AMENDMENT TO H.R. 4521, THE AMERICA COMPETES ACT OF 2022
OFFERED BY MS. TENNEY OF NEW YORK

At the end of title II of division C, insert the following new subtitle:

Subtitle C—Small Business Investment

SEC. 20221. SMALL BUSINESS INVESTMENT COMPANY PROGRAM.


(1) in section 302(a)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking “or” at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting “; or”;

and

(iii) by adding at the end the following:

“(C) $20,000,000, adjusted every 5 years for inflation, with respect to each licensee au-
authorized or seeking authority to sell bonds to
the Administration as a participating invest-
ment company under section 321.”; and
(2) by adding at the end the following:

“SEC. 321. SMALL BUSINESS AND DOMESTIC PRODUCTION
RECOVERY INVESTMENT FACILITY.

“(a) DEFINITIONS.—In this section:

“(1) ELIGIBLE SMALL BUSINESS CONCERN.—
The term ‘eligible small business concern’—

“(A) means a small business concern that
is a manufacturing business that is assigned a
North American Industry Classification System
code beginning with 31, 32, or 33 at the time
at which the small business concern receives an
investment from a participating investment
company under the facility; and

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

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

“(3) FUND.—The term ‘Fund’ means the fund
established under subsection (h).
“(4) Participating investment company.—
The term ‘participating investment company’ means
a small business investment company approved
under subsection (d) to participate in the facility.

“(5) Protégé investment company.—The
term ‘protégé investment company’ means a small
business investment company that—

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

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

“(6) Small business concern.—The term
‘s small business concern’ has the meaning given the
term in section 3(a) of the Small Business Act (15
U.S.C. 632(a)).

“(b) Establishment.—

“(1) Facility.—The Administrator shall estab-
lish and carry out a facility to increase resiliency in
the manufacturing supply chain of eligible small
business concerns by providing financial assistance
to participating investment companies that facilitate
equity financings to eligible small business concerns
in accordance with this section.
“(2) Administration of facility.—The facility shall be administered by the Administrator acting through the Associate Administrator described in section 201.

“(c) Applications.—

“(1) In general.—Any small business investment company may submit to the Administrator an application to participate in the facility.

“(2) Requirements for application.—An application to participate in the facility shall include the following:

“(A) A business plan describing how the applicant intends to make successful equity investments in eligible small business concerns.

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

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

“(3) Exceptions to application for new licensees.—Not later than 90 days after the date of enactment of this section, the Administrator shall reduce requirements for applicants applying to oper-
ate as a participating investment company under this section in order to encourage the participation of new small business investment companies in the facility under this section, which may include the requirements established under part 107 of title 13, Code of Federal Regulations, or any successor regulation, relating to—

“(A) the approval of initial management expenses;

“(B) the management ownership diversity requirement;

“(C) the disclosure of general compensatory practices and fee structures; or

“(D) any other requirement that the Administrator determines to be an obstacle to achieving the purposes described in this paragraph.

“(d) SELECTION OF PARTICIPATING INVESTMENT COMPANIES.—

“(1) DETERMINATION.—

“(A) IN GENERAL.—Except as provided in paragraph (3), not later than 60 days after the date on which the Administrator receives an application under subsection (c), the Administrator shall—
“(i) make a final determination to approve or disapprove such applicant to participate in the facility; and

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

“(B) COMMITMENT AMOUNT.—Except as provided in paragraph (3), at the time of approval of an applicant, the Administrator shall make a determination of the amount of the commitment that may be awarded to the applicant under this section.

“(2) SELECTION CRITERIA.—In making a determination under paragraph (1), the Administrator shall consider—

“(A) the probability that the investment strategy of the applicant will successfully repay any financial assistance provided by the Administration, including the probability of a return significantly in excess thereof;

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

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

“(ii) create or preserve jobs in the United States;
“(C) the probability that the applicant will meet the objectives in the business plan of the applicant, including the financial goals, and, if applicable, the pathway-protégé program in accordance with subsection (g); and

“(D) the probability that the applicant will assist eligible small business concerns in achieving profitability.

