Chloe Coniaris Testimony
Submitted on behalf of Advantage Capital
Re: Rhode Island Small Business Development Fund Proposed Regulations

Thank you for the opportunity to speak before you today. My name is Chloe Coniaris and I am an Associate at Advantage Capital, an impact investment firm with a 28-year track record of providing patient and flexible growth capital to established and emerging small businesses located in underserved states and communities throughout the country. The $3.1 billion that we have invested in 770 small and medium sized businesses has supported 80,754 jobs and created 61,758 jobs in over 30 states and the District of Columbia. We target job-generating businesses with good wages and good benefits because we know that when companies grow, create and retain high-quality jobs, their impact is felt at the household and community level, changing outcomes and outlooks for everyday citizens and families.

The Rhode Island Small Business Development Fund (SBDF) was passed to encourage the investment of private capital in Rhode Island's small businesses and startups to support their continued growth and expansion right here in the state.

We know from experience that this program will work. Look no further than next door in Connecticut, whose investment program the SBDF was modeled after. Since 2011 under the Invest CT program, our $115.3 million invested in 43 Connecticut companies has enabled the creation of 544 jobs and 1,404 retained jobs. Our CT investments have attracted an additional $198.2 million in third-party follow-on capital. Moreover, every company in our Connecticut portfolio offers comprehensive benefits and accessible jobs. The program received a favorable audit from the Connecticut Department of Community and Economic Development in 2017-2018, was reauthorized once already and is up for another reauthorization this year. It is important to distinguish this program from its precursor (First Insurance Reinvestment Fund), which did not contain the same safeguards as the current CT program. We did not participate in this prior program.

Similarly, further up the Atlantic coast, the $45.4 million we invested under the Maine New Markets Tax Credit program has enabled the creation of 773 jobs and the retention of 580 jobs in Maine. Likewise, the Finance Authority of Maine issued a favorable audit of the program in March 2017, finding the program had an overall positive fiscal impact of $15.8 million. This impact will only grow over time.

The Rhode Island program was vetted extensively over the course of two years by the Rhode Island Legislature and at several hearings with the Senate and House Finance Committees and the House Committee on Small Business. As an applicant under the program, we are committed to ensuring that the SBDF is successfully implemented.

We will submit additional comprehensive written comments to the Proposed Rules later, but in the interest of time, I wanted to touch on two areas of concern in the proposed regulations – the bonding requirement and 2020 Global Investment Performance Standards, or GIPS.

There are provisions relating to this extra-statutory bonding requirement throughout the proposed regulations. This new requirement is not authorized in the statute nor found in other Commerce economic development incentive programs. Nowhere else is an applicant required to file a financial guarantee bond in the amount of the tax credits sought by the applicant. This bonding requirement enables Commerce to reduce a fund's tax credit allocation and be repaid up to that full amount at the time a fund applies to exit in the event the fund's investments did not result in a positive economic impact, job creation or retention to the extent projected by the applicant. The statute already is prescriptive in state protections – namely, the ability to recapture credits as well as the ability to recoup the state's expenditures if a fund fails to measure up to the economic impacts it promised in its application.

Commerce has the ability to claw back all of a fund's tax credits if that fund (1) fails to invest 100% of its capital in qualified investments within three years, (2) fails to maintain that level of investing in eligible businesses until the end of the statutory compliance period, (3) makes a distribution or payment that drives its capital (qualified investments, cash and marketable securities) below 100% of its investment authority, (4) fails to make required investments in minority business enterprise or (5) invests in certain non-qualified businesses. The state bears little to no risk of failing to recover any recaptured amount due to the nature of the ultimate users of these credits. This is especially true with respect to a fund's failure to meet its initial investment milestone as no credits may be utilized until this deployment milestone is met.

It is important to note that the tax credit investors are large insurance companies with premium tax liability in the state of Rhode Island today. These insurance companies will continue to be subject to tax in Rhode Island and are the recipients of the tax credits. The funds do not receive these tax credits. Further, to effectively raise private capital, tax credits cannot be contingent upon subjective requirements. Instead, tax credit investors must have a full understanding of what actions or inactions put the tax credits at risk of recapture or disallowance. If credits are recaptured, they are assessed a liability and normal tax collection process and rules would be available to the state to recover the full recaptured amount. Insurance companies are comfortable with this model and have vetted these structures such as the Connecticut and Maine programs I previously mentioned.

Second, the statute already explicitly contains defined monetary penalties a fund must pay to the state in the event the fund fails to satisfy the job creation and retention goals outlined in the fund's application. Job promises must be met or a fund must pay penalties before Commerce approves a fund to exit.

Please let me pause for a moment to make an important distinction that the Proposed Regulations muddles with the bonding requirement -- the legislation specifically envisions bifurcating first tax credit recapture – which is borne by the insurance company investors in the event the Small Business Investment Fund violates specific requirements of the act having nothing to do with investment performance – and second strict monetary penalties for failure to create and retain jobs – which is and must be borne solely by the principals of the Small Business Development Fund.

We recognize that the state has an interest in ensuring that small business development funds live up to their requirements to make any sharing distributions with the state. Unfortunately, as written, these bond reduction and recapture provisions amount to significant regulatory overreach and will prevent applicants from participating in the program and impede successful fundraising efforts. The cost of the financial guarantee bond proposed by Commerce would likely exceed the value of the incentives offered, rendering the program impractical and unusable. Our suggestion would be that the bond or guarantee required under the proposed rules be limited to (i) any amounts payable under Section 8.17 of the Proposed Rules and (ii) any tax credits recaptured pursuant to Section 42-64-33.5 of the Act, payment for which is not recovered from the taxpayer that actually took the credits on a Rhode Island return. We believe such a mechanism could be acquired at a reasonable cost, further protect the state and taxpayer interests and ensure the program's success efficiently and effectively.

The Global Investment Performance Standards I alluded to earlier are also problematic and impractical. The legislation already contains strong safeguards such as the measurement of an applicant's track record. Specifically, the program requires an applicant to have historical investments of at least $100 million in nonpublic companies. This gating item ensures that the fund managers have the expertise, experience and depth of fundraising ability to make smart investment decisions, further protecting the taxpayer and state.

Since the program applicants' investments naturally occurred in the past, we strongly object to the imposition of GIPS on the funds that made these investments in the past. It is unreasonable to limit participation in the program to funds that must demonstrate compliance retroactively - since that in and of itself would be extremely difficult to do - with a standard that did not go into effect until January 1, 2020. There is no federal or state requirement for private equity and venture capital funds to comply with GIPS, and many funds across the country have not chosen to do so at this point. Although the proposed rules carve out an exception to this for federally licensed Small Business Investment Companies (SBICs) and Rural Business Investment Companies (RBICs) upon a "satisfactory demonstration of a conflict and required alternative showing of adherence to high standards," the language utilized here remains problematic because of its ambiguity. Should Commerce therefore determine that applicants certified under the SBDF Program must adopt the GIPS standards *prospectively,* we believe that is completely reasonable and acceptable to apply this standard to funds in the Rhode Island program but not retroactively to funds with no nexus to Rhode Island or Rhode Island regulation.

Again, I want to emphasize our commitment to ensuring that this program is a success- we have a demonstrated track record of making these types of investments in small businesses throughout the country, achieving lasting, real impact at the household and community levels and ensuring that all interests are aligned and protected. We are hopeful that with the right changes to the proposed regulations, we can successfully raise a fund in Rhode Island and help continue to grow the Ocean State's small businesses and startups. Thank you.