

to help employee-owned businesses succeed.

Employee-owned businesses are anchor businesses in our communities. They provide good, stable jobs and help employees build value and wealth over time and participate in the governance of the company. They align the incentives of workers with owners and management and are good for overall economic productivity as well.

This bill builds on the bipartisan language that I helped secure in the omnibus appropriations bill directing the SBA to encourage employee ownership. Passing this bill will make those changes in the 1-year spending bill that expires September 30 permanent.

Mr. Speaker, I encourage all Members to support this very important piece of bipartisan legislation.

Ms. VELÁZQUEZ. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, there is no question that we need to support our Main Street small businesses, especially those that fall outside of traditional business structures. H.R. 5236 does just that by requiring more training and clarifying lending protocols.

Today's bill is endorsed by at least 25 organizations, including America's SBDCs, the American Sustainable Business Council, the Association for Enterprise Opportunity, ESCA, and a variety of co-ops and employee-owner associations.

Mr. Speaker, I would like to thank Justin Pelletier and Jon Cardinal for their tireless work on this complex topic.

Mr. Speaker, I urge Members to support this bill, and I yield back the balance of my time.

Mr. CHABOT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I will conclude by saying that employee-owned businesses really populate the streets and neighborhoods of many cities across this Nation. They are unique in form but face many of the same hurdles that other small businesses face.

H.R. 5236 streamlines how employee-owned businesses operate under the important rules of the SBA 7(a) Loan Program. While preserving important characteristics of the program, H.R. 5236 will help employee-owned businesses as they seek capital to grow, expand, and create much-needed jobs.

Mr. Speaker, I want to again thank and commend the ranking member, Ms. VELÁZQUEZ, for her leadership on this legislation.

I would urge my colleagues to support H.R. 5236, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HILL). The question is on the motion offered by the gentleman from Ohio (Mr. CHABOT) that the House suspend the rules and pass the bill, H.R. 5236, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

SMALL BUSINESS 7(A) LENDING OVERSIGHT REFORM ACT OF 2018

Mr. CHABOT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4743) to amend the Small Business Act to strengthen the Office of Credit Risk Management within the Small Business Administration, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4743

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business 7(a) Lending Oversight Reform Act of 2018".

SEC. 2. DEFINITIONS.

In this Act, the terms "Administration" and "Administrator" mean the Small Business Administration and the Administrator thereof, respectively.

SEC. 3. CODIFICATION OF THE OFFICE OF CREDIT RISK MANAGEMENT AND THE LENDER OVERSIGHT COMMITTEE.

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

(1) by redesignating section 47 as section 49; and

(2) by inserting after section 46 the following new sections:

"SEC. 47. OFFICE OF CREDIT RISK MANAGEMENT.

"(a) ESTABLISHMENT.—There is established within the Administration the Office of Credit Risk Management (in this section referred to as the 'Office').

"(b) DUTIES.—The Office shall be responsible for supervising—

"(1) any lender making loans under section 7(a) (in this section referred to as a '7(a) lender');"

"(2) any Lending Partner or Intermediary participant of the Administration in a lending program of the Office of Capital Access of the Administration; and

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

"(c) DIRECTOR.—

"(1) IN GENERAL.—The Office shall be headed by the Director of the Office of Credit Risk Management (in this section referred to as the 'Director'), who shall be a career appointee in the Senior Executive Service (as defined in section 3132 of title 5, United States Code).

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

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

"(1) be present for and supervise any such review that is conducted by a contractor of the Office on the premise of the 7(a) lender; and

"(2) supervise any such review that is not conducted on the premise of the 7(a) lender.

"(e) ENFORCEMENT AUTHORITY AGAINST 7(A) LENDERS.—

"(1) INFORMAL ENFORCEMENT AUTHORITY.—The Director may take an informal enforcement action against a 7(a) lender if the Director finds that the 7(a) lender has violated a statutory or regulatory requirement under

section 7(a) or any requirement in a Standard Operating Procedures Manual or Policy Notice related to a program or function of the Office of Capital Access.

"(2) FORMAL ENFORCEMENT AUTHORITY.—

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

"(i) a statutory or regulatory requirement under section 7(a), including a requirement relating to credit elsewhere; or

"(ii) any requirement described in a Standard Operating Procedures Manual or Policy Notice, related to a program or function of the Office of Capital Access.

"(B) ENFORCEMENT ACTIONS.—An enforcement action imposed on a 7(a) lender by the Director under subparagraph (A) shall be based on the severity or frequency of the violation and may include assessing a civil monetary penalty against the 7(a) lender in an amount that is not greater than \$250,000.

