

115TH CONGRESS
2D SESSION

S. 2786

To expand opportunities to available employee-owned business concerns through Small Business Administration loan programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2018

Mrs. GILLIBRAND (for herself, Mr. YOUNG, Mr. RISCH, Mrs. SHAHEEN, Mr. BOOKER, Ms. COLLINS, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To expand opportunities to available employee-owned business concerns through Small Business Administration loan programs, 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 “Main Street Employee
5 Ownership Act of 2018”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the terms “Administration” and “Adminis-
 2 trator” mean the Small Business Administration
 3 and the Administrator thereof, respectively;

4 (2) the term “cooperative” has the meaning
 5 given the term in section 7(a)(35) of the Small Busi-
 6 ness Act, as added by section 3;

7 (3) the term “employee-owned business con-
 8 cern” means—

9 (A) a cooperative; and

10 (B) a qualified employee trust;

11 (4) the terms “qualified employee trust” and
 12 “small business concern” have the meanings given
 13 those terms in section 3 of the Small Business Act
 14 (15 U.S.C. 632), as amended by this Act; and

15 (5) the term “small business development cen-
 16 ter” means a small business development center de-
 17 scribed in section 21 of the Small Business Act (15
 18 U.S.C. 648).

19 **SEC. 3. EXPANSION OF 7(A) LOANS.**

20 (a) IN GENERAL.—Section 7(a) of the Small Busi-
 21 ness Act (15 U.S.C. 636(a)) is amended—

22 (1) in paragraph (15)—

23 (A) in subparagraph (A)—

(i) by striking “this subsection to qualified employee trusts” and inserting “this subsection—

“(i) to qualified employee trusts”;

(ii) in clause (i), as so designated—

(I) by inserting “, and for any transaction costs associated with purchasing,” after “purchasing”; and

(II) by striking the period at the end and inserting “; and”; and

(iii) by adding at the end the following:

“(ii) to a small business concern under a plan approved by the Administrator, if the proceeds from the loan are only used to make a loan to a qualified employee trust, and for any transaction costs associated with making that loan, that results in the qualified employee trust owning at least 51 percent of the small business concern.”;

(B) in subparagraph (B)—

(i) in the matter preceding clause (i), by inserting “or by the small business concern” after “the trustee of such trust”;

1 (ii) in clause (ii), by striking “and” at
2 the end;

3 (iii) in clause (iii), by striking the pe-
4 riod at the end and inserting “, and”; and

5 (iv) by adding at the end the fol-
6 lowing:

7 “(iv) with respect to a loan made to a
8 trust, or to a cooperative in accordance with
9 paragraph (35)—

10 “(I) a seller of the small business con-
11 cern may remain involved as an officer, di-
12 rector, or key employee of the small busi-
13 ness concern when a qualified employee
14 trust or cooperative has acquired 100 per-
15 cent of ownership of the small business
16 concern; and

17 “(II) any seller of the small business
18 concern who remains as an owner of the
19 small business concern, regardless of the
20 percentage of ownership interest, shall be
21 required to provide a personal guarantee
22 by the Administration.”; and

23 (C) by adding at the end the following:

24 “(F) A small business concern that makes a
25 loan to a qualified employee trust under subpara-

1 graph (A)(ii) is not required to contain the same
 2 terms and conditions as the loan made to the small
 3 business concern that is guaranteed by the Adminis-
 4 tration under such subparagraph.

5 “(G) With respect to a loan made to a qualified
 6 employee trust under this paragraph, or to a cooper-
 7 ative in accordance with paragraph (35), the Admin-
 8 istrator may, as determined appropriate by the Ad-
 9 ministrator, elect to not require any mandatory eq-
 10 uity to be provided by the qualified employee trust
 11 or cooperative to make the loan.”; and

12 (2) by adding at the end the following:

13 “(35) LOANS TO COOPERATIVES.—

14 “(A) DEFINITION.—In this paragraph, the
 15 term ‘cooperative’ means an entity that is de-
 16 termined to be a cooperative by the Adminis-
 17 trator, in accordance with applicable Federal
 18 and State laws and regulations.

