Calendar No. 161

113TH CONGRESS, 1st Session | SENATE | REPORT 113–84

SMALL BUSINESS DISASTER REFORM ACT OF 2013

JULY 31, 2013.—Ordered to be printed

Ms. LANDRIEU, from the Committee on Small Business and Entrepreneurship, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 415]

The Committee on Small Business and Entrepreneurship, to which was referred the bill (S. 415) to clarify the collateral requirement for certain loans under section 7(d) of the Small Business Act, to address assistance to out-of-state small business concerns, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

I. INTRODUCTION

The *Small Business Disaster Reform Act of 2013* (S. 415) was introduced by the Committee's Chair, Senator Mary L. Landrieu, and Senators Thad Cochran, Kirsten Gillibrand, and Mark Pryor, on February 18, 2013. Senators Benjamin Cardin, Heidi Heitkamp, John Hoeven, and Roger Wicker have also cosponsored the legislation.

The bill clarifies, for SBA disaster business loans of less than $200,000, that the SBA is required to utilize business assets other than the borrower's primary residence if those assets are available to use as collateral towards the loan. Additionally, the bill authorizes the SBA Administrator to allow out-of-state SBDCs to provide assistance to small businesses located in Presidentially declared disaster areas.

During markup of the bill, the Committee approved the legislation by a roll call vote of 11–6.

29–010

II. PURPOSE AND NEED FOR LEGISLATION

The U.S. Small Business Administration (SBA) is the primary Federal disaster-assistance loan program for private sector, non-agricultural businesses. SBA's Disaster Loan Program actually predates the SBA itself. The program was originally created in 1932 under the Herbert Hoover Administration at the Reconstruction Finance Corporation (RFC)—the precursor to the SBA. The program was gradually expanded until, when the SBA was created in 1953, Congress transferred disaster loan making authority from RFC to the SBA.

Disaster loans are direct loans from SBA and eligibility is based on financial criteria. Interest rates fluctuate according to statutory formulas (recent disaster loans were at 4 percent). Eligible recipients are small businesses, homeowners, and nonprofits. There are two kinds of business disaster loans: Physical Disaster Loans and Economic Injury Disaster Loans. The SBA also funds a nationwide network of nearly 1,000 Small Business Development Centers with over 4,500 business advisors. These advisors provide business counseling to entrepreneurs, both in disaster and non-disaster situations.

The purpose of the *Small Business Disaster Reform Act of 2013* is to ensure that the Federal government is better prepared and has the tools necessary to respond quickly and effectively following a disaster. The first provision in the *Small Business Disaster Reform Act of 2013* builds off of SBA disaster reforms enacted in 2008 and intends to ensure that SBA is responsive to the needs of small businesses seeking smaller amounts of disaster assistance. The majority of Committee members are concerned that these businesses are burdened the most by liens on their primary personal residential homes when they could conceivably provide sufficient business assets (i.e. commercial real estate, equipment, inventory) as collateral for the loan. Business owners, in many cases who have just lost everything due to natural disasters, are applying to the SBA for disaster loans of $200,000 or less for their business. The SBA has responded by requiring these disaster victims to put up their personal home, sometimes in excess of $300,000 to $400,000, as collateral even though the business may have acceptable business assets available to collateralize the loan.

The second provision in the bill authorizes the SBA Administrator to allow out-of-state Small Business Development Centers (SBDCs) to provide assistance in to small businesses located in Presidentially-declared disaster areas. There is currently a limitation on SBDCs from assisting businesses outside of their geographic areas. The Committee is concerned that this hurts recovery in disaster areas experiencing a large scale disaster as SBDCs are often impacted right along with their local small businesses. For example, following Hurricanes Katrina and Rita, Louisiana SBDCs were severely limited in what they could do right after the storm and seasoned disaster experts with Florida SBDCs could not assist in Louisiana while the local SBDCs were stood back up. A similar situation occurred following Hurricane Sandy last year—SBDCs in other states were prohibited from helping with recovery in New York or New Jersey.