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

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

"(g) SERVICING AND LIQUIDATION RESPONSIBILITIES.—During any period during which a 7(a) lender is suspended or otherwise prohibited from making loans under section 7(a), the 7(a) lender shall remain obligated to maintain all servicing and liquidation activities delegated to the lender by the Administrator, unless otherwise specified by the Director.

"(h) PORTFOLIO RISK ANALYSIS OF 7(a) LOANS.—

"(1) IN GENERAL.—The Director shall annually conduct a risk analysis of the portfolio of the Administration with respect to all loans guaranteed under section 7(a).

"(2) REPORT TO CONGRESS.—On December 1, 2018, and every December 1 thereafter, the Director shall submit to Congress a report containing the results of each portfolio risk analysis conducted under paragraph (1) during the fiscal year preceding the submission of the report, which shall include—

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

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

"(C) without identifying individual 7(a) lenders by name, a consolidated analysis of the risk created by the individual 7(a) lenders responsible for not less than 1 percent of the gross loan approvals set forth separately for the year covered by the report by—

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

"(ii) the number of loans made by such 7(a) lenders;

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

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

"(F) the number and dollar amount of total losses, the number and dollar amount of total purchases, and the percentage and dollar amount of recoveries at the Administration;

"(G) the number and type of enforcement actions recommended by the Director;

"(H) the number and type of enforcement actions approved by the Lender Oversight Committee established under section 48;

“(I) the number and type of enforcement actions disapproved by the Lender Oversight Committee; and

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

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

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

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

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

“SEC. 48. LENDER OVERSIGHT COMMITTEE.

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

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

“(1) 3 members shall be voting members, 2 of whom shall be career appointees in the Senior Executive Service (as defined in section 3132 of title 5, United States Code); and

“(2) the remaining members shall be non-voting members who shall serve in an advisory capacity on the Committee.

“(c) DUTIES.—The Committee shall—

“(1) review reports on lender oversight activities;

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

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

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

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

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

“(d) MEETINGS.—

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

“(2) REPORTS.—The Committee shall submit to the Administrator a report detailing each meeting of the Committee, including if the Committee does or does not vote to approve a formal enforcement action of the Director of the Office of Credit Risk Management with respect to a lender.”.

(b) SUPERVISION DUTIES FOR 7(A) LENDERS.—Effective January 1, 2019, subsection (d) of section 47 (as added by subsection (a)) is amended to read as follows:

“(d) SUPERVISION DUTIES FOR 7(A) LENDERS.—

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

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

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

“(2) REVIEW REPORT TIMELINE.—

“(A) IN GENERAL.—Notwithstanding any other requirements of the Office or the Administrator, the Administrator shall develop and implement a review report timeline which shall—

“(i) require the Administrator to—

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

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

“(ii) if a response by the 7(a) lender is requested in a report submitted under subparagraph (A)(i)(II) with respect to a 7(a) lender as the Administrator determines necessary.”.

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

(c) TRANSFER OF FUNCTIONS.—

(1) OFFICE OF CREDIT RISK MANAGEMENT.—All functions of the Office of Credit Risk Management of the Small Business Administration, including the personnel, assets, and obligation of the Office of Credit Risk Management, as in existence on the day before the date of the enactment of this Act, shall be transferred to the Office of Credit Risk Management established under section 47 of the Small Business Act, as added by subsection (a).

(2) LENDER OVERSIGHT COMMITTEE.—All functions of the Lender Oversight Committee of the Small Business Administration, including the personnel, assets, and obligations of the Lender Oversight Committee, as in existence on the day before the date of the enactment of this Act, shall be transferred to the Lender Oversight Committee established under section 48 of the Small Business Act, as added by subsection (a).

(d) DEEMING OF NAME.—

(1) OFFICE OF CREDIT RISK MANAGEMENT.—Any reference in a law, regulation, guidance, document, paper, or other record of the United States to the Office of Credit Risk Management of the Small Business Administration shall be deemed a reference to the Office of Credit Risk Management, established under section 47 of the Small Business Act, as added by subsection (a).

(2) LENDER OVERSIGHT COMMITTEE.—Any reference in a law, regulation, guidance, document, paper, or other record of the United States to the Lender Oversight Committee of the Small Business Administration shall be deemed a reference to the Lender Oversight Committee, established under section 48 of the Small Business Act, as added by subsection (a).

