

118TH CONGRESS  
1ST SESSION

# S. 46

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 3), 2023

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

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## 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                   “(III) allow the applicant to more  
 2                   precisely request the desired amount  
 3                   of commitment pending the securing  
 4                   of capital from private market inves-  
 5                   tors.

6                   “(iii) LIMIT ON PERIOD OF THE  
 7                   TIME.—The period between a provisional  
 8                   approval under clause (i) and the final de-  
 9                   termination of approval under paragraph  
 10                  (1) shall not exceed 12 months.

11                  “(e) COMMITMENTS AND SBIC BONDS.—

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

17                   “(2) BOND TERMS.—A bond purchased by the  
 18                   Administrator from a participating investment com-  
 19                   pany under this subsection shall have the following  
 20                   terms and conditions:

21                   “(A) TERM AND INTEREST.—

22                   “(i) IN GENERAL.—The bond shall be  
 23                   issued for a term of not less than 15 years  
 24                   and shall bear interest at a rate deter-

1           mined by the Administrator of not more  
2           than 2 percent.

3           “(ii) ACCRUAL OF INTEREST.—Inter-  
4           est on the bond shall accrue and shall be  
5           payable in accordance with subparagraph  
6           (D).

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

11          “(B) PROFITS.—

12           “(i) IN GENERAL.—The Administra-  
13           tion shall be entitled to receive a share of  
14           the profits net of any profit sharing per-  
15           formance compensation of the participating  
16           investment company equal to the quotient  
17           obtained by dividing—

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

22                   “(II) the commitment approved  
23                   under subsection (d) plus the regu-  
24                   latory capital of the participating in-

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.”.

○