To establish the Innovation and Startups Equity Investment Program in the Department of the Treasury, through which the Secretary of the Treasury shall allocate money to certain States to assist high-potential scalable startups access venture capital to commercialize innovations, create jobs, and accelerate economic growth, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 26, 2020

Mr. Phillips (for himself, Mr. Khanna, Mr. Ryan, and Ms. Sewell of Alabama) introduced the following bill; which was referred to the Committee on Financial Services.

A BILL

To establish the Innovation and Startups Equity Investment Program in the Department of the Treasury, through which the Secretary of the Treasury shall allocate money to certain States to assist high-potential scalable startups access venture capital to commercialize innovations, create jobs, and accelerate economic growth, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.
This Act may be cited as the “New Business Preservation Act”.

SEC. 2. DEFINITIONS.
In this Act:

(1) APPROVED STATE PROGRAM.—The term “approved State program” means a State program that is approved by the Secretary in accordance with the standards established under section 3(b)(1).

(2) COVERED INVESTMENT.—The term “covered investment” means an equity investment in a startup using amounts made available to carry out the covered programs.

(3) COVERED PROGRAMS.—The term “covered programs” means the Program and the program carried out under section 4.

(4) EQUITY INVESTMENT.—The term “equity investment”—

(A) means an investment for an ownership interest in an entity, the financial return with respect to which is principally aligned with the financial return of the plurality of ownership interests in the entity; and

(B) includes a debt instrument that can be converted to an equity ownership interest in an entity based on future events.
(5) EXIT.—The term “exit”, with respect to a startup in which there is a covered investment, means—

(A) the acquisition of the startup;

(B) after an initial public offering with respect to the startup, the sale of a share of the startup that was obtained through the covered investment; or

(C) the voluntary purchase of ownership interests by the startup, investors, or existing shareholders.

(6) FEDERAL CONTRIBUTION.—The term “Federal contribution” means a contribution made—

(A) by a participating State to, or for the account of, an approved State program; and

(B) with Federal funds allocated to the participating State by the Secretary.

(7) FOLLOW-ON INVESTMENT.—The term “follow-on investment” means a subsequent equity investment in a startup in which there was originally a separate and distinct equity investment under—

(A) a program carried out under the State Small Business Credit Initiative Act of 2010 (12 U.S.C. 5701 et seq.); or

(B) the Program.
(8) Market rate management fee and profit interest.—The term “market rate management fee and profit interest” means the usual and customary compensation structure paid to fund managers for fund investment management services under agreements with private sector limited partners.

(9) Participating state.—The term “participating State” means a State that participates in the Program after having satisfied the approval criteria under section 3(c).

(10) Program.—The term “Program” means the Innovation and Startups Equity Investment Program established under section 3(a).

(11) Qualifying area.—The term “qualifying area” means an area of the United States outside of the major venture capital centers, as determined in the rule making conducted by the Secretary under section 3(e).

(12) Rule; rule making.—The terms “rule” and “rule making” have the meanings given those terms in section 551 of title 5, United States Code.

(13) Secretary.—The term “Secretary” means the Secretary of the Treasury.
(14) STARTUP.—The term “startup” means a business entity that—

(A) has been in existence for less than 10 years;

(B) has the intention or potential to—

(i) significantly scale with respect to revenue and job creation;

(ii) develop innovative products or services; and

(iii) deliver high returns on investment; and

(C) is headquartered in a qualifying area.

(15) STATE.—

(A) IN GENERAL.—The term “State” means—

(i) a State of the United States; and

(ii) the District of Columbia.

(B) RULE OF CONSTRUCTION.—The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall collectively be considered to be 1 State for the purposes of this Act.

(16) STATE PROGRAM.—The term “State program” means a program established by a State to
provide equity investment in startups or venture
capital funds that are headquartered in qualifying
areas, without regard to whether those qualifying
areas are located in the State.

(17) VENTURE CAPITAL FUND.—The term
“venture capital fund” has the meaning given the
term in section 275.203(l)–1 of title 17, Code of
Federal Regulations, or any successor regulation.

SEC. 3. ISEI PROGRAM.

