

Union Calendar No. 503

115TH CONGRESS
2^D SESSION

H. R. 4743

[Report No. 115-655]

To amend the Small Business Act to strengthen the Office of Credit Risk Management within the Small Business Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2018

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

APRIL 26, 2018

Additional sponsors: Mr. MARSHALL, Miss GONZÁLEZ-COLÓN of Puerto Rico, Mrs. RADEWAGEN, Ms. JUDY CHU of California, Mrs. MURPHY of Florida, Mr. ESPAILLAT, Mr. EVANS, Ms. CLARKE of New York, Mr. NORMAN, and Mr. LAWSON of Florida

APRIL 26, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 9, 2018]

A BILL

To amend the Small Business Act to strengthen the Office of Credit Risk Management within the Small Business Administration, 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 “Small Business 7(a)*
5 *Lending Oversight Reform Act of 2018”.*

6 **SEC. 2. DEFINITIONS.**

7 *In this Act, the terms “Administration” and “Admin-*
8 *istrator” mean the Small Business Administration and the*
9 *Administrator thereof, respectively.*

10 **SEC. 3. CODIFICATION OF THE OFFICE OF CREDIT RISK**

11 **MANAGEMENT AND THE LENDER OVERSIGHT**

12 **COMMITTEE.**

13 *(a) IN GENERAL.—The Small Business Act (15 U.S.C.*
14 *631 et seq.) is amended—*

15 *(1) by redesignating section 47 as section 49;*

16 *and*

17 *(2) by inserting after section 46 the following*

18 *new sections:*

19 **“SEC. 47. OFFICE OF CREDIT RISK MANAGEMENT.**

20 *“(a) ESTABLISHMENT.—There is established within*

21 *the Administration the Office of Credit Risk Management*

22 *(in this section referred to as the ‘Office’).*

23 *“(b) DUTIES.—The Office shall be responsible for su-*

24 *pervising—*

1 “(1) any lender making loans under section 7(a)
2 (in this section referred to as a ‘7(a) lender’);

3 “(2) any Lending Partner or Intermediary par-
4 ticipant of the Administration in a lending program
5 of the Office of Capital Access of the Administration;
6 and

7 “(3) any small business lending company or a
8 non-Federally regulated lender without regard to the
9 requirements of section 23.

10 “(c) DIRECTOR.—

11 “(1) IN GENERAL.—The Office shall be headed by
12 the Director of the Office of Credit Risk Management
13 (in this section referred to as the ‘Director’), who
14 shall be a career appointee in the Senior Executive
15 Service (as defined in section 3132 of title 5, United
16 States Code).

17 “(2) DUTIES.—The Director shall be responsible
18 for oversight of the lenders and participants described
19 in subsection (b), including by conducting periodic
20 reviews of the compliance and performance of such
21 lenders and participants.

22 “(d) SUPERVISION DUTIES FOR 7(a) LENDERS.—With
23 respect to 7(a) lenders, an employee of the Office shall—

1 “(1) be present for and supervise any such re-
2 view that is conducted by a contractor of the Office
3 on the premise of the 7(a) lender; and

4 “(2) supervise any such review that is not con-
5 ducted on the premise of the 7(a) lender.

6 “(e) ENFORCEMENT AUTHORITY AGAINST 7(a) LEND-
7 ERS.—

8 “(1) INFORMAL ENFORCEMENT AUTHORITY.—The
9 Director may take an informal enforcement action
10 against a 7(a) lender if the Director finds that the
11 7(a) lender has violated a statutory or regulatory re-
12 quirement under section 7(a) or any requirement in
13 a Standard Operating Procedures Manual or Policy
14 Notice related to a program or function of the Office
15 of Capital Access.

