

116TH CONGRESS  
2D SESSION

# S. 3483

To amend the Small Business Investment Act of 1958 to establish the Scale-Up Manufacturing Investment Company (“SUMIC”) Program.

---

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2020

Mr. BOOKER (for himself and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

---

## A BILL

To amend the Small Business Investment Act of 1958 to establish the Scale-Up Manufacturing Investment Company (“SUMIC”) Program.

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 “Scale-Up Manufac-  
5 turing Investment Company Act of 2020”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1           (1) the strength of the United States manufac-  
2           turing sector is critical to the economy and the glob-  
3           al competitiveness of the United States;

4           (2) United States manufacturers support  
5           17,600,000 jobs in the United States and account  
6           for 12 percent of the gross domestic product of the  
7           United States;

8           (3) access to capital is essential to growth and  
9           innovation in the manufacturing sector;

10          (4) small, emerging manufacturers face unique  
11          challenges scaling commercial production in the  
12          United States, driving many young manufacturers to  
13          other countries;

14          (5) structural barriers exist in the United  
15          States that prevent key investments in first-commer-  
16          cial manufacturing facilities;

17          (6) a healthy manufacturing sector is essential  
18          to innovation economy of the United States, pro-  
19          viding three-quarters of all private sector research  
20          and development, employing nearly two-thirds of all  
21          research and development workers, and producing  
22          the majority of all patents issued;

23          (7) technology-intensive manufacturing small  
24          businesses, some of which may be start-ups, with the  
25          potential to anchor the next generation of manufac-

1 turing production where they locate, face special  
2 challenges in accessing the capital to move from idea  
3 to prototype and into commercial production;

4 (8) already more capital intensive than software  
5 or services start-ups, manufacturing start-ups and  
6 small businesses face a “second and wider valley of  
7 death” when it comes to raising the capital to scale  
8 up for commercial production because of their cap-  
9 ital intensity and novel technology;

10 (9) a number of countries, including China,  
11 South Korea, Germany, and Japan, provide publicly  
12 funded incentives to attract these firms, recognizing  
13 that despite the risks, the long-term benefits of es-  
14 tablishing leadership in emerging technology areas  
15 are large;

16 (10) a study of manufacturing technology-inten-  
17 sive start-ups licensed by the Massachusetts Insti-  
18 tute of Technology found that almost all that scaled  
19 up into commercial production did so overseas large-  
20 ly because of this far more attractive capital and in-  
21 vestment environment for manufacturing start-ups,  
22 which is a huge loss for the future of manufacturing  
23 in the United States;

24 (11) if the United States loses the first genera-  
25 tion of production for a new technology or manufac-

1 turing process, history suggests that it is an uphill  
 2 battle once lost to reclaim that capability here given  
 3 the unique learning and know-how acquired during  
 4 the building of that first factory; and

5 (12) to ensure that manufacturing technologies  
 6 invented in the United States are ultimately made in  
 7 the United States will require addressing the unique  
 8 capital access challenges faced by these technology-  
 9 intensive manufacturing start-ups.

10 **SEC. 3. SCALE-UP MANUFACTURING INVESTMENT PRO-**  
 11 **GRAM.**

12 (a) IN GENERAL.—Title III of the Small Business  
 13 Investment Act of 1958 (15 U.S.C. 681 et seq.) is amend-  
 14 ed by adding at the end the following:

15 **“PART D—SCALE-UP MANUFACTURING**  
 16 **INVESTMENT COMPANY PROGRAM**

17 **“SEC. 399A. DEFINITIONS.**

18 “In this part—

19 “(1) the term ‘Associate Administrator’ means  
 20 the Associate Administrator described in section  
 21 201;

22 “(2) the term ‘Council’ means the Scale-Up  
 23 Manufacturing Investment Company Credit Council  
 24 that may be established under section 399K;

1           “(3) the term ‘participating investment fund’  
2 means a privately managed investment fund licensed  
3 under section 399C to operate under the program;

4           “(4) the term ‘private capital’ has the meaning  
5 given the term in section 103(9);

6           “(5) the term ‘program’ means the scale-up  
7 manufacturing investment company program estab-  
8 lished under section 399B;

9           “(6) the term ‘qualifying manufacturing  
10 project’ means an investment in a small and emerg-  
11 ing manufacturer for the purposes of building first  
12 commercial production facilities, novel manufac-  
13 turing capabilities, or the introduction into produc-  
14 tion of emerging manufacturing technologies;

15           “(7) the term ‘small and emerging manufac-  
16 turer’ means any advanced manufacturer that does  
17 not exceed the size standard established by the Ad-  
18 ministrator for the applicable North American In-  
19 dustry Classification System code under section 3 of  
20 the Small Business Act (15 U.S.C. 632); and

21           “(8) the term ‘small business concern owned  
22 and controlled by socially and economically disadvan-  
23 taged individuals’ has the meaning given the term in  
24 section 8(d)(3)(C) of the Small Business Act (15  
25 U.S.C. 637(d)(3)(C)).