The third provision ensures that out-of-state SBDCs are not left paying out of pocket for assisting in these disaster areas. This section encourages the SBA to ensure it reimburses SBDCs for these disaster-related expenses, provided they were legitimate and there are funds available to do so. The *Small Business Disaster Reform Act of 2013* makes these commonsense disaster reforms and will greatly benefit businesses impacted by future disasters.

The Committee is also concerned with borrowers of Economic Injury Disaster Loans (EIDLs) complying with loan requirements and therefore provides, within the fourth provision, increased oversight of EIDLs. A sense of Congress is included to reiterate that the SBA should utilize existing funds to implement this section.

The fifth provision requires the SBA to take reasonable steps to reduce paperwork burdens on individuals and businesses applying for SBA disaster assistance. This provision also encourages that the application for disaster assistance facilitates deterring and detecting potential incidents of waste, fraud, and abuse.

Finally, the last provision requires the SBA to report to Congress, in 90 days, on establishing an online web portal, within SBA's existing disaster website, to track the status of their disaster loan applications. The Committee has become aware of concerns surrounding disaster loans from Hurricane Sandy where sufficient follow-up communications are not being provided from SBA staff to disaster victims. These communications are both timely and necessary to applicants as their disaster loan application proceeds through the critical stages of origination, approval, and disbursement. To improve the quality of service and provide greater transparency for disaster loan applicants, this provision would require SBA to report on establishing a secure web portal for disaster loan applicants. This web portal, which would be within the existing disaster web portal, would allow disaster applicants to better track the status of their applications and receive relevant contact information for the specific SBA staff handling their loans.

III. HISTORY OF LEGISLATION

S. 415 draws its Section 2 provisions from: H.R. 3854, the *Small Business Financing and Investment Act of 2009,* introduced by Representative Kurt Schrader and cosponsored by Representatives Yvette Clarke, Deborah L. Halvorson, Ann Kirkpatrick, Ike Skelton, and Nydia M. Velázquez on October 20, 2009, H.R. 3743, the *Small Business Disaster Readiness and Reform Act of 2009,* introduced by Representative Parker Griffith on October 7, 2009, and H.R. 1, the *Disaster Relief Appropriations Act of 2013,* introduced by Representative Harold Rogers on February 11, 2011.

During the 111th Congress, H.R. 3854, the *Small Business Financing and Investment Act of 2009,* received a final vote of 389–32. H.R. 3743, the *Small Business Disaster Readiness and Reform Act of 2009,* received final passage by voice vote and H.R. 1 passed the Senate with a final vote of 62–32. Section 2 of S. 415, which builds upon these portions of legislation introduced and passed in previous Congresses, clarifies that, for SBA disaster business loans less than $200,000 that the SBA is required to utilize assets other than the primary residence if those assets are available to use as collateral towards the loan. The section specifies that these assets should be of equal or greater value than the amount of the loan and that, in implementing this section, the SBA is not required to reduce the amount or quality of collateral it seeks on these types of loans.

Section 3 of S. 415, which authorizes assistance to out-of-state small businesses during disasters, also builds upon sections of legislation introduced and passed in previous Congresses. During the 109th Congress, S. 3778, the *Small Business Reauthorization and Improvements Act of 2006,* was introduced by then Chair Olympia Snowe and included a similar provision. Despite being reported out of Committee favorably by a vote of 18–0 on August 2, 2006, the bill did not make it out of the full Senate before the close of the 109th Congress.

In the 110th Congress, then Chairman John Kerry introduced S. 163, the *Small Business Disaster Response and Loan Improvements Act of 2007,* co-sponsored by then Ranking Member Snowe and Senators Landrieu, Isakson, Nelson, and Vitter. This legislation contained provisions noting that during a disaster small business development centers can become authorized to provide assistance to small business centers located outside of the State, without regard to geographic proximity, if the small business is located in a declared disaster area. The legislation also provided for small business development centers that provide counselors, to presidentially declared disaster areas, continuity of services in any State in which such small business development center otherwise provides services. The provision also permitted small business development center personnel to use any site or facility designated by the Administrator for use to provide disaster recovery assistance. The bill was reported favorably out of Committee by a unanimous vote on March 29, 2007 and later passed the full Senate, by unanimous consent, on August 3, 2007.

