Suspend the Rules and Pass the Bill, H.R. 8211, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

116TH CONGRESS

2D SESSION

H. R. 8211

To amend the Small Business Investment Act of 1958 to improve the loan guaranty program, enhance the ability of small manufacturers to access affordable capital, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 2020

Ms. CRAIG (for herself and Mr. CHABOT) introduced the following bill; which was referred to the Committee on Small Business

A BILL

To amend the Small Business Investment Act of 1958 to improve the loan guaranty program, enhance the ability of small manufacturers to access affordable capital, 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 “504 Modernization and

5 Small Manufacturer Enhancement Act of 2020”.

G:\CMTE\SB\16\SUS\H8211_SUS.XML
SEC. 2. ADDITIONS TO POLICY GOALS FOR THE DEVELOPMENT COMPANY PROGRAM.


(1) by redesignating subparagraphs (A) through (L) as subparagraphs (B) through (M), respectively;

(2) by inserting before subparagraph (B) (as so redesignated) the following:

“(A) workforce development through work-based or work-integrated training, which shall be satisfied by demonstrating that a small business concern that is a subject of the project has—

“(i) a documented in-house training program, the duration of which is not shorter than 12 weeks; or

“(ii) entered into a contract with an entity—

“(I) to provide trained applicants for any open position of employment at the small business concern; and

“(II) that ensures that any applicant provided to the small business concern under subclause (I) has undergone not fewer than 12 weeks of
training that is relevant to the open
position described in that subclause,”;

(3) by amending subparagraph (D) (as so re-
designated) to read as follows:

“(D) expansion of minority-owned, em-
ployee-owned, or women-owned business devel-
opment,”;

(4) in subparagraph (L) (as so redesignated),
by striking “producers, or” and inserting “pro-
ducers,”;

(5) in subparagraph (M) (as so redesignated),
by striking the period at the end and inserting a
comma;

(6) by inserting after subparagraph (M) the fol-
lowing new subparagraphs:

“(N) enhanced ability for small business
concerns to reduce costs by using energy effi-
cient products and generating renewable en-
ergy,

“(O) aid revitalizing of any area for which
a disaster has been declared or determined
under subparagraph (A), (B), (C), or (E) of
section 7(b)(2) of the Small Business Act, or

“(P) expansion of small business concerns
with 10 or fewer employees.”; and
(7) in the flush text following subparagraph (P), as added by paragraph (6), by striking “subparagraphs (J) and (K)” and inserting “subparagraphs (K) and (L)”.

SEC. 3. INCREASE IN LOAN AMOUNTS FOR MANUFACTURING LOANS.


(1) in the matter preceding paragraph (1), by striking “The Administration” and inserting the following:

“(a) IN GENERAL.—The Administration”; and

(2) in subsection (a), as so designated—

(A) in paragraph (2)(A)—

(i) in the matter preceding clause (i), by striking “section” and inserting “subsection”; and

(ii) in clause (iii), by striking “$5,500,000” and inserting “$6,500,000”; and

(B) in paragraph (3)(A), by striking “this section” and inserting “this subsection”.

SEC. 4. IMPROVEMENTS TO 504 LOAN CLOSING PROCEDURE.


(1) in section 502, as amended by section 3, by adding at the end the following new subsections:

“(b) CLOSING.—

“(1) AUTHORITY OF CERTAIN DEVELOPMENT COMPANIES.—An accredited lender certified company may take any of the following actions to facilitate the closing of a loan made under subsection (a):

“(A) Reallocate the cost of the project with respect to which the loan is made in an amount that is not more than 10 percent of the overall cost of the project.

“(B) Correct any name that is applicable to the loan, including the name of any borrower, guarantor, eligible passive company described in subparagraph (C)(i), and operating company described in subparagraph (C)(ii).

“(C) Form any of the following to receive proceeds of the loan:

“(i) An eligible passive company that complies with section 120.111 of title 13, Code of Federal Regulations, or any successor regulation.
“(ii) If an eligible passive company is formed under clause (i), an operating company with respect to that eligible passive company.