1 **“SEC. 399B. ESTABLISHMENT.**

2       “(a) IN GENERAL.—The Administrator shall estab-  
3 lish and carry out a scale-up manufacturing investment  
4 company program under which the Administrator shall  
5 provide leverage to participating investment funds to sup-  
6 port debt and equity investments in qualifying manufac-  
7 turing projects of small and emerging manufacturers in  
8 the United States.

9       “(b) ADMINISTRATION OF PROGRAM.—The program  
10 shall be administered by the Administrator acting through  
11 the Associate Administrator.

12 **“SEC. 399C. SELECTION OF PARTICIPATING INVESTMENT**  
13 **FUNDS.**

14       “(a) APPLICATION FOR LICENSE.—

15               “(1) SUBMISSION OF APPLICATION.—An invest-  
16 ment fund desiring to receive a license to operate  
17 under the program shall submit an application to  
18 the Administrator at such time and in such manner  
19 as the Administrator may require.

20               “(2) REQUIREMENT.—An application submitted  
21 under paragraph (1) shall demonstrate that the in-  
22 vestment fund—

23                       “(A) has the requisite minimum private  
24 capital raised from investors; and

1           “(B) committed to operate under the pro-  
2           gram as of the date of submission of the appli-  
3           cation.

4           “(3) STATUS.—Not later than 90 days after the  
5           date on which the Administrator receives an applica-  
6           tion submitted under paragraph (1), the Adminis-  
7           trator shall provide the applicant with a written re-  
8           port detailing the status of the application and any  
9           requirements remaining for completion of the appli-  
10          cation.

11          “(b) SELECTION.—

12           “(1) IN GENERAL.—Not later than 180 days  
13           after the date on which the Administrator receives  
14           an application under subsection (a), the Adminis-  
15           trator shall approve or deny the application for a li-  
16           cense to operate under the program and notify the  
17           applicant of the determination.

18           “(2) CRITERIA.—The Administrator shall es-  
19           tablish selection criteria to evaluate applications to  
20           operate under the program, which shall include, at  
21           a minimum—

22           “(A) the proven investment experience of  
23           the investment fund manager;

24           “(B) the proven, balanced, and positive-in-  
25           vestment track record of a previous investment

1 fund or the principals and fund performance  
2 analysis measured against benchmarks and peer  
3 funds;

4 “(C) the experience of the investment fund  
5 with investments relating to small manufactur-  
6 ers and emerging technologies related to ad-  
7 vanced manufacturing;

8 “(D) an evaluation of the use of leverage  
9 by the investment fund managers in past deals;

10 “(E) evidence indicating a cohesive and ef-  
11 fective team and team dynamic;

12 “(F) principals with strong reputations;

13 “(G) a record of positive realizations and  
14 exits from previous investments in the invest-  
15 ment track record;

16 “(H) clearly articulated focus, investment  
17 thesis, investment themes, and investment in-  
18 struments to be used to capitalize companies;  
19 and

20 “(I) fund structure and economics that re-  
21 flect standard practices and industry norms,  
22 such as—

23 “(i) preferred returns to limited part-  
24 ners;



1                   “(ii) general partner carried interest  
2                   allocations, fees and vesting schedules;

3                   “(iii) adequate fund infrastructure  
4                   and supporting back office services; and

5                   “(iv) evidence of fund raising traction  
6                   and capability.

7                   “(c) FEES.—

8                   “(1) IN GENERAL.—The Administration shall  
9                   prescribe fees to be paid by each applicant for a li-  
10                  cense to operate as a participating investment fund  
11                  under the program.

12                  “(2) USE OF AMOUNTS.—Fees collected under  
13                  this subsection—

14                         “(A) shall be deposited in the account for  
15                         salaries and expenses of the Administration;  
16                         and

17                         “(B) are authorized to be appropriated  
18                         solely to cover the costs of licensing examina-  
19                         tions.