“(3) APPROVAL OF PARTICIPATING INVESTMENT COMPANIES.—

“(A) Provisional approval.—

“(i) In general.—Notwithstanding paragraph (1), with respect to an application submitted by an applicant to operate as a participating investment company under this section, the Administrator may provide provisional approval for the applicant in lieu of a final determination of approval and determination of the amount of the commitment under that paragraph.

“(ii) Purpose.—The purpose of a provisional approval under clause (i) is to—

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

“(II) allow the applicant to more effectively raise capital commitments in the private markets by referencing the intent of the Administrator to award the applicant a commitment;

and

“(III) allow the applicant to more precisely request the desired amount of commitment pending the securing of capital from private market investors.

“(iii) LIMIT ON PERIOD OF THE TIME.—The period between a provisional approval under clause (i) and the final determination of approval under paragraph (1) shall not exceed 12 months.

“(e) COMMITMENTS AND SBIC BONDS.—

“(1) IN GENERAL.—The Administrator may, out of amounts available in the Fund, purchase or commit to purchase from a participating investment
company 1 or more accruing bonds that include equity features as described in this subsection.

“(2) BOND TERMS.—A bond purchased by the Administrator from a participating investment company under this subsection shall have the following terms and conditions:

“(A) TERM AND INTEREST.—

“(i) IN GENERAL.—The bond shall be issued for a term of not less than 15 years and shall bear interest at a rate determined by the Administrator of not more than 2 percent.

“(ii) ACCRUAL OF INTEREST.—Interest on the bond shall accrue and shall be payable in accordance with subparagraph (D).

“(iii) PREPAYMENT.—The bond shall be prepayable without penalty after the end of the 1-year period beginning on the date on which the bond was purchased.

“(B) PROFITS.—

“(i) IN GENERAL.—The Administration shall be entitled to receive a share of the profits net of any profit sharing performance compensation of the participating
investment company equal to the quotient
obtained by dividing—

“(I) one-third of the commitment
that the participating investment com-
pany is approved for under subsection
(d); by

“(II) the commitment approved
under subsection (d) plus the regu-
latory capital of the participating in-
vestment company at the time of ap-
proval under that subsection.

“(ii) Determination of Percentage.—The share to which the Administra-
tion is entitled under clause (i)—

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

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

“(C) Profit Sharing Performance
Compensation.—
“(i) RECEIPT BY ADMINISTRATION.—

The Administration shall receive a share of profits of not more than 2 percent, which shall be deposited into the Fund and be available to make commitments under this subsection.

“(ii) RECEIPT BY MANAGERS.—The managers of the participating investment company may receive a maximum profit sharing performance compensation of 25 percent less the share of profits paid to the Administration under clause (i).

“(D) PROHIBITION ON DISTRIBUTIONS.—

No distributions on capital, including profit distributions, shall be made by the participating investment company to the investors or managers of the participating investment company until the Administration has received payment of all accrued interest on the bond committed under this section.

“(E) REPAYMENT OF PRINCIPAL.—Except as described in subparagraph (F), repayments of principal of the bond of a participating investment company shall be—
“(i) made at the same time as returns of private capital; and

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

“(F) LIQUIDATION OR DEFAULT.—Upon any liquidation event or default, as defined by the Administration, any unpaid principal or accrued interest on the bond shall—

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

“(ii) be paid before any return of equity or any other distributions to the investors or managers of the participating investment company.

“(3) AMOUNT OF COMMITMENTS AND PURCHASES.—

“(A) MAXIMUM AMOUNT.—The maximum amount of outstanding bonds and commitments to purchase bonds for any participating investment company under the facility shall be the lesser of—
“(i) twice the amount of the regulatory capital of the participating investment company; or

“(ii) $200,000,000.