(a) ESTABLISHMENT.—There is established in the
Department of the Treasury the Innovation and Startups
Equity Investment Program—

(1) which shall be administered by the Sec-
retary; and

(2) under which—

(A) the Secretary shall, in accordance with
the provisions of this section, allocate to partici-
pating States—

(i) the amount appropriated under
section 8(a)(1); and

(ii) any future amounts appropriated
to carry out the Program under the au-
thorization provided under section 8(b);

(B) participating States to which funds are
allocated under subparagraph (A) shall,
through approved State programs, provide eq-
uity investment in startups; and

(C) money (including securities) returned
to States after exits with respect to the invest-
ments described in subparagraph (B) shall be
reinvested through follow-on investments, as
further provided in section 5.

(b) DUTIES OF THE SECRETARY.—In administering
the Program, the Secretary shall—

(1) establish minimum standards for a State
program to be considered an approved State pro-
gram;
(2) provide technical assistance to States for
designing State programs and implementing ap-
proved State programs;
(3) disseminate information relating to best
practices with respect to the design and implementa-
tion described in paragraph (2);
(4) perform any managerial or administrative
function that is necessary to maintain the integrity
of the Program; and
(5) provide oversight of the Program, including
by reviewing whether each approved State program
is in compliance with the requirements of the Pro-
gram.
(c) Approval Criteria.—

(1) Participating States.—A State may become a participating State if—

(A) the State—

(i) designates a specific department or agency of the State, or an entity supported by the State, to implement and administer a State program of the State; or

(ii) has a contractual arrangement—

(I) with a participating State that has an approved State program; and

(II) through which the participating State described in subclause (I) will implement and administer the State program of the State;

(B) the State takes all legal actions necessary to enable the entity that, under subparagraph (A), will implement the State program of the State to carry out that implementation;

(C) the State submits to the Secretary an application described in paragraph (2)(B) during a time period to be established by the Secretary; and
(D) the State and the Secretary enter into an allocation agreement that—

(i) satisfies the requirements of this Act, including the requirement under section 5(a)(2)(A);

(ii) provides that the State program established by the State will comply with any standards established by the Secretary in carrying out this Act;

(iii) establishes internal control, compliance, and reporting requirements established by the Secretary and any other terms and conditions that are necessary to carry out the Program, including an agreement by the State to permit the Secretary to audit the State program established by the State;

(iv) requires that, not later than 180 days after the date on which the State and the Secretary enter into the agreement (or a later date if the Secretary determines that later date to be appropriate), the State program of the State is able to make the type of equity investments contemplated by this Act; and
(v) includes an agreement by the State to submit to the Secretary any reports required under the Program, including those required under section 7.

(2) APPROVED STATE PROGRAMS.—

(A) MODELS.—The Secretary may certify a State program that uses either of the following structures as an approved State program:

(i) A program in which a State-supported entity or a private investment firm (referred to in this clause as the “manager”) directly invests in startups in accordance with the following requirements:

(I) A State agency may not serve as the manager of the program.

(II) Any investment made under the program shall have not less than 50 percent of the investment funded using nongovernment sources.

(III) A State-sponsored entity or nonprofit organization serving as the manager under the program may charge a market rate annual management fee.
(IV) The State may allow the manager under the program to receive a market-rate profit share.

(V) The manager under the program shall actively—

(aa) educate minority-owned and women-owned startups regarding the process through which the manager makes equity investments; and

(bb) pursue equity investments in startups described in item (aa).

(ii) A program in which a State-supported entity or a private investment firm establishes a fund to invest in other investment funds in accordance with the following requirements:

(I) The fund established under the program may charge a market rate management fee paid by the administrator of the program with program funds and receive a market rate management fee and profit interest.
(II) If the State has an above average per capita venture capital market share, the State shall prioritize allocations by the fund established under the program to funds managed by first-time managers, women, and minorities.

(III) The allocations made by the fund established under the program shall be in an amount that is not more than 20 percent of the capital raised by that fund, except that, with respect to a recipient fund described in subclause (II), that amount shall be 50 percent.

