

**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:

1 **Subtitle C—Small Business**
2 **Investment**

3 **SEC. 20221. SMALL BUSINESS INVESTMENT COMPANY PRO-**
4 **GRAM.**

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

8 (1) in section 302(a)—

9 (A) in paragraph (1)—

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

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

15 (iii) by adding at the end the fol-
16 lowing:

17 “(C) \$20,000,000, adjusted every 5 years
18 for inflation, with respect to each licensee au-

1 thorized or seeking authority to sell bonds to
2 the Administration as a participating invest-
3 ment company under section 321.”; and

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

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

7 “(a) DEFINITIONS.—In this section:

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

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

17 “(B) does not include an entity described
18 in section 7(a)(37)(A)(iv)(III) of the Small
19 Business Act (15 U.S.C.
20 636(a)(37)(A)(iv)(III)).

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

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

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

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

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

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

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

18 “(b) ESTABLISHMENT.—

19 “(1) FACILITY.—The Administrator shall estab-
20 lish and carry out a facility to increase resiliency in
21 the manufacturing supply chain of eligible small
22 business concerns by providing financial assistance
23 to participating investment companies that facilitate
24 equity financings to eligible small business concerns
25 in accordance with this section.

1 “(2) ADMINISTRATION OF FACILITY.—The fa-
2 cility shall be administered by the Administrator act-
3 ing through the Associate Administrator described in
4 section 201.

5 “(c) APPLICATIONS.—

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

9 “(2) REQUIREMENTS FOR APPLICATION.—An
10 application to participate in the facility shall include
11 the following:

12 “(A) A business plan describing how the
13 applicant intends to make successful equity in-
14 vestments in eligible small business concerns.

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

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

22 “(3) EXCEPTIONS TO APPLICATION FOR NEW
23 LICENSEES.—Not later than 90 days after the date
24 of enactment of this section, the Administrator shall
25 reduce requirements for applicants applying to oper-

1 ate as a participating investment company under
2 this section in order to encourage the participation
3 of new small business investment companies in the
4 facility under this section, which may include the re-
5 quirements established under part 107 of title 13,
6 Code of Federal Regulations, or any successor regu-
7 lation, relating to—

8 “(A) the approval of initial management
9 expenses;

10 “(B) the management ownership diversity
11 requirement;

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

14 “(D) any other requirement that the Ad-
15 ministrator determines to be an obstacle to
16 achieving the purposes described in this para-
17 graph.

18 “(d) SELECTION OF PARTICIPATING INVESTMENT
19 COMPANIES.—

20 “(1) DETERMINATION.—

21 “(A) IN GENERAL.—Except as provided in
22 paragraph (3), not later than 60 days after the
23 date on which the Administrator receives an ap-
24 plication under subsection (c), the Adminis-
25 trator shall—

1 “(i) make a final determination to ap-
2 prove or disapprove such applicant to par-
3 ticipate in the facility; and

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

6 “(B) COMMITMENT AMOUNT.—Except as
7 provided in paragraph (3), at the time of ap-
8 proval of an applicant, the Administrator shall
9 make a determination of the amount of the
10 commitment that may be awarded to the appli-
11 cant under this section.

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

15 “(A) the probability that the investment
16 strategy of the applicant will successfully repay
17 any financial assistance provided by the Admin-
18 istration, including the probability of a return
19 significantly in excess thereof;

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

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

24 “(ii) create or preserve jobs in the
25 United States;

1 “(C) the probability that the applicant will
2 meet the objectives in the business plan of the
3 applicant, including the financial goals, and, if
4 applicable, the pathway-protégé program in ac-
5 cordance with subsection (g); and

6 “(D) the probability that the applicant will
7 assist eligible small business concerns in achiev-
8 ing profitability.

9 “(3) APPROVAL OF PARTICIPATING INVEST-
10 MENT COMPANIES.—

11 “(A) PROVISIONAL APPROVAL.—

12 “(i) IN GENERAL.—Notwithstanding
13 paragraph (1), with respect to an applica-
14 tion submitted by an applicant to operate
15 as a participating investment company
16 under this section, the Administrator may
17 provide provisional approval for the appli-
18 cant in lieu of a final determination of ap-
19 proval and determination of the amount of
20 the commitment under that paragraph.

