

118TH CONGRESS
1ST SESSION

S. _____

To establish a small business and domestic production recovery investment facility, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. RUBIO (for himself and Mr. RISCH) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish a small business and domestic production recovery investment facility, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Innovation
5 and Manufacturing Act”.

6 **SEC. 2. SMALL BUSINESS INVESTMENT COMPANY PRO-**
7 **GRAM.**

8 (a) IN GENERAL.—Part A of title III of the Small
9 Business Investment Act of 1958 (15 U.S.C. 681 et seq.)
10 is amended—

1 (1) in section 302(a) (15 U.S.C. 682(a))—

2 (A) in paragraph (1)—

3 (i) in subparagraph (A), by striking

4 “or” at the end;

5 (ii) in subparagraph (B), by striking

6 the period at the end and inserting “; or”;

7 and

8 (iii) by adding at the end the fol-

9 lowing:

10 “(C) \$20,000,000, adjusted every 5 years

11 for inflation, with respect to each licensee au-

12 thorized or seeking authority to sell bonds to

13 the Administration as a participating invest-

14 ment company under section 321.”; and

15 (2) by adding at the end the following:

16 **“SEC. 321. SMALL BUSINESS AND DOMESTIC PRODUCTION**

17 **RECOVERY INVESTMENT FACILITY.**

18 “(a) DEFINITIONS.—In this section:

19 “(1) ELIGIBLE SMALL BUSINESS CONCERN.—

20 The term ‘eligible small business concern’—

21 “(A) means a small business concern that

22 is a manufacturing business that is assigned a

23 North American Industry Classification System

24 code beginning with 31, 32, or 33 at the time

25 at which the small business concern receives an

1 investment from a participating investment
2 company under the facility; and

3 “(B) does not include an entity described
4 in section 7(a)(37)(A)(iv)(III) of the Small
5 Business Act (15 U.S.C.
6 636(a)(37)(A)(iv)(III)).

7 “(2) FACILITY.—The term ‘facility’ means the
8 facility established under subsection (b).

9 “(3) FUND.—The term ‘Fund’ means the fund
10 established under subsection (h).

11 “(4) PARTICIPATING INVESTMENT COMPANY.—
12 The term ‘participating investment company’ means
13 a small business investment company approved
14 under subsection (d) to participate in the facility.

15 “(5) PROTÉGÉ INVESTMENT COMPANY.—The
16 term ‘protégé investment company’ means a small
17 business investment company that—

18 “(A) is majority managed by new, inexperi-
19 enced, or otherwise underrepresented fund man-
20 agers; and

21 “(B) elects and is selected by the Adminis-
22 tration to participate in the pathway-protégé
23 program under subsection (g).

24 “(6) SMALL BUSINESS CONCERN.—The term
25 ‘small business concern’ has the meaning given the

1 term in section 3(a) of the Small Business Act (15
2 U.S.C. 632(a)).

3 “(b) ESTABLISHMENT.—

4 “(1) FACILITY.—The Administrator shall estab-
5 lish and carry out a facility to increase resiliency in
6 the manufacturing supply chain of eligible small
7 business concerns by providing financial assistance
8 to participating investment companies that facilitate
9 equity financings to eligible small business concerns
10 in accordance with this section.

11 “(2) ADMINISTRATION OF FACILITY.—The fa-
12 cility shall be administered by the Administrator act-
13 ing through the Associate Administrator described in
14 section 201.

15 “(c) APPLICATIONS.—

16 “(1) IN GENERAL.—Any small business invest-
17 ment company may submit to the Administrator an
18 application to participate in the facility.

19 “(2) REQUIREMENTS FOR APPLICATION.—An
20 application to participate in the facility shall include
21 the following:

22 “(A) A business plan describing how the
23 applicant intends to make successful equity in-
24 vestments in eligible small business concerns.

1 “(B) Information regarding the relevant
2 investment qualifications and backgrounds of
3 the individuals responsible for the management
4 of the applicant.