19 “(B) AUTHORITY.—The Administration
 20 shall guarantee loans made to a cooperative for
 21 the purpose described in paragraph (15).”.

22 (b) DELEGATION OF AUTHORITY TO PREFERRED
 23 LENDERS.—Section 5(b)(7) of the Small Business Act (15
 24 U.S.C. 634(b)(7)) is amended by inserting “, including

1 loans guaranteed under paragraph (15) or (35) of section
2 7(a)” after “deferred participation loans”.

3 **SEC. 4. SMALL BUSINESS INVESTMENT COMPANY PRO-**
4 **GRAM OUTREACH.**

5 The Administrator shall provide outreach and edu-
6 cational materials to companies licensed under section
7 301(c) of the Small Business Investment Act of 1958 (15
8 U.S.C. 681(c)) to increase the use of funds to make invest-
9 ments in company transitions to employee-owned business
10 concerns.

11 **SEC. 5. SMALL BUSINESS MICROLOAN PROGRAM OUT-**
12 **REACH.**

13 The Administrator shall provide outreach and edu-
14 cational materials to intermediaries under section 7(m) of
15 the Small Business Act (15 U.S.C. 636(m)) to increase
16 the use of funds to make loans to employee-owned busi-
17 ness concerns, including transitions to employee-owned
18 business concerns.

19 **SEC. 6. SMALL BUSINESS DEVELOPMENT CENTER OUT-**
20 **REACH AND ASSISTANCE.**

21 (a) ESTABLISHMENT.—The Administrator shall es-
22 tablish a Small Business Employee Ownership and Co-
23 operatives Promotion Program to offer technical assist-
24 ance and training on the transition to employee ownership
25 through cooperatives and qualified employee trusts.

1 (b) SMALL BUSINESS DEVELOPMENT CENTERS.—

2 (1) IN GENERAL.—In carrying out the program
3 established under subsection (a), the Administrator
4 shall enter into agreements with small business de-
5 velopment centers under which the centers shall—

6 (A) provide access to information and re-
7 sources on employee ownership through co-
8 operatives or qualified employee trusts as a
9 business succession strategy;

10 (B) conduct training and educational ac-
11 tivities; and

12 (C) carry out the activities described in
13 subparagraph (U) of section 21(c)(3) of the
14 Small Business Act (15 U.S.C. 648(c)(3)).

15 (2) ADDITIONAL SERVICES.—Section 21(c)(3)
16 of the Small Business Act (15 U.S.C. 648(c)(3)) is
17 amended—

18 (A) in subparagraph (S), by striking
19 “and” at the end;

20 (B) in subparagraph (T), by striking the
21 period at the end and inserting “; and”; and

22 (C) by adding at the end the following:

23 “(U) encouraging and assisting the provi-
24 sion of succession planning to small business
25 concerns with a focus on transitioning to co-

operatives, as defined in section 7(a)(35), and qualified employee trusts (collectively referred to in this subparagraph as ‘employee-owned business concerns’), including by—

“(i) providing training to individuals to promote the successful management, governance, or operation of a business purchased by those individuals in the formation of an employee-owned business concern;

“(ii) assisting employee-owned business concerns that meet applicable size standards established under section 3(a) with education and technical assistance with respect to financing and contracting programs administered by the Administration;

“(iii) coordinating with lenders on conducting outreach on financing through programs administered by the Administration that may be used to support the transition of ownership to employees;

“(iv) supporting small business concerns in exploring or assessing the possi-

1 bility of transitioning to an employee-
2 owned business concern; and

3 “(v) coordinating with the cooperative
4 development centers of the Department of
5 Agriculture, the land grant extension net-
6 work, the Manufacturing Extension Part-
7 nership, community development financial
8 institutions, employee ownership associa-
9 tions and service providers, and local, re-
10 gional and national cooperative associa-
11 tions.”.