20                  **“SEC. 399D. PROVISION OF LEVERAGE TO PARTICIPATING**  
21                                 **INVESTMENT FUNDS.**

22                  “(a) IN GENERAL.—Not later than 60 days after the  
23                  date on which the Administrator approves and issues a  
24                  license under section 399C to operate as a participating  
25                  investment fund under the program, the Administrator

1 may provide not more than \$1 of leverage for every \$1  
2 of private capital raised by the participating investment  
3 fund.

4 “(b) MAXIMUM LEVERAGE.—The maximum amount  
5 of outstanding leverage made available in any given fiscal  
6 year—

7 “(1) to any participating investment fund may  
8 not exceed \$500,000,000; and

9 “(2) to all participating investment funds in ag-  
10 gregate may not exceed \$1,000,000,000.

11 “(c) PRIVATE CAPITAL REQUIREMENT.—

12 “(1) IN GENERAL.—The private capital of a  
13 participating investment fund shall be not less than  
14 \$250,000,000.

15 “(2) FINANCIAL INSTITUTION INVESTMENTS.—

16 Any national bank, or any member bank of the Fed-  
17 eral Reserve System or nonmember insured bank to  
18 the extent permitted under applicable State law,  
19 may invest in any one or more participating invest-  
20 ment funds, or in any entity established to invest  
21 solely in participating investment funds, except that  
22 in no event shall the total amount of such invest-  
23 ments of any such bank exceed 5 percent of the cap-  
24 ital and surplus of the bank.

1       “(d) LEVERAGE FEE.—The Administrator shall  
2 charge and collect a leverage fee of not more than 5.5 per-  
3 cent and not less than 3 percent of the face amount of  
4 the leverage issued.

5 **“SEC. 399E. BORROWING POWER.**

6       “(a) IN GENERAL.—Each participating investment  
7 fund shall have the authority to borrow money and issue  
8 debentures and preferred securities, subject to such limita-  
9 tions and regulations as the Administration may prescribe.

10       “(b) LIMITATION.—Of the leverage provided by the  
11 Administrator to a participating investment fund under  
12 section 399D—

13               “(1) not less than 70 percent shall be issued as  
14 debentures under subsection (a); and

15               “(2) not more than 30 percent may be issued  
16 as preferred securities under subsection (a).

17       “(c) FEDERAL FINANCING BANK.—The Federal Fi-  
18 nancing Bank may acquire a debenture issued by a par-  
19 ticipating investment fund company under subsection (a).

20       “(d) PURCHASE AND GUARANTEE BY SBA.—

21               “(1) IN GENERAL.—The Administration may  
22 purchase or guarantee the timely payment of all  
23 principal and interest as scheduled on debentures or  
24 preferred securities issued by participating invest-  
25 ment funds under subsection (a), subject to such

1 limitations and regulations as the Administration  
2 may prescribe.

3 “(2) FULL FAITH AND CREDIT.—The full faith  
4 and credit of the United States is pledged to the  
5 payment of all amounts which may be required to be  
6 paid under any guarantee under this subsection.

7 “(e) THIRD-PARTY DEBT.—The Administrator—

8 “(1) shall not permit a participating investment  
9 fund having outstanding leverage to incur third-  
10 party debt that would create or contribute to an un-  
11 reasonable risk of default or loss to the Federal Gov-  
12 ernment; and

13 “(2) shall permit such participating investment  
14 funds to incur third-party debt only on such terms  
15 and subject to such conditions as may be established  
16 by the Administrator, by regulation or otherwise.

17 “(f) CALCULATION OF SUBSIDY RATE.—All fees, in-  
18 terest, and profits received and retained by the Adminis-  
19 tration under this section and section 399D shall be in-  
20 cluded in the calculations made by the Director of the Of-  
21 fice of Management and Budget to offset the cost (as that  
22 term is defined in section 502 of the Federal Credit Re-  
23 form Act of 1990 (2 U.S.C. 661a)) to the Administration  
24 of purchasing and guaranteeing debentures and preferred  
25 securities under this Act.

1 **“SEC. 399F. INVESTMENTS IN SMALL BUSINESS CONCERNS.**

2 “(a) IN GENERAL.—A participating investment fund  
3 shall use leverage received under section 399D to make  
4 debt and equity investments in small and emerging manu-  
5 facturers to carry out qualifying manufacturing projects.

6 “(b) LIMITATION.—Not more than 50 percent of the  
7 amount provided by a participating investment fund to a  
8 small and emerging manufacturer under subsection (a) for  
9 a qualifying manufacturing project shall consist of lever-  
10 age provided to the participating investment fund under  
11 the program.

