30 days after the Director exercises the authority
3 under subsection (f) to make a loan or equity investment
4 or to provide a loan guarantee, insurance, or reinsurance,
5 the Secretary of Defense shall notify the congressional de-
6 fense committees of such exercise of authority.

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

9 “(l) DEFINITIONS.—In this section:

10 “(1) CAPITAL ASSISTANCE.—The term ‘capital
11 assistance’ means loans, loan guarantees, equity in-
12 vestments, or technical assistance provided under
13 subsection (f).

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

16 “(A) an individual;

17 “(B) a corporation, including a limited li-
18 ability corporation;

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

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

23 “(E) a trust;

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

1 “(G) a Tribal government or consortium of
2 Tribal governments;

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

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

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

12 “(A) to identify, accelerate, and sustain
13 the establishment, research, development, con-
14 struction, procurement, leasing, consolidation,
15 alteration, improvement, or repair of tangible
16 and intangible assets vital to national security;
17 or

18 “(B) to protect vital tangible and intan-
19 gible assets from theft, acquisition, and transfer
20 by countries that are adversaries of the United
21 States.

22 “(4) INVESTMENT-GRADE RATING.—The Direc-
23 tor shall establish a credit rating system to ensure
24 a reasonable reassurance of repayment. This may in-

1 clude use of existing credit rating agencies where ap-
2 propriate.

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

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

12 “(7) SUBSIDY AMOUNT.—The term ‘subsidy
13 amount’ means the amount of budget authority suf-
14 ficient to cover the estimated long-term cost to the
15 Federal Government of a loan—

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

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

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

“148. Office of Strategic Capital.”.