16 “(2) FORMAL ENFORCEMENT AUTHORITY.—

17 “(A) IN GENERAL.—With the approval of
18 the Lender Oversight Committee established
19 under section 48, the Director may take a formal
20 enforcement action against any 7(a) lender if the
21 Director finds that the 7(a) lender has violated—

22 “(i) a statutory or regulatory require-
23 ment under section 7(a), including a re-
24 quirement relating to credit elsewhere; or

1 “(ii) any requirement described in a
2 *Standard Operating Procedures Manual or*
3 *Policy Notice, related to a program or func-*
4 *tion of the Office of Capital Access.*

5 “(B) *ENFORCEMENT ACTIONS.*—*An enforce-*
6 *ment action imposed on a 7(a) lender by the Di-*
7 *rector under subparagraph (A) shall be based on*
8 *the severity or frequency of the violation and*
9 *may include assessing a civil monetary penalty*
10 *against the 7(a) lender in an amount that is not*
11 *greater than \$250,000.*

12 “(3) *APPEAL BY LENDER.*—*A 7(a) lender may*
13 *appeal an enforcement action imposed by the Director*
14 *described in this subsection to the Office of Hearings*
15 *and Appeals established under section 5(i) or to an*
16 *appropriate district court of the United States.*

17 “(f) *REGULATIONS.*—*Not later than 1 year after the*
18 *date of the enactment of this section, the Administrator*
19 *shall issue regulations, after opportunity for notice and*
20 *comment, to carry out subsection (e).*

21 “(g) *SERVICING AND LIQUIDATION RESPONSIBIL-*
22 *ITIES.*—*During any period during which a 7(a) lender is*
23 *suspended or otherwise prohibited from making loans under*
24 *section 7(a), the 7(a) lender shall remain obligated to main-*
25 *tain all servicing and liquidation activities delegated to the*

1 lender by the Administrator, unless otherwise specified by
2 the Director.

3 “(h) *PORTFOLIO RISK ANALYSIS OF 7(a) LOANS.*—

4 “(1) *IN GENERAL.*—The Director shall annually
5 conduct a risk analysis of the portfolio of the Admin-
6 istration with respect to all loans guaranteed under
7 section 7(a).

8 “(2) *REPORT TO CONGRESS.*—On December 1,
9 2018, and every December 1 thereafter, the Director
10 shall submit to Congress a report containing the re-
11 sults of each portfolio risk analysis conducted under
12 paragraph (1) during the fiscal year preceding the
13 submission of the report, which shall include—

14 “(A) an analysis of the overall program risk
15 of loans guaranteed under section 7(a);

16 “(B) an analysis of the program risk, set
17 forth separately by industry concentration;

18 “(C) without identifying individual 7(a)
19 lenders by name, a consolidated analysis of the
20 risk created by the individual 7(a) lenders re-
21 sponsible for not less than 1 percent of the gross
22 loan approvals set forth separately for the year
23 covered by the report by—

24 “(i) the dollar value of the loans made
25 by such 7(a) lenders; and

1 “(ii) the number of loans made by such
2 7(a) lenders;

3 “(D) steps taken by the Administrator to
4 mitigate the risks identified in subparagraphs
5 (A), (B), and (C);

6 “(E) the number of 7(a) lenders, the number
7 of loans made, and the gross and net dollar
8 amount of loans made;

9 “(F) the number and dollar amount of total
10 losses, the number and dollar amount of total
11 purchases, and the percentage and dollar amount
12 of recoveries at the Administration;

13 “(G) the number and type of enforcement
14 actions recommended by the Director;

15 “(H) the number and type of enforcement
16 actions approved by the Lender Oversight Com-
17 mittee established under section 48;

18 “(I) the number and type of enforcement ac-
19 tions disapproved by the Lender Oversight Com-
20 mittee; and

21 “(J) the number and dollar amount of civil
22 monetary penalties assessed.