12 “(c) PORTFOLIO MANAGEMENT.—A single invest-  
13 ment made by a participating investment fund under sub-  
14 section (a) may not exceed 10 percent of the total capital  
15 of the participating investment fund, which includes pri-  
16 vate capital and any leverage projected to be provided to  
17 the participating investment fund, if applicable.

18 “(d) INCREASED OUTREACH.—The Administration  
19 shall issue policy directives to provide for enhanced out-  
20 reach efforts to increase investments by participating in-  
21 vestment funds in—

22 “(1) a small business concern owned and con-  
23 trolled by socially and economically disadvantaged  
24 individuals; and

25 “(2) small business concerns owned and con-  
26 trolled by—

- 1                   “(A) women;
- 2                   “(B) veterans; or
- 3                   “(C) individuals with disabilities.

4 **“SEC. 399G. EXAMINATIONS AND VALUATIONS.**

5           “(a) EXAMINATIONS.—

6                   “(1) IN GENERAL.—Each participating invest-

7                   ment fund shall be subject to examinations made at

8                   the direction of the Investment Division of the Ad-

9                   ministration in accordance with this subsection.

10                   “(2) ASSISTANCE OF PRIVATE SECTOR ENTI-

11                   TIES.—Examinations under this subsection may be

12                   conducted with the assistance of a private sector en-

13                   tity that has the qualifications and the expertise nec-

14                   essary to conduct such examinations.

15                   “(3) COSTS.—

16                   “(A) ASSESSMENT.—

17                   “(i) IN GENERAL.—The Administrator

18                   may assess the cost of examinations under

19                   this subsection, including compensation of

20                   the examiners, against the participating in-

21                   vestment fund examined.

22                   “(ii) PAYMENT.—Any participating

23                   investment fund against which the Admin-

24                   istrator assesses costs under subparagraph

25                   (A) shall pay such costs.

1           “(B) DEPOSIT OF FUNDS.—Funds col-  
2 lected under this subsection—

3           “(i) shall be deposited in the account  
4 for salaries and expenses of the Adminis-  
5 tration; and

6           “(ii) are authorized to be appropriated  
7 solely to cover the costs of examinations  
8 and other program oversight activities.

9           “(b) VALUATIONS.—

10           “(1) FREQUENCY OF VALUATIONS.—

11           “(A) IN GENERAL.—Each participating in-  
12 vestment fund shall submit to the Adminis-  
13 trator a written valuation of the loans and in-  
14 vestments of the participating investment fund  
15 not less often than semiannually or otherwise  
16 upon the request of the Administrator, except  
17 that any participating investment fund with no  
18 leverage outstanding shall submit such valu-  
19 ations annually, unless the Administrator deter-  
20 mines otherwise.

21           “(B) MATERIAL ADVERSE CHANGES.—Not  
22 later than 30 days after the end of a fiscal  
23 quarter of a participating investment fund dur-  
24 ing which a material adverse change in the ag-  
25 gregate valuation of the loans and investments

1 or operations of the participating investment  
2 fund occurs, the participating investment fund  
3 shall notify the Administrator in writing of the  
4 nature and extent of that change.

5 “(C) INDEPENDENT CERTIFICATION.—

6 “(i) IN GENERAL.—Not less than once  
7 during each fiscal year, each participating  
8 investment fund shall submit to the Ad-  
9 ministrator the financial statements of the  
10 participating investment fund, audited by  
11 an independent certified public accountant  
12 approved by the Administrator.

13 “(ii) AUDIT REQUIREMENTS.—Each  
14 audit conducted under clause (i) shall in-  
15 clude—

16 “(I) a review of the procedures  
17 and documentation used by the par-  
18 ticipating investment fund in pre-  
19 paring the valuations required by this  
20 subsection; and

21 “(II) a statement by the inde-  
22 pendent certified public accountant  
23 that such valuations were prepared in  
24 conformity with the valuation criteria  
25 applicable to the participating invest-



1                   ment fund established in accordance  
2                   with paragraph (2).

3                   “(2) VALUATION CRITERIA.—Each valuation  
4                   submitted under this subsection shall be prepared by  
5                   the participating investment fund in accordance with  
6                   valuation criteria, which shall—

7                   “(A) be established or approved by the Ad-  
8                   ministrator; and

9                   “(B) include appropriate safeguards to en-  
10                  sure that the noncash assets of a participating  
11                  investment fund are not overvalued.