(B) APPLICATION.—A State that wishes to have a State program of the State certified by the Secretary as an approved State program shall submit to the Secretary an application that contains—

(i) a venture capital supply and accessibility study listing, which shall include—

(I) a list of active, as of the date on which the application is submitted, venture capital funds in the State
with capital under management, segregated by funds that actively invest in startups and funds that no longer actively invest in startups;

(ii) for the 10-year period preceding the date on which the State submits the application, a list of each State-sponsored program, the intent of which is to stimulate equity investment in startups, including the policies implemented under each such program and the reported results of each such program;

(iii) a list of active, as of the date on which the application is submitted, State pension fund investments in venture capital funds and similar types of investments;

(iv) a final report on outcomes in the State under each program established under the State Small Business Credit Ini-
tiative Act of 2010 (12 U.S.C. 5701 et seq.) (referred to in this subparagraph as the “Initiative”), including—

(I) the total amount expended in direct support of small businesses under the Initiative in the State;

(II) the total amount of private capital leverage generated by each approved program under the Initiative in the State;

(III) the amount of funds made available under the Initiative in the State that were not ultimately expended, if any;

(IV) the amount of capital returned to the State in the form of investment returns or loan repayments under the Initiative; and

(V) the actual uses of residual funds generated from the Initiative in the State;

(v) a policy regarding the resolution of conflicts of interest with respect to the State program, including a comparison
with that policy for the Department of the Treasury with respect to the Initiative; and

(vi) an identification of which model described in subparagraph (A) the State intends to use for the State program of the State.

(C) REVIEW OF APPLICATION.—Not later than 90 days after the date on which the Secretary receives an application submitted by a State under subparagraph (B), the Secretary shall approve the application if the application satisfies all applicable requirements.

(3) DURATION OF APPROVAL.—

(A) IN GENERAL.—Except as provided in subparagraph (C), a State program that the Secretary certifies as an approved State program under this subsection shall—

(i) remain so certified for the 5-year period beginning on the date on which the Secretary certifies the program; and

(ii) during the 5-year period described in clause (i), remain eligible to receive allocations under the Program, except as otherwise expressly provided in this section.
(B) RE-CERTIFICATION.—After the end of the 5-year period described in subparagraph (A)(i) with respect to an approved State program, the Secretary may re-certify the approved State program after obtaining from the applicable participating State any materials that the Secretary may require.

(C) EXCEPTION FOR MATERIAL CHANGES.—If, during the 5-year period described in subparagraph (A)(i) with respect to an approved State program, there are material changes made to the structure or administration of the approved State program, the applicable participating State, in order to maintain the certification for the approved State program, shall submit to the Secretary an updated application that contains any materials that the Secretary may require.

(d) ALLOCATIONS.—

(1) FORMULA.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the amount of an allocation to a participating State under the Program shall be calculated as follows:
(i) With respect to an allocation made from the amount appropriated under section 8(a)(1), the allocation shall be calculated as follows:

(I) Divide the total population of the State by the total population of the United States.

(II) Multiply the total amount appropriated under section 8(a)(1) by the quotient obtained under subclause (I) with respect to the State.

(ii) With respect to an allocation made from any amounts appropriated to carry out the Program under the authorization provided under section 8(b), the allocation shall be calculated as follows:

(I) Divide the total population of the State by the total population of the United States.

(II) Multiply the quotient obtained under subclause (I) with respect to the State by the total amount made available to carry out the Program for the fiscal year in which the allocation is made.
(B) States with a high level of venture capital activity.—

(i) Purpose.—The purpose of this subparagraph is to, for the purposes of the calculation under subparagraph (A) with respect to certain States, exclude areas with high levels of venture capital activity from the populations of those States.

(ii) Calculation.—Subject to any rules issued under clause (iii), with respect to the calculation under subparagraph (A) for the States of California, Massachusetts, and New York, the total populations of those States shall be adjusted as follows:

(I) With respect to California, the populations of the following counties shall be subtracted from the total population of that State:

(aa) Marin County.

(bb) Sonoma County.

(cc) Napa County.

(dd) Contra Costa County.

(ee) Santa Clara County.

(ff) San Mateo County.

(gg) San Francisco County.
(hh) Los Angeles County.

(ii) Orange County.

(jj) Ventura County.

(II) With respect to Massachusetts, the populations of the following counties shall be subtracted from the total population of that State:

(aa) Essex County.

(bb) Middlesex County.

(cc) Suffolk County.

(dd) Norfolk County.

(III) With respect to New York, the populations of the following counties shall be subtracted from the total population of that State:

(aa) Kings County.

(bb) Queens County.

(cc) New York County.

(dd) Bronx County.

(ee) Richmond County.

(iii) Rule Making.—As the Secretary determines to be appropriate, the Secretary may issue rules to amend the list of counties under subclause (I), (II), or (III) of
clause (ii) in order to fulfill the purpose described in clause (i).