During the 111th Congress, Senator Landrieu introduced S. 1229, the *Entrepreneurial Development Act of 2009,* cosponsored by then Ranking Member Snowe, then Chairman Kerry and Senator Shaheen. S. 1229 contained similar provisions, as it relates to small business development centers, to those included in S. 3778 and S. 163. Specifically—the legislation, at the discretion of the Administrator, authorized a small business development center to provide assistance to small businesses located outside of the State without regard to geographic proximity, if the small business concerns are located in a declared Presidential disaster area, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), during the period of the declaration. Despite being reported out of Committee favorably by a unanimous vote on July 2, 2009, the bill did not make it out of the full Senate before the close of the 111th Congress.

During the 112th Congress, Senator Landrieu introduced Senate Amendment 2521, an amendment to the *Small Business Jobs and Tax Relief Act,* cosponsored by Senators Christopher Coons and Jeff Merkley on July 11, 2012. This amendment contained provisions to permit the personnel of a small business development center to use any site or facility designated by the Administrator for use to provide disaster recovery assistance. The amendment was voted favorably, with a 57–42 vote, by the full Senate on July 12, 2012.

IV. HEARINGS AND ROUNDTABLES

During the 113th Congress, under Chair Landrieu:

On March 14, 2013, The Committee on Small Business and Entrepreneurship held a roundtable titled, "Helping Small Businesses Weather Economic Challenges and Natural Disasters: Review of Legislative Proposals on Access to Capital and Disaster Recovery." Disaster Recovery issues were addressed in a portion of the roundtable and representatives from the SBA, Inspector General for Auditing at the Small Business Administration, New York State Small Business Development Center, the Greater Beaumont Chamber of Commerce, the Heritage Foundation, and the Wharton School Risk Management and Decision Processes Center.

During the 112th Congress, under Chair Landrieu:

On December 13, 2012, the Committee held a hearing titled, "Hurricane Sandy: Assessing the Federal Response and Small Business Recovery Efforts." The purpose of this hearing was to review Hurricane Sandy recovery and relative legislative proposals that may assist (including Supplemental Appropriations and the collateral proposal). During the hearing, Senator Landrieu raised her collateral proposal in her opening remarks; there was also a line of questioning between Senators and the SBA.

V. DESCRIPTION OF BILL

Section 1. Short title

This section specifies the short title of the legislation as the "Small Business Disaster Reform Act of 2013."

Section 2. Clarification of collateral requirements

This section would clarify that, for SBA disaster business loans less than $200,000 that SBA is required to utilize assets other than the primary residence if those assets are available to use as collateral towards the loan. Section 2 ensures that these assets should be of equal or greater value than the amount of the loan. Also, to guarantee that this is a targeted improvement, the bill also includes additional language that this bill in no way requires SBA to reduce the amount or quality of collateral it seeks on these types of loans. It is not the intent of the committee to prohibit the use of personal homes as collateral for these loans nor to require that business assets, including inventory and equipment, be used as collateral. Instead, the section is intended to require the SBA to first review if sufficient business assets exist to collateralize such loans before requiring a personal home as collateral.

The majority of Committee members believe that safeguards in the provision ensure that Section 2 will not reduce the quality of collateral required by SBA for these disaster loans nor will it reduce the quality of the SBA's general collateral requirements. These changes will assist the SBA in cutting down on waste, fraud and abuse of these legislative reforms. In order to further assist the SBA, it is important to clarify what types of business assets they should review. For example, it is the Committee's understanding that SBA's current lending practices consider the following business assets as suitable collateral: commercial real estate; machinery and equipment; business inventory; and furniture and fixtures. For the 7(a) loan program, the SBA considers such factors as depreciation and the ability to liquidate assets when initially reviewing collateral. For example, the agency values business equipment or inventory significantly less than commercial or residential real estate due to depreciation. If these assets are deemed risky or as not having sufficient value to collateralize the loan, the SBA will not make the loan. In light of the collateral changes made by Section 2, of S. 415, the Committee expects the SBA to adopt these practices for the disaster loan program to further minimize the risk to taxpayers.