12 **“SEC. 399H. MISCELLANEOUS.**

13                  “The Administrator may take such action as set forth  
14 in sections 309, 311, 312, 314, 315, and 316 and an  
15 owner (including a member, partner, or shareholder), offi-  
16 cer, director, employee, agent, or other participant in the  
17 management or conduct of the affairs of a participating  
18 investment fund shall be subject to the requirements of  
19 such sections.

20 **“SEC. 399I. VIOLATIONS; REMOVAL OR SUSPENSION OF**  
21 **MANAGEMENT OFFICIALS.**

22                  “(a) VIOLATIONS.—If any participating investment  
23 fund violates or fails to comply with any of the provisions  
24 of this part or of regulations prescribed hereunder, all of  
25 its rights, privileges, and franchises derived therefrom may

1 thereby be forfeited. Before any such participating invest-  
2 ment fund shall be declared dissolved, or its rights, privi-  
3 leges, and franchises forfeited, any noncompliance with or  
4 violation of this Act shall be determined and adjudged by  
5 a court of the United States of competent jurisdiction in  
6 a suit brought for that purpose in the district, territory,  
7 or other place subject to the jurisdiction of the United  
8 States, in which the principal office of such participating  
9 investment fund is located. Any such suit shall be brought  
10 by the United States at the instance of the Administration  
11 or the Attorney General.

12 “(b) **SUSPENSION OF MANAGEMENT OFFICIALS.**—  
13 Using the procedures for removing or suspending a direc-  
14 tor or an officer of a licensee set forth in section 313,  
15 the Administrator may remove or suspend any manage-  
16 ment official of a participating investment fund.

17 **“SEC. 399J. REPORTS.**

18 “Each participating investment fund shall, on a semi-  
19 annual basis, provide to the Administrator such informa-  
20 tion as the Administrator may require, including—

21 “(1) information related to the measurement  
22 criteria that the participating investment fund pro-  
23 posed in the application for the program;

24 “(2) information on the use of leverage by the  
25 participating investment fund; and

1 “(3) in each case in which the participating in-  
 2 vestment fund makes an investment in a small busi-  
 3 ness concern that is not a small business concern  
 4 owned and controlled by socially and economically  
 5 disadvantaged individuals, a report on the number  
 6 and percentage of employees of the small business  
 7 concern who are socially and economically disadvan-  
 8 taged individuals.

9 **“SEC. 399K. SCALE-UP MANUFACTURING INVESTMENT COM-  
 10 PANY CREDIT COUNCIL.**

11 “(a) ESTABLISHMENT.—The Administrator may es-  
 12 tablish a Scale-Up Manufacturing Investment Company  
 13 Credit Council, which, if established, shall consist of 5  
 14 members from the private sector with aggregate and col-  
 15 lective experience in technology development, manufac-  
 16 turing financing, and capital investment.

17 “(b) DUTIES.—The Council, if established, shall ad-  
 18 vise the Administrator on carrying out the program, which  
 19 shall include—

20 “(1) providing advice from time to time on ad-  
 21 vanced scale-up manufacturing industries; and

22 “(2) establishing and conducting an annual  
 23 briefing beginning not later than 18 months after  
 24 the date of enactment of this section.

1 **“SEC. 399L. REGULATIONS.**

2 “The Administrator may issue such regulations as  
3 the Administrator determines necessary to carry out the  
4 provisions of this part in accordance with its purposes.”.

5 (b) BANK HOLDING COMPANY ACT OF 1956.—Sec-  
6 tion 13(d)(1)(E) of the Bank Holding Company Act of  
7 1956 (12 U.S.C. 1851(d)(1)(E)) is amended by inserting  
8 “investments in one or more participating investment  
9 funds, as defined in section 399A of the Small Business  
10 Investment Act of 1958,” before “or investments”.

11 (c) INELIGIBILITY FOR BANKRUPTCY.—Section  
12 109(b)(2) of title 11, United States Code, is amended by  
13 inserting “a participating investment fund as defined in  
14 section 399A of the Small Business Investment Act of  
15 1958,” before “credit union”.

16 (d) ELIGIBILITY FOR CRA CREDIT.—Section 804 of  
17 the Community Reinvestment Act of 1977 (12 U.S.C.  
18 2903) is amended by adding at the end the following:

19 “(e) INVESTMENTS IN PARTICIPATING INVESTMENT  
20 FUNDS.—In assessing and taking into account, under sub-  
21 section (a), the record of a financial institution, the appro-  
22 priate Federal financial supervisory agency shall consider,  
23 as a factor, investments made in one or more participating  
24 investment funds under part D of title III of the Small  
25 Business Investment Act of 1958.”.

○