

114TH CONGRESS
1ST SESSION

S. 1934

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

AUGUST 4, 2015

Mr. BOOKER (for himself, Mrs. GILLIBRAND, Mrs. MURRAY, Mr. COONS, and Mr. PETERS) 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 2015Scale-Up Manu-
6 facturing Investment Company Act of 2015”.

7 **SEC. 2. FINDINGS.**

8 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 that 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 that term
24 in 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 initial receipt by the Administrator of an application
 6 submitted under paragraph (1), the Administrator
 7 shall provide the applicant with a written report de-
 8 tailing the status of the application and any require-
 9 ments remaining for completion of the application.

10 “(b) SELECTION.—

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

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

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

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

1 analysis measured against benchmarks and peer
2 funds;

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

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

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

11 “(F) principals with strong reputations;

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

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

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

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

24 “(ii) general partner carried interest
25 allocations, fees and vesting schedules;

1 “(iii) adequate fund infrastructure
 2 and supporting back office services; and
 3 “(iv) evidence of fund raising traction
 4 and capability.

5 “(c) FEES.—

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

10 “(2) USE OF AMOUNTS.—Fees collected under
 11 this subsection—

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

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

18 **“SEC. 399D. PROVISION OF LEVERAGE TO PARTICIPATING**
 19 **INVESTMENT FUNDS.**

20 “(a) IN GENERAL.—Not later than 60 days after the
 21 date on which the Administrator approves and issues a
 22 license under section 399C to operate as a participating
 23 investment fund under the program, the Administrator
 24 may provide not more than \$1 of leverage for every \$1

1 of private capital raised by the participating investment
2 fund.

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

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

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

10 “(c) PRIVATE CAPITAL REQUIREMENT.—

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

14 “(2) FINANCIAL INSTITUTION INVESTMENTS.—

15 Any national bank, or any member bank of the Fed-
16 eral Reserve System or nonmember insured bank to
17 the extent permitted under applicable State law,
18 may invest in any 1 or more participating invest-
19 ment funds, or in any entity established to invest
20 solely in participating investment funds, except that
21 in no event shall the total amount of such invest-
22 ments of any such bank exceed 5 percent of the cap-
23 ital and surplus of the bank.

24 “(d) LEVERAGE FEE.—The Administrator shall
25 charge and collect a leverage fee of not more than 5.5 per-

1 cent and not less than 3 percent of the face amount of
 2 the leverage issued.

3 **“SEC. 399E. BORROWING POWER.**

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

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

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

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

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

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

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

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

5 “(e) THIRD PARTY DEBT.—The Administrator—

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

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

15 “(f) CALCULATION OF SUBSIDY RATE.—All fees, in-
16 terest, and profits received and retained by the Adminis-
17 tration under this section and section 399D shall be in-
18 cluded in the calculations made by the Director of the Of-
19 fice of Management and Budget to offset the cost (as that
20 term is defined in section 502 of the Federal Credit Re-
21 form Act of 1990 (2 U.S.C. 661a)) to the Administration
22 of purchasing and guaranteeing debentures and preferred
23 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; and
 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 1 or more participating investment funds,
9 as defined in section 399A of the Small Business Invest-
10 ment 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 1 or more participating
24 investment funds under part D of the Small Business In-
25 vestment Act of 1958.”.

