Small business investors will need to hurry and expedite plans to benefit from short-term provisions of the new Small Business Jobs Act (the Act), which was signed by President Obama on September 27, 2010. Some provisions expire at the end of 2010, but quick action may help investors in small business take advantage of new opportunities. This brief explains the provisions that offer significant benefits if investors are nimble and quick.

The Act includes temporary measures that make funding immediately available to small businesses. However, investors will need to act quickly to benefit from these measures if they have not already started planning.

**Taxable Gain Exclusion on Future Sale of Small Business Stock**

The Act includes a temporary exclusion of 100 percent of gain on qualified small business stock with no minimum tax preference. The exclusion was previously only 50 percent of gain. The increased exclusion applies to sales of qualified stock issued after enactment and before January 1, 2011. A five year holding period is still required in order to claim this exemption in a future year.

The caveat is that you must acquire the stock either through purchase or creation of a new corporate entity by the end of 2010. To take advantage of the provision, entrepreneurs must act quickly to identify and complete investments that would qualify for the exclusion after the holding period is satisfied. If investors have already been considering small business investments, this may give them the incentive to take the final actions.

Stock in a company was generally eligible qualified business stock for the previous 50 percent exclusion of gain if all of the following requirements are met:

- Issue date must be August 11, 1993, or later.
- Stock must be original issue.
- Aggregate gross assets of the corporation must be less than $50,000,000, both before and after issue date of the stock.
- Corporation must be engaged (with at least 80 percent of its asset value) in an active trade or business, excluding farming and certain service-related trade businesses (such as financial services, performing arts, architecture, operating hotels, renting real property, and more. (See code Section 1202 for a complete list.) Corporation must be a domestic “C” corporation.

If you are considering such an investment but have not identified the right opportunity,
creating a new corporation before year end to hold future investments may also position investors to benefit from the Act since start-up companies may be treated as an active trade or business for purposes of Section 1202.

Previously, gains excluded under Section 1202 were subject to a tax preference for alternative minimum tax purposes equal to 7 percent of the amount excluded from gross income for the taxable year. This tax preference will not apply to future gains excluded on qualified business stock acquired in the remainder of 2010 if all other qualified small business stock requirements are met.

**Bonus Depreciation**
- Fifty percent bonus depreciation, which had expired at the end of 2009, has been extended through December 31, 2010. For assets placed in service in 2010 (or 2011 for certain property with longer production periods) with a depreciable life of seven years or less, the bill decouples bonus depreciation from allocation of contract costs under the percentage of completion accounting method.

**Self Employed Individuals’ Health Insurance**
- Self-Employed Individuals’ Health Insurance – For 2010 only, self-employed individuals who deduct health insurance are allowed to take the deduction in computing net earnings from self-employment.

**Small Business Loan Amounts and Guarantee Percentages**
Until January 1, 2011, guaranteed loan percentages and maximum loan amounts are increased for small business loans under Section 7(a) of the Act.

- **Guarantee Percentages** – The government guarantee increases to 90 percent from 75 or 85 percent for all loans regardless of loan amount. Previously original loan amounts of more than $150,000 or more were guaranteed at 75 percent. Original loan amounts of less than or equal to $150,000 were guaranteed at 85 percent.

- **Maximum Loan Commitments** – The Act raises total outstanding loan commitment limits to $4.5 million from $1.5 million and the total gross loan amount to $5 million from $2 million.

Increased government guarantees and outstanding loan commitments are effective until January 1, 2011 when the percentage guarantees will revert to the original percentages and the total outstanding loan commitment will reduce to $3,750,000.

Businesses which have been at the guarantee or commitment threshold previously, may now find that lenders are able to extend further credit.

**Loan Fee Reductions**
This Act continues fee reductions or elimination allowed by Section 501 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 151) which would have expired on September 30, 2010, until December 31, 2010. Generally annual fees and guarantee fees for loans under Section 7 (a) of the Small Business Act are charged by the Small Business Administration to the lenders. The lenders are allowed to pass only guarantee fees along to the borrower.

Section 7 (a) of the Small Business Act provides loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis.

Lenders are required to pay an annual fee of up to 0.55 percent per year of the outstanding guarantee loan balance. The actual rate is determined annually based on the Small Business Administration’s annual budget appropriated by Congress and the additional amount necessary to cover the cost of making such guarantees for Section 7(a) loans. Lenders may not pass yearly
fees through to the borrower but must absorb this cost into their own pricing structure.

Guarantee fees are generally charged on loans with a maturity greater than one year as a percentage of the outstanding loan balance and vary depending on the outstanding loan amount. The total fee may go up to 3.75 percent. These fees are paid by the participating lender who may pass the fee along to the borrower. The table below illustrates the guarantee fee rate by the loan size amount.

<table>
<thead>
<tr>
<th>Guaranteed Amount</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;= $150,000</td>
<td>2</td>
</tr>
<tr>
<td>&gt; $150,000 and &lt; $700,000</td>
<td>3</td>
</tr>
<tr>
<td>&lt;= $700,000</td>
<td>3.5</td>
</tr>
<tr>
<td>&gt;$1,000,000</td>
<td>Additional 0.25</td>
</tr>
</tbody>
</table>

This means that 7(a) loan fees may continue to be reduced to the maximum extent possible including collecting no fee until the end of this year, 2010.

**Temporary Express Loan Enhancement**

The Small Business Jobs Act increases the maximum Express Loan amount to $1,000,000 from $350,000. The Act included an automatic repeal of this provision effective one year after the date of enactment or September 27, 2011.

Express Loans are any loan made by an authorized lender where the lender utilizes its own loan analyses, procedures and documentation requirements to the maximum extent practicable. The program was established by the Small Business Administration under paragraph (25)(B) on April 5, 2004 with, originally, a guaranty rate of not more than 50 percent.

Express loans for business investment in renewable energy and energy efficiency technologies may be eligible for a fee reduction of up to 50 percent of the standard guarantee fees after the fee reductions above do expire.