The Committee believes that it is essential for SBA to secure the loans, make the program cost effective, and minimize risk to the taxpayer, but at the same time, SBA has at its disposal multiple ways to secure loans.

Section 3. Assistance to out-of-state small businesses

Section 3 of this bill removes an unnecessary prohibition in the Small Business Act that currently prohibits SBDCs from other states to help out in areas impacted by disasters. In particular, this provision authorizes the SBA Administrator to allow out-of-state SBDCs to provide assistance in to small businesses located in Presidentially-declared disaster areas. This is because SBDCs are considered to be the backbone of the SBA's Office of Entrepreneurial Development (OED) efforts, and are the largest of the agency's OED programs. SBDCs are the university based resource partners that provide counseling and training needs for more than 600,000 business clients annually. According to the Chrisman Study commissioned by America's Small Business Development Center association, from 2010 to 2011, the counseling and technical assistance services they offered lead to the creation of 75,166 new jobs, at a cost of $3,156 per job. Additionally the study estimates that SBDC counseling services helped to save 83,268 jobs. These centers are even more critical following natural or manmade disasters. That is because SBDCs help impacted businesses in navigating Federal disaster programs, insurance programs, and in creating new business plans following a disaster. For that reason, the Committee believes that it is essential that there is continuity to have SBDC counselors on the ground in disaster areas.

For example, following Hurricane Katrina, SBDCs in Louisiana were severely limited in what they could do because of the widespread damage to homes and facilities utilized by their counselors. On the other hand, their counterparts at the Florida SBDCs had a wealth of disaster expertise and were willing to assist but were prohibited from providing assistance to small businesses outside their geographic area. In 2012, similar challenges occurred following Hurricane Sandy but SBDCs in Louisiana, Florida or elsewhere were prohibited from helping their counterparts in the Northeast even if they wanted to help recovery in New York or New Jersey and doing so would not impact their operations back home. For smaller scale disasters, local SBDCs will respond to disasters in their own areas. However, for large scale, catastrophic disasters, this provision could make a significant difference for impacted small businesses.

In fact, on December 13, 2012, the committee received testimony from Jim King, Chair of the Association of Small Business Development Centers (ASBDCs) and State Director of New York State

Small Business Development Center. Mr. King outlined the symbiotic relationship between different SBDC state chapters and how they currently assist each other after disasters. He specifically noted that, "I was also privileged to have the opportunity to work with the SBDC in Louisiana following Hurricane Katrina in 2005 and visited New Orleans as one of five State Directors invited to share thoughts with my counterpart there, Mary Lynn Wilkerson, to evolve a strategy for recovery. It should be noted that Mary Lynn has returned the favor many times over since Hurricane Sandy devastated our area, with materials, information and support, which has been greatly appreciated." He also later noted that, "Starting almost immediately after the disaster, staff in other states and programs began reaching out with offers of assistance and words or experiences of support. The experiences gained from disasters in Florida, Texas, Colorado, Louisiana and many other places reinforce the value of the SBDC network in meeting the needs of small business in times of disaster." The Committee believes that these current relationships will be further strengthened by enacting this legislation. C.E. "Tee" Rowe, President/CEO of ASBDC noted this in a February 10, 2013 letter to Chair Landrieu when he wrote, "Allowing SBDCs to share resources across state lines or other boundaries for the purposes of disaster recovery is a common sense proposal, little different from utilities sharing linemen." At the same time, however, the committee encourages SBDC chapters across the country to establish more of these partnerships pre-disaster so that their SBDC counterparts can be there post-disaster. SBDC chapters that are, unfortunately, battle hardened from multiple disasters should not be the only chapters that bear fruit from these partnerships with their counterparts.