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

SEC. 4. DEFINITION OF CREDIT ELSEWHERE.

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

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

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

“(1) for the purposes of this Act (except as used in section 7(b)), the availability of credit on reasonable terms and conditions to the individual loan applicant from non-Federal, non-State, or non-local government sources,

considering factors associated with conventional lending practices, including—

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

“(B) whether the loan applicant is an enterprise that has been in operation for a period of not more than 2 years;

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

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

“(E) any other factor relating to the particular credit application, as documented in detail by the lender, that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards; and

“(2) for the purposes of section 7(b), the availability of credit on reasonable terms and conditions from non-Federal sources taking into consideration the prevailing rates and terms in the community in or near where the applicant business concern transacts business, or the applicant homeowner resides, for similar purposes and periods of time.”; and

(2) in section 7(a)(1)(A)(i) (15 U.S.C. 636(a)(1)(A)(i)), by inserting “The Administrator has the authority to direct, and conduct oversight for, the methods by which lenders determine whether a borrower is able to obtain credit elsewhere.” before “No financial assistance”.

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

“(b) As used in this Act, the term ‘agricultural enterprises’ means those small business concerns engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural-related industries.”.

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

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

(1) by redesignating subsection (j) as subsection (f); and

(2) by adding at the end the following new subsection:

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

“(1) IN GENERAL.—Subject to paragraphs (2) and (3) and with respect to fiscal year 2019 and each fiscal year thereafter, if the Administrator determines that the amount of commitments by the Administrator for general business loans authorized under section 7(a) for a fiscal year could exceed the limit on the total amount of commitments the Administrator may make for those loans under this Act, an appropriations Act, or any other provision of law, the Administrator may make commitments for those loans for that fiscal year in an aggregate amount equal to not more than 115 percent of that limit.

“(2) NOTICE REQUIRED BEFORE EXERCISING AUTHORITY.—Not later than 30 days before the date on which the Administrator intends to exercise the authority under paragraph (1), the Administrator shall submit notice of intent to exercise the authority to—

“(A) the Committee on Small Business and Entrepreneurship and the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the Senate; and

“(B) the Committee on Small Business and the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the House of Representatives.

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

SEC. 6. ESTABLISHING A PROCESS FOR WAIVERS.

(a) IN GENERAL.—If the Administrator exercises statutory or regulatory authority to waive a regulation or a requirement in the Standard Operating Procedures Manual or Policy Notice related to a program or function of the Office of Capital Access of the Administration, the waiver shall be in writing and be maintained in an indexed form.

(b) NO NEW WAIVER AUTHORITY.—Nothing in subsection (a) shall be construed as creating new authority for the Administrator to waive regulations of the Administration.

SEC. 7. REPEAL OF SMALL BUSINESS LOAN LOSS REPORT.

Subsection (b) of section 10 of the Small Business Act (15 U.S.C. 639(b)) is repealed.

The SPEAKER pro tempore (Mr. HILL). Pursuant to the rule, the gentleman from Ohio (Mr. CHABOT) and the gentlewoman from New York (Ms. VELÁZQUEZ) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio.

GENERAL LEAVE

Mr. CHABOT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. CHABOT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, although the economy is starting to recover, small businesses continue to face a rigid lending environment that challenges growth and job creation. With options limited, small businesses regularly turn to the SBA, the Small Business Administration, for assistance.

With nearly 70,000 loans made in fiscal year 2017, the 7(a) Loan Program is the SBA's largest capital access tool and is reserved for creditworthy small businesses that cannot access traditional or conventional bank lending.

□ 1500

In recent years, the program has experienced rapid growth, which spiked congressional interest and resulted in numerous hearings and meetings to evaluate the SBA's oversight of lenders.

After careful consideration, I, along with the ranking member, Ms. VELÁZQUEZ, determined legislation was needed to ensure the integrity of the program and to safeguard the American taxpayers' dollars. As a result, in January of this year, we introduced H.R. 4743, the Small Business 7(a) Lending Oversight Reform Act of 2018, this bill.

H.R. 4743 contains important oversight reforms that strengthen the SBA's Office of Credit Risk Management and the SBA's Lender Oversight Committee. H.R. 4743 also bolsters the credit elsewhere test which acts as a gatekeeper into this government guarantee program.

With the reforms outlined in this provision, the credit elsewhere test will

be clarified and refocused on a borrower's ability to access the program. The changes to the credit elsewhere test will ensure the program is being used by eligible and deserving small businesses.