(C) Minimum Allocation.—The allocation to a participating State under the Program shall be in an amount that is not less than—

(i) with respect to an allocation made from the amount appropriated under section 8(a)(1), 1 percent of that amount; and

(ii) with respect to an allocation made from amounts appropriated in a fiscal year to carry out the Program under the authorization provided under section 8(b), 1 percent of the total amount made available to carry out the Program for that fiscal year.

(2) Delivery.—

(A) In general.—Subject to the other provisions of this paragraph, the Secretary shall—

(i) apportion the amount allocated to a participating State under this subsection into thirds;

(ii) transfer the first 1/3 described in clause (i) to a participating State not later than 30 days after the date on which the
Secretary approves the State program of the State; and

(iii) transfer each successive $\frac{1}{3}$ described in clause (i) to a participating State when the State has certified to the Secretary that the State has expended, transferred, or obligated 80 percent of the most recently allocated $\frac{1}{3}$ for Federal contributions.

(B) USE OF AMOUNTS.—Each amount allocated to a participating State under this subsection shall remain available to the State—

(i) for making Federal contributions; and

(ii) in the case of each $\frac{1}{3}$ transferred under subparagraph (A), for paying administrative costs incurred by the State in implementing an approved State program of the State in an amount that is not more than 5 percent of that $\frac{1}{3}$ amount.

(C) WITHHOLDING.—The Secretary may withhold a $\frac{1}{3}$ transfer under subparagraph (A) pending the results of a financial audit by the Secretary of the applicable approved State program.
(D) EXCEPTION.—The Secretary may, in the discretion of the Secretary, transfer the full amount allocated to a participating State under this subsection in a single transfer if the State submits to the Secretary an application that demonstrates the need for such a method of transfer.

(3) REMAINING FUNDS.—If, after allocating funds to participating States under this subsection, there are amounts remaining from the amounts made available to carry out the Program (without regard to whether those amounts were made available under section 8(a)(1) or pursuant to the authorization provided under section 8(b)), the Secretary shall allocate the remaining amounts in accordance with paragraphs (1) and (2).

(e) RULES.—Not later than 90 days after the date of enactment of this Act, the Secretary shall initiate a rule making to issue rules regarding the administration of the Program, which shall include the establishment of the minimum standards described in subsection (b)(1).

SEC. 4. FOLLOW-ON INVESTMENTS.

(a) IN GENERAL.—The Secretary shall allocate the amount appropriated under section 8(a)(2), and any future amounts appropriated to carry out this section under
the authorization provided under section 8(b), to approved State programs to facilitate follow-on investments.

(b) PROCESS.—To carry out the allocations under this section, the Secretary shall manage a competitive process, facilitated by an expert consultant from the private sector, to award funding to approved State programs to provide follow-on investments.

(c) AMOUNT.—A follow-on investment under subsection (b) shall be in an amount that is not less than $5,000,000 and not more than $50,000,000.

(d) FEES.—With respect to the expert consultant described in subsection (b)—

(1) the Secretary may pay management fees to the consultant in an amount that is not more than 0.5 percent of the co-investment funds managed by the consultant over the term of the program under this section; and

(2) the consultant may receive not more than 10 percent of the profit interest earned by the States participating in the program under this section from the proceeds of successful follow-on investments.

(e) RULES.—Not later than 180 days after the date of enactment of this Act, the Secretary shall issue rules—
(1) to determine the eligibility of States that wish to participate in the program established under this section, which shall include the exclusion under section 3(d)(1)(B)(ii);

(2) to provide the manner in which States may make the follow-on investments described in this section;

(3) that shall permit multiple States to work together to invest in startups; and

(4) to determine an appropriate time to make the allocations required under this section with respect to follow-on investments in startups for which the original equity investments were made under the Program.

SEC. 5. EXITS AND REPAYMENT.

(a) Exits.—

(1) In general.—If a State to which an allocation is made under a covered program receives funds from an exit with respect to a covered investment, the State shall use those funds to further invest in startups in the manner contemplated by the applicable covered program.

(2) Enforcement.—The Secretary shall—
(A) require that each allocation agreement described in section 3(e)(1)(D) include the requirement under paragraph (1); and

(B) in any audit conducted of the State by the Secretary under a covered program, confirm that there is compliance with respect to the requirement under paragraph (1).