21 “(ii) PURPOSE.—The purpose of a
22 provisional approval under clause (i) is
23 to—

24 “(I) encourage applications from
25 investment companies with an invest-

1 ment mandate from the committed
2 private market capital of the invest-
3 ment company that does not conform
4 to the requirements described in this
5 section at the time of application;

6 “(II) allow the applicant to more
7 effectively raise capital commitments
8 in the private markets by referencing
9 the intent of the Administrator to
10 award the applicant a commitment;
11 and

12 “(III) allow the applicant to more
13 precisely request the desired amount
14 of commitment pending the securing
15 of capital from private market inves-
16 tors.

17 “(iii) LIMIT ON PERIOD OF THE
18 TIME.—The period between a provisional
19 approval under clause (i) and the final de-
20 termination of approval under paragraph
21 (1) shall not exceed 12 months.

22 “(e) COMMITMENTS AND SBIC BONDS.—

23 “(1) IN GENERAL.—The Administrator may,
24 out of amounts available in the Fund, purchase or
25 commit to purchase from a participating investment

1 company 1 or more accruing bonds that include eq-
2 uity features as described in this subsection.

3 “(2) BOND TERMS.—A bond purchased by the
4 Administrator from a participating investment com-
5 pany under this subsection shall have the following
6 terms and conditions:

7 “(A) TERM AND INTEREST.—

8 “(i) IN GENERAL.—The bond shall be
9 issued for a term of not less than 15 years
10 and shall bear interest at a rate deter-
11 mined by the Administrator of not more
12 than 2 percent.

13 “(ii) ACCRUAL OF INTEREST.—Inter-
14 est on the bond shall accrue and shall be
15 payable in accordance with subparagraph
16 (D).

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

21 “(B) PROFITS.—

22 “(i) IN GENERAL.—The Administra-
23 tion shall be entitled to receive a share of
24 the profits net of any profit sharing per-
25 formance compensation of the participating

1 investment company equal to the quotient
2 obtained by dividing—

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

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

12 “(ii) DETERMINATION OF PERCENT-
13 AGE.—The share to which the Administra-
14 tion is entitled under clause (i)—

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

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

24 “(C) PROFIT SHARING PERFORMANCE
25 COMPENSATION.—

1 “(i) RECEIPT BY ADMINISTRATION.—
2 The Administration shall receive a share of
3 profits of not more than 2 percent, which
4 shall be deposited into the Fund and be
5 available to make commitments under this
6 subsection.

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

13 “(D) PROHIBITION ON DISTRIBUTIONS.—
14 No distributions on capital, including profit dis-
15 tributions, shall be made by the participating
16 investment company to the investors or man-
17 agers of the participating investment company
18 until the Administration has received payment
19 of all accrued interest on the bond committed
20 under this section.

21 “(E) REPAYMENT OF PRINCIPAL.—Except
22 as described in subparagraph (F), repayments
23 of principal of the bond of a participating in-
24 vestment company shall be—

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

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

7 “(F) LIQUIDATION OR DEFAULT.—Upon
8 any liquidation event or default, as defined by
9 the Administration, any unpaid principal or ac-
10 crued interest on the bond shall—

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

13 “(ii) be paid before any return of eq-
14 uity or any other distributions to the inves-
15 tors or managers of the participating in-
16 vestment company.

17 “(3) AMOUNT OF COMMITMENTS AND PUR-
18 CHASES.—

19 “(A) MAXIMUM AMOUNT.—The maximum
20 amount of outstanding bonds and commitments
21 to purchase bonds for any participating invest-
22 ment company under the facility shall be the
23 lesser of—

1 “(i) twice the amount of the regu-
2 latory capital of the participating invest-
3 ment company; or

4 “(ii) \$200,000,000.