“(D) Correct the address of any property with respect to which the loan is made.

“(E) Correct the name of any interim lender or third-party lender.

“(F) Change any third-party lender or interim lender if that lender is a financial institution that is regulated by the Federal Government or a State government.

“(G) Make a guarantor a co-borrower or a co-borrower a guarantor.

“(H) Add a guarantor that does not change ownership with respect to the loan.

“(I) Reduce the amount of standby debt before the closing as a result of regularly scheduled payments.

“(J) Reduce the cost of the project with respect to which the loan is made.

“(2) FEES.—The Administrator shall—

“(A) issue a rule regarding the amount of a closing fee that may be financed in a debenture that is issued by a certified development
company to make one or more loans to small business concerns, the proceeds of which are used by that concern for the purposes described in subsection (a), except that such amount shall be not less than $3,500; and

“(B) periodically update the rule issued under subparagraph (A).

“(3) NO ADVERSE CHANGE AND FINANCIAL STATEMENT.—Before the closing with respect to a loan made under subsection (a), the borrower and any operating company shall—

“(A) make the certification required under section 120.892 of title 13, Code of Federal Regulations, or any successor regulation; and

“(B) submit to the certified development company a financial statement that is not more than 180 days old, which the company shall certify not later than 120 days before the date on which the certified development company issues a debenture with respect to the project to which the loan relates.

“(c) EXPRESS PROGRAM.—An accredited lender certified company may, with respect to a covered loan, take any of the following actions with respect to the loan:
“(1) Any action described in any of subparagraphs (A) through (J) of subsection (b)(1).

“(2) If the borrower is not delinquent with respect to the loan payments—

“(A) permit the loan to subordinate to a new third-party lender loan for the purposes of refinancing that third-party lender loan, except that no refinanced amount with respect to the loan may be increased in order to provide cash to the borrower;

“(B) permit a new party to assume responsibility for the loan if the original borrower remains on the loan as the original guarantor;

“(C) obtain force placed insurance coverage for the loan if the borrower has allowed insurance coverage with respect to the loan to lapse; and

“(D) endorse an insurance check with respect to the property that is financed by the loan in an amount that is less than $100,000.

“(3) Certify that the loan is compliant with the appraisal requirements and environmental policies and procedures applicable to the loan under Standard Operating Procedure 50 10 6 of the Administra-
tion, effective August 28, 2020, or any successor
Standard Operating Procedure.

“(d) DEFINITIONS.—In this section—

“(1) the term ‘accredited lender certified com-

pany’ means a certified development company that
meets the requirements under section 507(b), includ-
ing a certified development company that the Ad-

ministration has designated as an accredited lender
under such section 507(b); and

“(2) the term ‘covered loan’—

“(A) means a loan made under subsection

(a) in an amount that is not more than

$500,000; and

“(B) does not include a loan made to a

borrower that is a franchise that, or is in an in-
dustry that, has a high rate of default, as annu-
ally determined by the Administrator.”; and

(2) by adding at the end the following new sec-

tion:

“SEC. 511. CLOSING AND OVERSIGHT.

“(a) SBA DISTRICT COUNSEL S.—Beginning on the
date of enactment of this section, with respect to the pro-
gram established under this title, district counsels of the
Administration shall be subject to the same requirements,
and shall have the same authority and responsibilities, as
in effect with respect to that program on the day before
the date of enactment of this section, except that—

“(1) the Office of Credit Risk Management of
the Administration shall have the responsibility for
all duties relating to conducting file reviews of loans
made under this title; and

“(2) district counsels of the Administration
shall not have any responsibility relating to the re-
view of closing packages with respect to a loan made
under this title.

“(b) DESIGNATED ATTORNEYS.—For the purposes of
this title, the following provisions and requirements shall
apply with respect to a designated attorney of a certified
development company:

“(1) A designated attorney that meets the re-
quirements determined under paragraph (2) shall be
responsible for certifying documents relating to the
closing of a loan described in this title.