Section 4. Sense of Congress

This section states that it is the Sense of Congress that the SBA, subject to the availability of funding and to the extent that it is practicable, ensure that SBDCs are appropriately reimbursed for legitimate expenses incurred as a result of carrying out activities authorized by Section 3 of the bill. This section addresses past instances where SBDCs were not sufficiently reimbursed post-disaster by the SBA for disaster-related expenses. Section 3 provides clear Congressional intent that, in authorizing the SBA to allow out-of-state SBDCs to assist in disaster areas outside their geographic location, the agency must also ensure that out-of-state SBDCs are not left paying out of pocket for assisting in these disaster areas. If the SBA approves for these SBDCs to deploy staff or resources to a disaster area, the agency must in turn ensure that it reimburses SBDCs for these expenses provided they were legitimate and there are funds available to do so.

Section 5. Increased oversight of Economic Injury Disaster Loans

This section requires the SBA to conduct random site visits to ensure borrowers of Economic Injury Disaster Loans (EIDLs) are in operation and complying with loan requirements; and conduct random reviews of loan proceeds to ensure that borrowers are using funds in accordance with SBA loan approvals. A sense of Congress is included to reiterate that the SBA should utilize existing funds to implement this section.

These changes are being made in response to recommendations from the SBA Office of Inspector General (OIG). As a result of previous as well as ongoing reviews of the SBA EIDL program, the OIG noted that the SBA needed to step up its onsite reviews to verify that businesses less than a year old or being planned are actually in existence and has a bona fide business plan. The OIG also recommended the SBA institute random reviews of loan proceeds to verify borrowers are complying with SBA authorized uses for the loans.

Section 6. Reduction of paperwork burden

This section requires the SBA to take steps to reduce paperwork burdens on individuals and businesses applying for SBA disaster assistance. Since 2005, SBA has made progress in streamlining its paper applications and coming into the 21st century by instituting an online electronic disaster loan application. SBA applications are now four pages for home loans and three pages for business loans. This is down from 10 to 20 pages of required information after Katrina. This section would codify these administrative reforms and ensure that disaster victims are never again required to fill out mountains of paperwork.

Section 7. Report on web portal for disaster loan applicants

This section requires the SBA to report to Congress, in 90 days, on establishing an online web portal, within SBA's existing disaster website, to track the status of their disaster loan applications. Since 2005, the SBA has transitioned from a paper-based system to a digital records system for disaster loan applications. In particular, the SBA has created an electronic disaster loan application and has established a one-stop disaster web portal with other Federal agencies at DisasterAssistance.gov. These improvements, required by Congress as part of Section 12067 from PL 110–234, directed the SBA to develop, implement, and maintain a centralized information system to track all communications (written, e-mail, and phone) between disaster victims and SBA personnel concerning the status of their application.

However, it has become clear to the Committee that deficiencies still exist in the program as it relates to transparency and customer service for disaster loan applicants. In particular, the Committee has become aware of concerns surrounding disaster loans from Hurricane Sandy where sufficient follow-up communications are not being provided from SBA staff to disaster victims. These communications are both timely and necessary to applicants as their disaster loan application proceeds through the critical stages of origination, approval, and disbursement.

The Committee notes that similar systems have been used by such private sector companies as Federal Express and United Parcel Service to improve efficiencies, quality control, and customer service. The Committee believes that implementing such a system for disaster loan applications would help the SBA remedy these ongoing deficiencies in effectively tracking and providing accurate information to disaster loan applicants.