5 “(4) COMMITMENT PROCESS.—Commitments by
6 the Administration to purchase bonds under the fa-
7 cility shall remain available to be sold by a partici-
8 pating investment company until the end of the
9 fourth fiscal year following the year in which the
10 commitment is made, subject to review and approval
11 by the Administration based on regulatory compli-
12 ance, financial status, change in management, devi-
13 ation from business plan, and such other limitations
14 as may be determined by the Administration by reg-
15 ulation or otherwise.

16 “(5) COMMITMENT CONDITIONS.—

17 “(A) IN GENERAL.—As a condition of re-
18 ceiving a commitment under the facility, not
19 less than 50 percent of amounts invested by the
20 participating investment company shall be in-
21 vested in eligible small business concerns.

22 “(B) EXAMINATIONS.—In addition to the
23 matters set forth in section 310(c), the Admin-
24 istration shall examine each participating in-
25 vestment company in such detail so as to deter-

1 mine whether the participating investment com-
2 pany has complied with the requirements under
3 this subsection.

4 “(f) DISTRIBUTIONS AND FEES.—

5 “(1) DISTRIBUTION REQUIREMENTS.—

6 “(A) DISTRIBUTIONS.—As a condition of
7 receiving a commitment under the facility, a
8 participating investment company shall make
9 all distributions to the Administrator in the
10 same form and in a manner as are made to in-
11 vestors, or otherwise at a time and in a manner
12 consistent with regulations or policies of the
13 Administration.

14 “(B) ALLOCATIONS.—A participating in-
15 vestment company shall make allocations of in-
16 come, gain, loss, deduction, and credit to the
17 Administrator with respect to any outstanding
18 bonds as if the Administrator were an investor.

19 “(2) FEES.—The Administrator may not
20 charge fees for participating investment companies
21 other than examination fees that are consistent with
22 the license of the participating investment company.

23 “(3) BIFURCATION.—Losses on bonds issued by
24 participating investment companies shall not be off-

1 set by fees or any other charges on debenture small
2 business investment companies.

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

9 “(h) LOSS LIMITING FUND.—

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

16 “(2) USE OF FUNDS.—Amounts appropriated
17 to the Fund or deposited in the Fund under para-
18 graph (3) shall be available to the Administrator,
19 without further appropriation, for making commit-
20 ments and purchasing bonds under the facility and
21 expenses and payments, excluding administrative ex-
22 penses, relating to the operations of the Adminis-
23 trator under the facility.

24 “(3) DEPOSITING OF AMOUNTS.—

1 “(A) IN GENERAL.—All amounts received
2 by the Administrator from a participating in-
3 vestment company relating to the facility, in-
4 cluding any moneys, property, or assets derived
5 by the Administrator from operations in con-
6 nection with the facility, shall be deposited in
7 the Fund.

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

11 “(i) APPLICATION OF OTHER SECTIONS.—To the ex-
12 tent not inconsistent with requirements under this section,
13 the Administrator may apply sections 309, 311, 312, 313,
14 and 314 to activities under this section and an officer, di-
15 rector, employee, agent, or other participant in a partici-
16 pating investment company shall be subject to the require-
17 ments under such sections.

18 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
19 is authorized to be appropriated for the first fiscal year
20 beginning after the date of enactment of this part
21 \$10,000,000,000 to carry out the facility. Amounts appro-
22 priated pursuant to this subsection shall remain available
23 until the end of the second fiscal year beginning after the
24 date of enactment of this section.”.

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

5 (1) in subparagraph (B), in the matter pre-
6 ceding clause (i), by striking “Within” and inserting
7 “Except as provided in subparagraph (C), within”;
8 and

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

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

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

22 “(ii)(I) approve the application and
23 issue a license for such operation to the
24 applicant if the requirements of this sec-
25 tion are satisfied; or

1 “(II) disapprove the application and
2 notify the applicant in writing of the dis-
3 approval.”.

4 (c) **ELECTRONIC SUBMISSIONS.**—Part A of title III
5 of the Small Business Investment Act of 1958 (15 U.S.C.
6 681 et seq.), as amended by subsection (a) of this section,
7 is amended by adding at the end the following:

8 **“SEC. 322. ELECTRONIC SUBMISSIONS.**

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