12 **SEC. 7. INTERAGENCY WORKING GROUP.**

13 (a) IN GENERAL.—Not later than 90 days after the
14 date of enactment of this Act, the Administrator or a des-
15 ignee of the Administrator shall coordinate and chair an
16 interagency working group, which shall—

17 (1) develop recommendations on how Federal
18 programs can promote, support, and increase the
19 number of employee-owned business concerns;

20 (2) ensure coordination with Federal agencies
21 and national and local employee ownership, coopera-
22 tive, and small business organizations; and

23 (3) publish a report on the activities of the
24 interagency working group that is indexed and main-
25 tained for public review.

1 (b) MEETINGS.—The interagency working group de-
 2 scribed in subsection (a) shall meet in person or via elec-
 3 tronic resources at such times as determined necessary by
 4 the Administrator, but not less frequently than biannually.

5 **SEC. 8. AMENDMENT TO REPORT TO CONGRESS ON STATUS**
 6 **OF EMPLOYEE-OWNED FIRMS.**

7 Section 7(a)(15) of the Small Business Act (15
 8 U.S.C. 636(a)(15)), as amended by this Act, is amended—

9 (1) in subparagraph (E), by striking “Adminis-
 10 tration.” and inserting “Administration, which shall
 11 include—

12 “(i) the total number of loans made to co-
 13 operatives and qualified employee trusts (collec-
 14 tively referred to in this subparagraph as ‘em-
 15 ployee-owned business concerns’) that were
 16 guaranteed by the Administrator under this
 17 section or section 502 of the Small Business In-
 18 vestment Act of 1958 (15 U.S.C. 696), includ-
 19 ing the number of loans made—

20 “(I) to small business concerns owned
 21 and controlled by socially and economically
 22 disadvantaged individuals; and

23 “(II) to cooperatives;

24 “(ii) the total number of financings made
 25 to employee-owned business concerns by compa-

1 nies licensed under section 301(c) of the Small
 2 Business Investment Act of 1958 (15 U.S.C.
 3 696(c)), including the number of financings
 4 made—

5 “(I) to small business concerns owned
 6 and controlled by socially and economically
 7 disadvantaged individuals; and

8 “(II) to cooperatives; and

9 “(iii) any outreach and educational activi-
 10 ties conducted by the Administration with re-
 11 spect to employee-owned business concerns.”;
 12 and

13 (2) by adding at the end the following:

14 “(H) In this paragraph—

15 “(i) the term ‘cooperative’ has the meaning
 16 given the term in paragraph (35); and

17 “(ii) the term ‘small business concern
 18 owned and controlled by socially and economi-
 19 cally disadvantaged individuals’ has the mean-
 20 ing given the term in section 8(d)(3)(C).”.

21 **SEC. 9. REPORT ON COOPERATIVE LENDING.**

22 (a) SENSE OF CONGRESS.—It is the sense of Con-
 23 gress that cooperatives have a unique business structure
 24 and are unable to access the lending programs of the Ad-
 25 ministration effectively due to loan guarantee require-

1 ments that are incompatible with the business structure
2 of cooperatives.

3 (b) STUDY AND REPORT.—

4 (1) STUDY.—The Administrator, in coordina-
5 tion with lenders, stakeholders, and Federal agen-
6 cies, shall study and recommend practical alter-
7 natives for cooperatives that will satisfy the loan
8 guarantee requirements of the Administration.

9 (2) REPORT.—Not later than 120 days after
10 the date of enactment of this Act, the Administrator
11 shall submit to Congress the recommendations devel-
12 oped under paragraph (1) and a plan to implement
13 those recommendations.

14 **SEC. 10. AMENDMENT TO DEFINITION OF QUALIFIED EM-**
15 **PLOYEE TRUST.**

16 Section 3(c)(2)(A)(ii) of the Small Business Act (15
17 U.S.C. 632(c)(2)(A)(ii)) is amended to read as follows:

18 “(ii) which provides that each partici-
19 pant is entitled to direct the plan trustee
20 as to the manner of how to vote the quali-
21 fied employer securities (as defined in sec-
22 tion 4975(e)(8) of the Internal Revenue
23 Code of 1986), which are allocated to the
24 account of such participant with respect to
25 a corporate matter which (by law or char-

1 ter) must be decided by a vote conducted
2 in accordance with section 409(e) of the
3 Internal Revenue Code of 1986; and”.

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