“(2) The Administrator may determine any
continuing education requirements that the des-
ignated attorney shall be required to satisfy in order
to be permitted to close a loan made under this title.

“(3) If, as of the date of enactment of this sec-
tion, a certified development company does not have
a designated attorney, during the 270-day period be-
beginning on that date of enactment, the certified development company may identify such an attorney, subject to the approval of the Administrator.”.

SEC. 5. CERTIFIED DEVELOPMENT COMPANY LOANS FOR SMALL MANUFACTURERS.

(a) CONTRIBUTION REQUIREMENT.—Section 502(a)(3)(C) of the Small Business Investment Act of 1958, as designated by section 3, is amended—

(1) by redesignating clauses (i), (ii), (iii), and (iv) as subclauses (I), (II), (III), and (IV), respectively, and adjusting the margins of such subclauses accordingly;

(2) by inserting before subclause (I), as so redesignated, the following:

“(i) for a small business concern that is not a small manufacturer (as defined in section 501(e)(7))—”;

(3) in subclause (III), as so redesignated, by striking “clauses (i) and (ii)” and inserting “subclauses (I) and (II)”;

(4) in subclause (IV) as so redesignated, by striking the period and the end and inserting “; or”;

and

(5) by adding at the end the following:
“(ii) for a small manufacturer (as defined in section 501(e)(7))—

“(I) at least 5 percent of the total cost of the project financed, if the small business concern has been in operation for a period of 2 years or less;

“(II) at least 5 percent of the total cost of the project financed, if the project involves a limited or single purpose building or structure;

“(III) at least 10 percent of the total cost of the project financed if the project involves both of the conditions set forth in subclauses (I) and (II); or

“(IV) at least 5 percent of the total cost of the project financed, in all other circumstances, at the discretion of the development company.”.

(b) CREATION OR RETENTION OF JOBS REQUIREMENT.—Section 501(e) of the Small Business Investment Act of 1958 (15 U.S.C. 695(e)) is amended—

(1) in paragraph (1), by striking “creates or retains” and all that follows through the period at the end and inserting “creates or retains 1 job for every
$75,000 guaranteed by the Administration, except that the amount is $150,000 in the case of a project of a small manufacturer.”;

(2) in paragraph (2), by striking “creates or retains” and all that follows through the period at the end and inserting “creates or retains 1 job for every $75,000 guaranteed by the Administration, except that the amount is $150,000 in the case of a project of a small manufacturer.”;

(3) by redesignating paragraph (6) as paragraph (7); and

(4) by inserting after paragraph (5) the following:

“(6) For a loan for a project directed toward the creation of job opportunities under subsection (d)(1), the Administrator shall publish on the website of the Administration the number of jobs created or retained under the project as of the date that is 2 years after the completion (as determined based on information provided by the development company) of the project.”.

(c) COLLATERAL REQUIREMENTS.—Section 502(a)(3)(E)(i) of the Small Business Investment Act of 1958, as designated by section 3, is amended by adding at the end the following: “Additional collateral shall not
be required in the case of a small manufacturer (as defined in section 501(e)(7)).”.

(d) DEBT REFINANCING.—Section 502(a)(7)(B) of the Small Business Investment Act of 1958, as designated by section 3, is amended in the matter preceding clause (i) by inserting “(or in the case of a small manufacturer (as defined in section 501(e)(7)), that does not exceed 100 percent of the project cost of the expansion)” after “cost of the expansion”.

(e) AMOUNT OF GUARANTEED DEBENTURE.—Section 503(a) of the Small Business Investment Act of 1958 (15 U.S.C. 697(a)) is amended by adding at the end the following:

“(5) Any debenture issued by a State or local development company to a small manufacturer (as defined in section 501(e)(7)) with respect to which a guarantee is made under this subsection shall be in an amount equal to not more than 50 percent of the cost of the project with respect to which such debenture is issued, without regard to whether good cause has been shown.”.