5 “(C) A description of the extent to which
6 the applicant meets the selection criteria under
7 subsection (d)(2).

8 “(3) EXCEPTIONS TO APPLICATION FOR NEW
9 LICENSEES.—Not later than 90 days after the date
10 of enactment of this section, the Administrator shall
11 reduce requirements for applicants applying to oper-
12 ate as a participating investment company under
13 this section in order to encourage the participation
14 of new small business investment companies in the
15 facility under this section, which may include the re-
16 quirements established under part 107 of title 13,
17 Code of Federal Regulations, or any successor regu-
18 lation, relating to—

19 “(A) the approval of initial management
20 expenses;

21 “(B) the management ownership diversity
22 requirement;

23 “(C) the disclosure of general compen-
24 satory practices and fee structures; or

1 “(D) any other requirement that the Ad-
2 ministrator determines to be an obstacle to
3 achieving the purposes described in this para-
4 graph.

5 “(d) SELECTION OF PARTICIPATING INVESTMENT
6 COMPANIES.—

7 “(1) DETERMINATION.—

8 “(A) IN GENERAL.—Except as provided in
9 paragraph (3), not later than 60 days after the
10 date on which the Administrator receives an ap-
11 plication under subsection (c), the Adminis-
12 trator shall—

13 “(i) make a final determination to ap-
14 prove or disapprove such applicant to par-
15 ticipate in the facility; and

16 “(ii) transmit the determination to the
17 applicant in writing.

18 “(B) COMMITMENT AMOUNT.—Except as
19 provided in paragraph (3), at the time of ap-
20 proval of an applicant, the Administrator shall
21 make a determination of the amount of the
22 commitment that may be awarded to the appli-
23 cant under this section.

1 “(2) SELECTION CRITERIA.—In making a de-
2 termination under paragraph (1), the Administrator
3 shall consider—

4 “(A) the probability that the investment
5 strategy of the applicant will successfully repay
6 any financial assistance provided by the Admin-
7 istration, including the probability of a return
8 significantly in excess thereof;

9 “(B) the probability that the investments
10 made by the applicant will—

11 “(i) provide capital to eligible small
12 business concerns; or

13 “(ii) create or preserve jobs in the
14 United States;

15 “(C) the probability that the applicant will
16 meet the objectives in the business plan of the
17 applicant, including the financial goals, and, if
18 applicable, the pathway-protégé program in ac-
19 cordance with subsection (g); and

20 “(D) the probability that the applicant will
21 assist eligible small business concerns in achiev-
22 ing profitability.

23 “(3) APPROVAL OF PARTICIPATING INVEST-
24 MENT COMPANIES.—

25 “(A) PROVISIONAL APPROVAL.—

1 “(i) IN GENERAL.—Notwithstanding
2 paragraph (1), with respect to an applica-
3 tion submitted by an applicant to operate
4 as a participating investment company
5 under this section, the Administrator may
6 provide provisional approval for the appli-
7 cant in lieu of a final determination of ap-
8 proval and determination of the amount of
9 the commitment under that paragraph.

10 “(ii) PURPOSE.—The purpose of a
11 provisional approval under clause (i) is
12 to—

13 “(I) encourage applications from
14 investment companies with an invest-
15 ment mandate from the committed
16 private market capital of the invest-
17 ment company that does not conform
18 to the requirements described in this
19 section at the time of application;

20 “(II) allow the applicant to more
21 effectively raise capital commitments
22 in the private markets by referencing
23 the intent of the Administrator to
24 award the applicant a commitment;
25 and

1 vestment company at the time of ap-
2 proval under that subsection.

3 “(ii) DETERMINATION OF PERCENT-
4 AGE.—The share to which the Administra-
5 tion is entitled under clause (i)—

6 “(I) shall be determined at the
7 time of approval under subsection (d);
8 and

9 “(II) without the approval of the
10 Administration, shall not be revised,
11 including to reflect subsequent dis-
12 tributions of profits, returns of cap-
13 ital, or repayments of bonds, or other-
14 wise.