(b) FAILURE TO REINVEST.—If a State to which an allocation is made under a covered program receives funds from an exit with respect to a covered investment and fails to comply with any requirement under this Act, that State shall repay to the Secretary the amount of that allocation, including any realized gains.

SEC. 6. EXPEDITED CONTRACTING.

For the purposes of carrying out this Act, during the 1-year period beginning on the date of enactment of this Act, the Secretary may enter into contracts without regard to any other provision of law regarding public contracts.

SEC. 7. REPORTING.

(a) QUARTERLY REPORTS FROM STATES TO THE SECRETARY.—

(1) IN GENERAL.—Not later than 30 days after the first day of each calendar quarter that begins after the date on which the Secretary issues final rules in the rule making initiated under section 3(e),
each participating State that has received an allocation under the Program and each State to which funding is awarded under section 4(b) shall submit to the Secretary a report regarding the use, during the quarter preceding the quarter in which the State submits the report, of funds received under the applicable covered program.

(2) CONTENTS.—In each report that a State is required to submit under paragraph (1), the State shall, with respect to the quarter covered by the report—

(A) indicate the total amount of funds during the quarter that the State received under the covered programs and expended; and

(B) contain a certification by the State that—

(i) all of the information contained in the report is accurate;

(ii) funds allocated to the State under the covered programs continue to be available and legally committed to an approved State program of the State, except for funds already expended by the State in carrying out the approved State program; and
(iii) the State is carrying out the approved State program of the State in accordance with this Act and rules issued under this Act.

(b) Annual Reports from States to the Secretary.—Not later than March 31 of each year in which the covered programs are in effect, each participating State that has received an allocation under the Program and each State to which funding is awarded under section 4(b) shall submit to the Secretary an annual report with respect to the year preceding the year in which the report is submitted, which shall include, for the year covered by the report—

(1) the number of startups supported by an investment made through an approved State program of the State;

(2) the total number of investments made through an approved State program of the State;

(3) the amount of private capital leverage for each covered investment made through an approved State program of the State and collectively by the State under the covered programs and the source of any private capital match;

(4) a breakdown of investments made through an approved State program of the State by, with re-
spect to the startups in which the investments were made, industry type, investment size, age of entity, annual sales, geographic location (which shall be indicated by zip code), and number of employees; and

(5) any other information that the Secretary, in the sole discretion of the Secretary, may require to carry out the purposes of the covered programs.

(c) Annual Reports from the Secretary to Congress.—

(1) Reporting requirement.—

(A) In general.—The Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives an annual report that summarizes information reported to the Secretary by States that details, for the year covered by the report, outcomes from investments made pursuant to funds allocated under the covered programs.

(B) Length of requirement.—The Secretary shall submit the annual report required under subparagraph (A) until the later of—

(i) the year that is 12 years after the date of enactment of this Act; or
(ii) the year in which no investment is made through either of the covered programs.

(2) Reserve of amounts.—Of amounts appropriated to carry out the covered programs under section 8(a)(1), and amounts that may be appropriated under the authorization provided under section 8(b), the Secretary may reserve a percentage of the amounts in order to carry out paragraph (1).

SEC. 8. APPROPRIATIONS; DEPOSITS.

(a) Direct Appropriation.—There are appropriated, out of monies in the Treasury not otherwise appropriated, $2,000,000,000 as follows:

(1) $1,500,000,000 to carry out the Program, including any administrative costs incurred in carrying out the Program.

(2) $500,000,000 to carry out the follow-on investments program established under section 4, including any administrative costs incurred in carrying out that program.

(b) Authorization of Future Appropriations.—In addition to the appropriation under subsection (a), there is authorized to be appropriated to the Secretary such sums as may be necessary to carry out this Act.
(c) DEPOSITS.—In addition to the amount appropriated under subsection (a), and any amounts that may be appropriated under the authorization provided under subsection (b), the Secretary may, in accordance with the requirements of this Act, expend any funds repaid to the Secretary under section 5(b).

(d) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—The amount appropriated under subsection (a), and any amounts that may be appropriated under the authorization provided under subsection (b), shall remain available, without fiscal year limitation, until expended.

(2) AVAILABILITY OF CERTAIN DEPOSITS.—Any amounts repaid to the Secretary as described in subsection (c) shall remain available, without fiscal year limitation, until expended.