23 “(i) BUDGET SUBMISSION AND JUSTIFICATION.—The
24 Director shall annually provide, in writing, a fiscal year
25 budget submission for the Office and a justification for such

1 *submission to the Administrator. Such submission and jus-*
2 *tification shall—*

3 “(1) *include salaries and expenses of the Office*
4 *and the charge for the lender oversight fees;*

5 “(2) *be submitted at or about the time of the*
6 *budget submission by the President under section*
7 *1105(a) of title 31; and*

8 “(3) *be maintained in an indexed form and*
9 *made available for public review for a period of not*
10 *less than 5 years beginning on the date of submission*
11 *and justification.*

12 **“SEC. 48. LENDER OVERSIGHT COMMITTEE.**

13 “(a) *ESTABLISHMENT.—There is established within*
14 *the Administration the Lender Oversight Committee (in*
15 *this section referred to as the ‘Committee’).*

16 “(b) *MEMBERSHIP.—The Committee shall consist of at*
17 *least 8 members selected by the Administrator, of which—*

18 “(1) *3 members shall be voting members, 2 of*
19 *whom shall be career appointees in the Senior Execu-*
20 *tive Service (as defined in section 3132 of title 5,*
21 *United States Code); and*

22 “(2) *the remaining members shall be nonvoting*
23 *members who shall serve in an advisory capacity on*
24 *the Committee.*

25 “(c) *DUTIES.—The Committee shall—*

1 “(1) review reports on lender oversight activities;

2 “(2) review formal enforcement action rec-
3 ommendations of the Director of the Office of Credit
4 Risk Management with respect to any lender making
5 loans under section 7(a) and any Lending Partner or
6 Intermediary participant of the Administration in a
7 lending program of the Office of Capital Access of the
8 Administration;

9 “(3) in carrying out paragraph (2) with respect
10 to formal enforcement actions taken under subsection
11 (d) or (e) of section 23, vote to recommend or not rec-
12 ommend action to the Administrator or a designee of
13 the Administrator;

14 “(4) in carrying out paragraph (2) with respect
15 to any formal enforcement action not specified under
16 subsection (d) or (e) of section 23, vote to approve,
17 disapprove, or modify the action;

18 “(5) review, in an advisory capacity, any lender
19 oversight, portfolio risk management, or program in-
20 tegrity matters brought by the Director; and

21 “(6) take such other actions and perform such
22 other functions as may be delegated to the Committee
23 by the Administrator.

24 “(d) MEETINGS.—

1 “(1) *IN GENERAL.*—*The Committee shall meet as*
2 *necessary, but not less frequently than on a quarterly*
3 *basis.*”

4 “(2) *REPORTS.*—*The Committee shall submit to*
5 *the Administrator a report detailing each meeting of*
6 *the Committee, including if the Committee does or*
7 *does not vote to approve a formal enforcement action*
8 *of the Director of the Office of Credit Risk Manage-*
9 *ment with respect to a lender.”.*

10 ***(b) SUPERVISION DUTIES FOR 7(A) LENDERS.***—*Effec-*
11 *tive January 1, 2019, subsection (d) of section 47 (as added*
12 *by subsection (a)) is amended to read as follows:*

13 ***(d) SUPERVISION DUTIES FOR 7(A) LENDERS.***—

14 “(1) *REVIEWS.*—*With respect to 7(a) lenders, an*
15 *employee of the Office shall—*

16 “(A) *be present for and supervise any such*
17 *review that is conducted by a contractor of the*
18 *Office on the premise of the 7(a) lender; and*

19 “(B) *supervise any such review that is not*
20 *conducted on the premise of the 7(a) lender.*

21 “(2) *REVIEW REPORT TIMELINE.*—

22 “(A) *IN GENERAL.*—*Notwithstanding any*
23 *other requirements of the Office or the Adminis-*
24 *trator, the Administrator shall develop and im-*
25 *plement a review report timeline which shall—*

1 “(i) require the Administrator to—

2 “(I) deliver a written report of the
3 review to the 7(a) lender not later than
4 60 business days after the date on
5 which the review is concluded; or

6 “(II) if the Administrator expects
7 to submit the report after the end of the
8 60-day period described in clause (i),
9 notify the 7(a) lender of the expected
10 date of submission of the report and
11 the reason for the delay; and

12 “(ii) if a response by the 7(a) lender is
13 requested in a report submitted under sub-
14 paragraph (A), require the 7(a) lender to
15 submit responses to the Administrator not
16 later than 45 business days after the date
17 on which the 7(a) lender receives the report.