SEC. 6. ASSISTANCE FOR SMALL MANUFACTURERS.

Title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), as amended by section 4(2), is further amended by adding at the end the following new section:


“SEC. 512. ASSISTANCE FOR SMALL MANUFACTURERS.

“(a) IN GENERAL.—The Administrator shall ensure that each district office of the Administration partners with not less than 1 resource partner to provide training to small business concerns assigned a North American Industry Classification System code for manufacturing on obtaining assistance under the program carried out under this title, including with respect to the application process under that program and partnering with development companies under this title.

“(b) RESOURCE PARTNER DEFINED.—In this section, the term ‘resource partner’ means—

“(1) a small business development center (as defined in section 3 of the Small Business Act);

“(2) a women’s business center (described under section 29 of such Act);

“(3) a chapter of the Service Corps of Retired Executives (established under section 8(b)(1)(B) of such Act); and

“(4) a Veteran Business Outreach Center (described under section 32 of such Act).”.

SEC. 7. LEASING RULES FOR NEW FACILITIES AND EXISTING BUILDINGS.

(a) IN GENERAL.—Section 502(a) of the Small Business Investment Act of 1958, as designated by section 3,
is amended by striking paragraphs (4) and (5) and inserting the following new paragraphs:

“(4) NEW FACILITIES.—

“(A) IN GENERAL.—With respect to a project to construct a new facility, an assisted small business concern may permanently lease not more than 20 percent of the project if such concern—

“(i) permanently occupies and uses not less than 60 percent of the project;

“(ii) plans to occupy and use an additional portion of the project that is not permanently leased not later than 3 years after receipt of assistance under this section; and

“(iii) plans to permanently occupy and use 80 percent of the project not later than 10 years after receipt of such assistance.

“(B) SMALL MANUFACTURERS.—With respect to an assisted small business concern that is a small manufacturer (as defined in section 501(e)(6)), subparagraph (A)(i) shall apply with ‘50 percent’ substituted for ‘60 percent’.
“(5) EXISTING BUILDINGS.—With respect to a project to acquire, renovate, or reconstruct an existing building, the following shall apply:

“(A) OCCUPANCY REQUIREMENTS.—The assisted small business concern may permanently lease not more than 50 percent of the project if the concern permanently occupies and uses not less than 50 percent of the project.

“(B) EXCEPTION.—The assisted small business concern may permanently lease more than 50 percent of the project if—

“(i) such concern—

“(I) has occupied and used the existing building for a consecutive 12-month period before submitting an application for assistance under this section;

“(II) agrees to permanently use less than 50 percent of the existing building and permanently lease more than 50 percent for a consecutive 12-month period after receiving such assistance; and
“(III) affirms that the existing building is appropriate for current and reasonably anticipated needs; and “(ii) the development company assisting such project—

“(I) provides written notice to the Administrator on the date on which the development company closes the loan for such project; and

“(II) once each year during the first 5 years of the loan, and once every 2 years for the remainder of the loan—

“(aa) conducts an examination of the assisted small business concern to ensure the concern is not a real estate development business; and

“(bb) files with the Administrator an anti-investor certification signed by the development company and the assisted small business concern.

“(C) LEASE TERM.—Any residential lease made under this paragraph shall be for a term
of not more than 1 year, and any commercial
lease made under this paragraph shall be for a
term of not more than 5 years.”.

(b) REPORT.—Not later than 5 years after the date
of the enactment of this Act, the Administrator of the
Small Business Administration shall submit to Congress
a report analyzing the impact of the amendments made
by this section on access to capital for small business con-
cerns (as defined under section 3 of the Small Business
Act (15 U.S.C. 632)), and recommending whether similar
notice, examination, and certifications requirements
should be made to the program established under section
7(a) of the Small Business Act (15 U.S.C. 636(a)).

SEC. 8. LOW-INTEREST REFINANCING UNDER THE LOCAL
DEVELOPMENT BUSINESS LOAN PROGRAM.