15 “(C) PROFIT SHARING PERFORMANCE
16 COMPENSATION.—

17 “(i) RECEIPT BY ADMINISTRATION.—
18 The Administration shall receive a share of
19 profits of not more than 2 percent, which
20 shall be deposited into the Fund and be
21 available to make commitments under this
22 subsection.

23 “(ii) RECEIPT BY MANAGERS.—The
24 managers of the participating investment
25 company may receive a maximum profit

1 sharing performance compensation of 25
2 percent minus the share of profits paid to
3 the Administration under clause (i).

4 “(D) PROHIBITION ON DISTRIBUTIONS.—
5 No distributions on capital, including profit dis-
6 tributions, shall be made by the participating
7 investment company to the investors or man-
8 agers of the participating investment company
9 until the Administration has received payment
10 of all accrued interest on the bond committed
11 under this section.

12 “(E) REPAYMENT OF PRINCIPAL.—Except
13 as described in subparagraph (F), repayments
14 of principal of the bond of a participating in-
15 vestment company shall be—

16 “(i) made at the same time as returns
17 of private capital; and

18 “(ii) in amounts equal to the pro rata
19 share of the Administration of the total
20 amount being repaid or returned at such
21 time.

22 “(F) LIQUIDATION OR DEFAULT.—Upon
23 any liquidation event or default, as defined by
24 the Administration, any unpaid principal or ac-
25 crued interest on the bond shall—

1 “(i) have a priority over all equity of
2 the participating investment company; and

3 “(ii) be paid before any return of eq-
4 uity or any other distributions to the inves-
5 tors or managers of the participating in-
6 vestment company.

7 “(3) AMOUNT OF COMMITMENTS AND PUR-
8 CHASES.—

9 “(A) MAXIMUM AMOUNT.—The maximum
10 amount of outstanding bonds and commitments
11 to purchase bonds for any participating invest-
12 ment company under the facility shall be the
13 lesser of—

14 “(i) twice the amount of the regu-
15 latory capital of the participating invest-
16 ment company; or

17 “(ii) \$200,000,000.

18 “(4) COMMITMENT PROCESS.—Commitments by
19 the Administration to purchase bonds under the fa-
20 cility shall remain available to be sold by a partici-
21 pating investment company until the end of the
22 fourth fiscal year following the year in which the
23 commitment is made, subject to review and approval
24 by the Administration based on regulatory compli-
25 ance, financial status, change in management, devi-

1 ation from business plan, and such other limitations
2 as may be determined by the Administration by reg-
3 ulation or otherwise.

4 “(5) COMMITMENT CONDITIONS.—

5 “(A) IN GENERAL.—As a condition of re-
6 ceiving a commitment under the facility, not
7 less than 50 percent of amounts invested by the
8 participating investment company shall be in-
9 vested in eligible small business concerns.

10 “(B) EXAMINATIONS.—In addition to the
11 matters set forth in section 310(c), the Admin-
12 istration shall examine each participating in-
13 vestment company in such detail so as to deter-
14 mine whether the participating investment com-
15 pany has complied with the requirements under
16 this subsection.

17 “(f) DISTRIBUTIONS AND FEES.—

18 “(1) DISTRIBUTION REQUIREMENTS.—

19 “(A) DISTRIBUTIONS.—As a condition of
20 receiving a commitment under the facility, a
21 participating investment company shall make
22 all distributions to the Administrator in the
23 same form and in a manner as are made to in-
24 vestors, or otherwise at a time and in a manner

1 consistent with regulations or policies of the
2 Administration.

3 “(B) ALLOCATIONS.—A participating in-
4 vestment company shall make allocations of in-
5 come, gain, loss, deduction, and credit to the
6 Administrator with respect to any outstanding
7 bonds as if the Administrator were an investor.

8 “(2) FEES.—The Administrator may not
9 charge fees for participating investment companies
10 other than examination fees that are consistent with
11 the license of the participating investment company.