18 “(B) EXTENSION.—The Administrator may
19 extend the time frame described in subparagraph
20 (A)(i)(II) with respect to a 7(a) lender as the
21 Administrator determines necessary.”

22 (c) TRANSFER OF FUNCTIONS.—

23 (1) OFFICE OF CREDIT RISK MANAGEMENT.—All
24 functions of the Office of Credit Risk Management of
25 the Small Business Administration, including the

1 *personnel, assets, and obligation of the Office of Credit*
2 *Risk Management, as in existence on the day before*
3 *the date of the enactment of this Act, shall be trans-*
4 *ferred to the Office of Credit Risk Management estab-*
5 *lished under section 47 of the Small Business Act, as*
6 *added by subsection (a).*

7 (2) *LENDER OVERSIGHT COMMITTEE.—All func-*
8 *tions of the Lender Oversight Committee of the Small*
9 *Business Administration, including the personnel, as-*
10 *sets, and obligations of the Lender Oversight Com-*
11 *mittee, as in existence on the day before the date of*
12 *the enactment of this Act, shall be transferred to the*
13 *Lender Oversight Committee established under section*
14 *48 of the Small Business Act, as added by subsection*
15 *(a).*

16 (d) *DEEMING OF NAME.—*

17 (1) *OFFICE OF CREDIT RISK MANAGEMENT.—*
18 *Any reference in a law, regulation, guidance, docu-*
19 *ment, paper, or other record of the United States to*
20 *the Office of Credit Risk Management of the Small*
21 *Business Administration shall be deemed a reference*
22 *to the Office of Credit Risk Management, established*
23 *under section 47 of the Small Business Act, as added*
24 *by subsection (a).*

1 (2) *LENDER OVERSIGHT COMMITTEE.*—Any ref-
2 erence in a law, regulation, guidance, document,
3 paper, or other record of the United States to the
4 Lender Oversight Committee of the Small Business
5 Administration shall be deemed a reference to the
6 Lender Oversight Committee, established under sec-
7 tion 48 of the Small Business Act, as added by sub-
8 section (a).

9 (e) *TECHNICAL AMENDMENT.*—Section 3(r)(2) of the
10 Small Business Act (15 U.S.C. 632(r)(2)) is amended by
11 striking “regulated SBA lender” each place it appears in
12 heading and text and inserting “regulated lender”.

13 **SEC. 4. DEFINITION OF CREDIT ELSEWHERE.**

14 (a) *IN GENERAL.*—The Small Business Act (15 U.S.C.
15 631 et seq.) is amended—

16 (1) by striking section 3(h) (15 U.S.C. 632(h))
17 and inserting the following:

18 “(h) The term ‘credit elsewhere’ means—

19 “(1) for the purposes of this Act (except as used
20 in section 7(b)), the availability of credit on reason-
21 able terms and conditions to the individual loan ap-
22 plicant from non-Federal, non-State, or non-local gov-
23 ernment sources, considering factors associated with
24 conventional lending practices, including—

1 “(A) *the business industry in which the*
2 *loan applicant operates;*

3 “(B) *whether the loan applicant is an en-*
4 *terprise that has been in operation for a period*
5 *of not more than 2 years;*

6 “(C) *the adequacy of the collateral available*
7 *to secure the requested loan;*

8 “(D) *the loan term necessary to reasonably*
9 *assure the ability of the loan applicant to repay*
10 *the debt from the actual or projected cash flow of*
11 *the business; and*

12 “(E) *any other factor relating to the par-*
13 *ticular credit application, as documented in de-*
14 *tail by the lender, that cannot be overcome except*
15 *through obtaining a Federal loan guarantee*
16 *under prudent lending standards; and*

17 “(2) *for the purposes of section 7(b), the avail-*
18 *ability of credit on reasonable terms and conditions*
19 *from non-Federal sources taking into consideration*
20 *the prevailing rates and terms in the community in*
21 *or near where the applicant business concern trans-*
22 *acts business, or the applicant homeowner resides, for*
23 *similar purposes and periods of time.”; and*