“(4) COMMITMENT PROCESS.—Commitments by the Administration to purchase bonds under the facility shall remain available to be sold by a participating investment company until the end of the fourth fiscal year following the year in which the commitment is made, subject to review and approval by the Administration based on regulatory compliance, financial status, change in management, deviation from business plan, and such other limitations as may be determined by the Administration by regulation or otherwise.

“(5) COMMITMENT CONDITIONS.—

“(A) IN GENERAL.—As a condition of receiving a commitment under the facility, not less than 50 percent of amounts invested by the participating investment company shall be invested in eligible small business concerns.

“(B) EXAMINATIONS.—In addition to the matters set forth in section 310(e), the Administration shall examine each participating investment company in such detail so as to deter-
mine whether the participating investment company has complied with the requirements under this subsection.

“(f) **Distributions and Fees.**—

“(1) **Distribution Requirements.**—

“(A) **Distributions.**—As a condition of receiving a commitment under the facility, a participating investment company shall make all distributions to the Administrator in the same form and in a manner as are made to investors, or otherwise at a time and in a manner consistent with regulations or policies of the Administration.

“(B) **Allocations.**—A participating investment company shall make allocations of income, gain, loss, deduction, and credit to the Administrator with respect to any outstanding bonds as if the Administrator were an investor.

“(2) **Fees.**—The Administrator may not charge fees for participating investment companies other than examination fees that are consistent with the license of the participating investment company.

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

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

“(h) LOSS LIMITING FUND.—

“(1) IN GENERAL.—There is established in the
Treasury a fund that, subject to the availability of
appropriations, shall be for making commitments
and purchasing bonds with equity features under the
facility and receiving capital returned by partici-

“(2) USE OF FUNDS.—Amounts appropriated
to the Fund or deposited in the Fund under para-
graph (3) shall be available to the Administrator,
without further appropriation, for making commit-
ments and purchasing bonds under the facility and
expenses and payments, excluding administrative ex-

“(3) DEPOSITING OF AMOUNTS.—
“(A) IN GENERAL.—All amounts received by the Administrator from a participating investment company relating to the facility, including any moneys, property, or assets derived by the Administrator from operations in connection with the facility, shall be deposited in the Fund.

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

“(i) APPLICATION OF OTHER SECTIONS.—To the extent not inconsistent with requirements under this section, the Administrator may apply sections 309, 311, 312, 313, and 314 to activities under this section and an officer, director, employee, agent, or other participant in a participating investment company shall be subject to the requirements under such sections.

“(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the first fiscal year beginning after the date of enactment of this part $10,000,000,000 to carry out the facility. Amounts appropriated pursuant to this subsection shall remain available until the end of the second fiscal year beginning after the date of enactment of this section.”.
(b) APPROVAL OF BANK-OWNED, NON-LEVERAGED APPlicants.—Section 301(c)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 681(c)(2)) is amended—

(1) in subparagraph (B), in the matter preceding clause (i), by striking “Within” and inserting “Except as provided in subparagraph (C), within”;

and

(2) by adding at the end the following:

“(C) EXCEPTION FOR BANK-OWNED, NON-
LEVERAGED APPlicants.—Notwithstanding
subparagraph (B), not later than 45 days after
the date on which the Administrator receives a
completed application submitted by a bank-
owned, non-leveraged applicant in accordance
with this subsection and in accordance with
such requirements as the Administrator may
prescribe by regulation, the Administrator
shall—

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

“(ii)(I) approve the application and
issue a license for such operation to the
applicant if the requirements of this sec-
tion are satisfied; or
“(I) disapprove the application and notify the applicant in writing of the disapproval.”.

(e) Electronic Submissions.—Part A of title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.), as amended by subsection (a) of this section, is amended by adding at the end the following:

“SEC. 322. ELECTRONIC SUBMISSIONS.

“The Administration shall permit any document submitted under this title, or pursuant to a regulation carrying out this title, to be submitted electronically, including by permitting an electronic signature for any signature that is required on such a document.”.