(a) EXPANSIONS.—Section 502(a)(7)(B) of the Small
Business Investment Act of 1958, as designated by section
3 and amended by section 5(d), is further amended—
(1) in the matter preceding clause (i), by strik-
ing “50 percent” and inserting “100 percent”; and
(2) in clause (v), by adding “and” at the end;
(3) by striking clause (vi); and
(4) by redesignating clause (vii) as clause (vi).
(b) REPEAL.—Section 521(a) of division E of the Consolidated Appropriations Act, 2016 (Public Law 114–113; 129 Stat. 2463; 15 U.S.C. 696 note) is repealed.

(c) REFINANCING.—Section 502(a)(7) of the Small Business Investment Act of 1958, as designated by section 3, is amended by adding at the end the following new sub-paragraph:

“(C) REFINANCING NOT INVOLVING EXPANSIONS.—

“(i) DEFINITIONS.—In this sub-paragraph—

“(I) the term ‘borrower’ means a small business concern that submits an application to a development company for financing under this sub-paragraph;

“(II) the term ‘eligible fixed asset’ means tangible property relating to which the Administrator may provide financing under this section; and

“(III) the term ‘qualified debt’ means indebtedness that—

“(aa) was incurred not less than 6 months before the date of
the application for assistance under this subparagraph;

“(bb) is a commercial loan;

“(cc) the proceeds of which were used to acquire an eligible fixed asset;

“(dd) was incurred for the benefit of the small business concern; and

“(ee) is collateralized by eligible fixed assets; and

“(ii) Authority.—A project that does not involve the expansion of a small business concern may include the refinancing of qualified debt if—

“(I) the amount of the financing is not more than 90 percent of the value of the collateral for the financing, except that, if the appraised value of the eligible fixed assets serving as collateral for the financing is less than the amount equal to 125 percent of the amount of the financing, the borrower may provide additional cash or
other collateral to eliminate any deficiency;

“(II) the borrower has been in operation for all of the 2-year period ending on the date the loan application is submitted; and

“(III) for a financing for which the Administrator determines there will be an additional cost attributable to the refinancing of the qualified debt, the borrower agrees to pay a fee in an amount equal to the anticipated additional cost.

“(iii) FINANCING FOR BUSINESS EXPENSES.—

“(I) FINANCING FOR BUSINESS EXPENSES.—The Administrator may provide financing to a borrower that receives financing that includes a refinancing of qualified debt under clause (ii), in addition to the refinancing under clause (ii), to be used solely for the payment of business expenses.
“(II) APPLICATION FOR FINANCING.— An application for financing under subclause (I) shall include—

“(aa) a specific description of the expenses for which the additional financing is requested;

and

“(bb) an itemization of the amount of each expense.

“(III) CONDITION ON ADDITIONAL FINANCING.—A borrower may not use any part of the financing under this clause for non-business purposes.

“(iv) LOANS BASED ON JOBS.—

“(I) JOB CREATION AND RETENTION GOALS.—

“(aa) IN GENERAL.—The Administrator may provide financing under this subparagraph for a borrower that meets the job creation goals under subsection (d) or (e) of section 501.

“(bb) ALTERNATE JOB RETENTION GOAL.—The Adminis-
A lender may provide financing under this subparagraph to a borrower that does not meet the goals described in item (aa) in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by $75,000.

“(II) NUMBER OF EMPLOYEES.—

For purposes of subclause (I), the number of employees of a borrower is equal to the sum of—

“(aa) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and

“(bb) the product obtained by multiplying—

“(AA) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; by
“(BB) the quotient obtained by dividing the average number of hours each part time employee of the borrower works each week by 40.

“(v) NONDELEGATION.—Notwithstanding section 508(e), the Administrator may not permit a premier certified lender to approve or disapprove an application for assistance under this subparagraph.

“(vi) TOTAL AMOUNT OF LOANS.—The Administrator may provide not more than a total of $7,500,000,000 of financing under this subparagraph for each fiscal year.”.