24 (2) *in section 7(a)(1)(A)(i) (15 U.S.C.*
25 *636(a)(1)(A)(i)), by inserting “The Administrator has*

1 *the authority to direct, and conduct oversight for, the*
2 *methods by which lenders determine whether a bor-*
3 *rower is able to obtain credit elsewhere.” before “No*
4 *financial assistance”.*

5 ***(b) TECHNICAL AMENDMENT.***—*Section 18(b) of the*
6 *Small Business Act (15 U.S.C. 647(b)) is amended to read*
7 *as follows:*

8 *“(b) As used in this Act, the term ‘agricultural enter-*
9 *prises’ means those small business concerns engaged in the*
10 *production of food and fiber, ranching, and raising of live-*
11 *stock, aquaculture, and all other farming and agricultural-*
12 *related industries.”.*

13 ***SEC. 5. AUTHORITY FOR ADMINISTRATOR TO INCREASE***
14 ***AMOUNT FOR GENERAL BUSINESS LOANS.***

15 *Section 20 of the Small Business Act (15 U.S.C. 631*
16 *note) is amended—*

17 *(1) by redesignating subsection (j) as subsection*
18 *(f); and*

19 *(2) by adding at the end the following new sub-*
20 *section:*

21 ***“(g) AUTHORITY TO INCREASE AMOUNT OF GENERAL***
22 ***BUSINESS LOANS.—***

23 ***“(1) IN GENERAL.—****With respect to fiscal year*
24 *2018 and each fiscal year thereafter, if the Adminis-*
25 *trator determines that the amount of commitments by*

1 *the Administrator for general business loans author-*
2 *ized under section 7(a) for a fiscal year could exceed*
3 *the limit on the total amount of commitments the Ad-*
4 *ministrator may make for those loans under this Act,*
5 *an appropriations Act, or any other provision of law,*
6 *the Administrator may make commitments for those*
7 *loans for that fiscal year in an aggregate amount*
8 *equal to not more than 115 percent of that limit.*

9 “(2) *APPROVAL REQUIRED BEFORE EXERCISING*
10 *AUTHORITY.—*

11 “(A) *IN GENERAL.—Not later than 15 days*
12 *before the date on which the Administrator in-*
13 *tends to exercise the authority under paragraph*
14 *(1), the Administrator shall submit notice of in-*
15 *tent to exercise the authority to—*

16 “(i) *the Committee on Small Business*
17 *and Entrepreneurship and the Sub-*
18 *committee on Financial Services and Gen-*
19 *eral Government of the Committee on Ap-*
20 *propriations of the Senate; and*

21 “(ii) *the Committee on Small Business*
22 *and the Subcommittee on Financial Serv-*
23 *ices and General Government of the Com-*
24 *mittee on Appropriations of the House of*
25 *Representatives.*

1 “(B) *APPROVAL.*—*The Administrator may*
2 *not exercise the authority under paragraph (1)*
3 *unless such exercise of authority has been ap-*
4 *proved, in writing, by the Committee on Appro-*
5 *priations and the Committee on Small Business*
6 *and Entrepreneurship of the Senate and the*
7 *Committee on Appropriations and the Com-*
8 *mittee on Small Business of the House of Rep-*
9 *resentatives.*”

10 “(3) *LIMITATION.*—*The Administrator shall not*
11 *exercise the authority under paragraph (1) more than*
12 *once during any fiscal year.”.*”

13 **SEC. 6. ESTABLISHING A PROCESS FOR WAIVERS.**

14 (a) *IN GENERAL.*—*If the Administrator exercises stat-*
15 *utory or regulatory authority to waive a regulation or a*
16 *requirement in the Standard Operating Procedures Manual*
17 *or Policy Notice related to a program or function of the*
18 *Office of Capital Access of the Administration, the waiver*
19 *shall be in writing and be maintained in an indexed form.*

20 (b) *NO NEW WAIVER AUTHORITY.*—*Nothing in sub-*
21 *section (a) shall be construed as creating new authority for*
22 *the Administrator to waive regulations of the Administra-*
23 *tion.*

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