12 “(3) BIFURCATION.—Losses on bonds issued by
13 participating investment companies shall not be off-
14 set by fees or any other charges on debenture small
15 business investment companies.

16 “(g) PROTÉGÉ PROGRAM.—The Administrator shall
17 establish a pathway-protégé program in which a protégé
18 investment company may receive technical assistance and
19 program support from a participating investment company
20 on a voluntary basis and without penalty for non-partici-
21 pation.

22 “(h) LOSS LIMITING FUND.—

23 “(1) IN GENERAL.—There is established in the
24 Treasury a fund for making commitments and pur-
25 chasing bonds with equity features under the facility

1 and receiving capital returned by participating in-
2 vestment companies.

3 “(2) USE OF FUNDS.—Amounts appropriated
4 to the Fund or deposited in the Fund under para-
5 graph (3) shall be available to the Administrator,
6 without further appropriation, for making commit-
7 ments and purchasing bonds under the facility and
8 expenses and payments, excluding administrative ex-
9 penses, relating to the operations of the Adminis-
10 trator under the facility.

11 “(3) DEPOSITING OF AMOUNTS.—

12 “(A) IN GENERAL.—All amounts received
13 by the Administrator from a participating in-
14 vestment company relating to the facility, in-
15 cluding any moneys, property, or assets derived
16 by the Administrator from operations in con-
17 nection with the facility, shall be deposited in
18 the Fund.

19 “(B) PERIOD OF AVAILABILITY.—Amounts
20 deposited under subparagraph (A) shall remain
21 available until expended.

22 “(i) APPLICATION OF OTHER SECTIONS.—To the ex-
23 tent not inconsistent with requirements under this section,
24 the Administrator may apply sections 309, 311, 312, 313,
25 and 314 to activities under this section and an officer, di-

1 rector, employee, agent, or other participant in a partici-
2 pating investment company shall be subject to the require-
3 ments under such sections.

4 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
5 is authorized to be appropriated for the first fiscal year
6 beginning after the date of enactment of this part
7 \$10,000,000,000 to carry out the facility. Amounts appro-
8 priated pursuant to this subsection shall remain available
9 until the end of the second fiscal year beginning after the
10 date of enactment of this section.”.

11 (b) APPROVAL OF BANK-OWNED, NON-LEVERAGED
12 APPLICANTS.—Section 301(c)(2) of the Small Business
13 Investment Act of 1958 (15 U.S.C. 681(c)(2)) is amend-
14 ed—

15 (1) in subparagraph (B), in the matter pre-
16 ceding clause (i), by striking “Within” and inserting
17 “Except as provided in subparagraph (C), within”;
18 and

19 (2) by adding at the end the following:

20 “(C) EXCEPTION FOR BANK-OWNED, NON-
21 LEVERAGED APPLICANTS.—Notwithstanding
22 subparagraph (B), not later than 45 days after
23 the date on which the Administrator receives a
24 completed application submitted by a bank-
25 owned, non-leveraged applicant in accordance

1 with this subsection and in accordance with
2 such requirements as the Administrator may
3 prescribe by regulation, the Administrator
4 shall—

5 “(i) review the application in its en-
6 tirety; and

7 “(ii)(I) approve the application and
8 issue a license for such operation to the
9 applicant if the requirements of this sec-
10 tion are satisfied; or

11 “(II) disapprove the application and
12 notify the applicant in writing of the dis-
13 approval.”.

14 (c) **ELECTRONIC SUBMISSIONS.**—Part A of title III
15 of the Small Business Investment Act of 1958 (15 U.S.C.
16 681 et seq.), as amended by subsection (a) of this section,
17 is amended by adding at the end the following:

18 **“SEC. 322. ELECTRONIC SUBMISSIONS.**

19 “The Administration shall permit any document sub-
20 mitted under this title, or pursuant to a regulation car-
21 rying out this title, to be submitted electronically, includ-
22 ing by permitting an electronic signature for any signature
23 that is required on such a document.”.