VI. MINORITY VIEWS OF SENATOR RISCH

While the Ranking Member acknowledges that disaster programs need special consideration, there are specific concerns regarding Section 2 of S. 415 that the Ranking Member believes compromise the SBA's ability to secure loans in a responsible way to the taxpayer. The SBA has asserted that when they are able to take real property as collateral, other than the small business owner's home, they do so. Furthermore, in the event of default and liquidation, the SBA works through a very long process with the borrower to restructure that loan so as not to have to pursue foreclosure, an event that has only occurred 4 times in the last decade. The concern with restructuring the collateral standards is not that the SBA will fail to collect collateral of the same quality or of a 1:1 value ratio at the time the loan is issued; it is that the federal government is not able to easily liquidate inventory and equipment in the event of foreclosure. It is not the initial value, but the type of collateral secured that is most important, especially when it is being liquidated by the federal government, which has little or no experience with specialized equipment or inventory. The Ranking Member's perspective is that the federal government should obtain collateral with the least amount of risk associated with recouping the government's losses in the event the borrower cannot pay back the government-backed loan. The Fischer-Johnson Amendment to the underlying legislation, which would have simply struck the collateral provision, was not agreed to, and therefore, all but one member of the minority voted against passage of S. 415.

VII. COMMITTEE VOTE

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following votes were recorded on June 17, 2013.

Chair Landrieu moved to adopt the following three amendments, which were agreed to by voice vote:

(1) Senator Shaheen's amendment, as modified, to increase oversight of economic injury disaster loans.
(2) Chair Landrieu's amendment to reduce the burden of paperwork on individuals and businesses applying for SBA disaster assistance.
(3) Chair Landrieu and Senator Hagan's amendment to require the SBA to report to Congress, in 90 days, on establishing an online web portal, within SBA's existing disaster website, for businesses, home owners and renters to track the status of their disaster loan applications.

Following debate, Senator Landrieu called for a recorded vote on the question of whether to adopt an amendment filed by Senators Fischer and Johnson:

(1) Senators Fischer and Johnson's amendment set out to strike Sec. 2 of the disaster bill on modified requirements relating to the use of business assets instead of personal homes as collateral for business disaster loans of $200,000 or less.

The amendment was not agreed to by a 7–10 recorded vote. Senators Landrieu, Levin, Harkin, Pryor, Cardin, Shaheen, Hagan, Heitkamp, and Cowan voted to oppose the amendment. Senators Risch, Vitter, Rubio, Scott, Fischer, Enzi, and Johnson voted in favor of the amendment.

Chair Landrieu then moved to report out the *Small Business Disaster Reform Act of 2013,* as amended by recorded vote. The measure was reported favorably by an 11–6 recorded vote with the following Senators voting in the affirmative: Landrieu, Levin, Harkin, Cantwell, Pryor, Cardin, Shaheen, Hagan, Heitkamp, Cowan and Vitter. Senators Risch, Rubio, Scott, Fischer, Enzi, and Johnson voted against reporting out the measure.

VIII. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 11, 2013.

Hon. MARY L. LANDRIEU,
Chair, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIR: The Congressional Budget Office has prepared the enclosed cost estimate for S. 415, the Small Business Disaster Reform Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas W. Elmendorf, Director).

Enclosure.

S. 415—Small Business Disaster Reform Act of 2013

S. 415 would make changes to Small Business Administration (SBA) programs that serve areas affected by disasters. CBO estimates that implementing this legislation would not have a significant cost. Enacting S. 415 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

The bill would direct the SBA to:

- Allow certain applicants for physical disaster and economic injury disaster loans to use assets other than their primary residence as collateral for the loan;
- Provide technical assistance through small business development centers to small businesses located in a disaster-declared area regardless of proximity to the center;
- Increase oversight on entities receiving economic injury disaster loans; and
- Report to the Congress on the creation of a web portal to track the status of disaster loan applications submitted to the agency.

CBO estimates that conducting those activities would not have a significant cost. Allowing for similar collateral to be used in place of an applicant's primary residence should not affect the net cost to the federal government of SBA disaster loans. CBO also expects that the additional oversight and technical assistance authorized in the bill would be minimal relative to current law.

S. 415 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Daniel Hoople. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

IX. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

○