Additionally, H.R. 4743 outlines a portfolio risk analysis that the SBA must perform. With any program that has a government role, healthy and vigorous oversight is required to protect the taxpayers. H.R. 4743 provides this for the 7(a) Loan Program and for the Nation's small businesses.

Mr. Speaker, I want to thank the ranking member, Ms. VELÁZQUEZ, for all of her hard work and interest in this topic, and I also want to thank all of the members of the committee who have had a role in exploring this issue.

The bill has broad, bipartisan support—as many of our bills often do. I urge my colleagues to vote “yes” on H.R. 4743, and I reserve the balance of my time.

Ms. VELÁZQUEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4743, a bipartisan, bicameral bill that will improve oversight of the 7(a) Loan Program, the SBA's flagship lending product.

At the beginning of this Congress, our committee held a series of hearings to take the temperature of the 7(a) program. We actively investigated how it is being utilized, and we worked with stakeholders to address the deficiencies that were identified.

Both lenders and the agency have said oversight could be improved and transparency increased with legislative action. This bill is the product of that feedback and will make long overdue reforms to the program.

The legislation increases transparency and uniformity for both lenders and the agency by codifying the Office of Credit Risk Management and Lender Oversight Committee. It also requires the Office to internally submit a budget to ensure there is justification of the fees, salaries, and expenses used to carry out oversight functions.

We also heard that the credit elsewhere test—a bedrock of the program—was not clear and lacked a verification component. This bill better clarifies the credit elsewhere test and bolsters substantiation of how it is fulfilled.

Finally, we all remember 2015, when the program ran out of authority to lend before the end of the year. This created an artificial run on the lenders to get loans approved, unfairly harmed small businesses that needed credit, and ultimately required congressional intervention.

Today's bill incorporates provisions from legislation I introduced earlier this year, empowering the Administrator to request additional lending capacity from Congress to meet unexpected demands late in the fiscal year.

H.R. 4743 strikes a meaningful balance between strong oversight and protecting the interests of small businesses that need loans.

Mr. Speaker, I urge Members to support this legislation, and I reserve the balance of my time.

Mr. CHABOT. Mr. Speaker, I yield such time as he may consume to the gentleman from Mississippi (Mr. KELLY), chairman of the Subcommittee on Investigations, Oversight and Regulations.

Mr. KELLY of Mississippi. Mr. Speaker, I thank the chairman for yielding. In my district, the Small Business Administration has made tremendous and direct impact with the 7(a) Loan Program by helping small businesses that are not able to find or obtain capital through traditional or conventional markets.

To acquire a 7(a) loan, participating lenders must determine that a small business cannot receive credit elsewhere. In practice, this is called the credit elsewhere test. The test became the focus of my subcommittee hearing in March of 2017, when the Committee reviewed the 7(a) Loan Program.

As conservatives, we must safeguard American taxpayer dollars. A government guarantee program needs strong oversight to make sure adequate safeguards are in place. That is why 7(a) oversight must begin with the credit elsewhere test.

This is exactly what H.R. 4743 proposes. It strengthens the credit elsewhere test and provides transparency to factors most commonly used by lenders as they move small businesses through the 7(a) loan process. Additionally, H.R. 4743 increases the oversight capabilities of the Office of Credit Risk Management and the Lender Oversight Committee. These reforms will support the program while protecting American taxpayer dollars.

Mr. Speaker, I want to thank the chairman and the ranking member for taking up this issue and working with all Members to ensure oversight is paramount, and I urge my colleagues to support this much-needed legislation.

Ms. VELÁZQUEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in crafting H.R. 4743, the chairman and I worked closely with our Senate counterparts, the SBA, and the lending industry. Everyone had a seat at the table, and through debate and compromise, we arrived at a legislative product we can all be proud of, and that, most importantly, will help deserving small businesses access loans.

Mr. Speaker, I would like to take this opportunity to thank Chairman CHABOT and Senators RISCH and CARDIN for their bipartisanship. And, finally, I would like to thank our staff for working diligently on this important bill.

Mr. Speaker, I urge my colleagues to vote “yes,” and I yield back the balance of my time.

Mr. CHABOT. Mr. Speaker, I yield myself such time as I may consume to close.

Mr. Speaker, I want to thank the gentlewoman for her leadership on this

issue. I would also like to thank the staffs on both sides of the aisle, and I would also like to thank the chairman of the Appropriations Committee, RODNEY FRELINGHUYSEN, for his assistance in a bump that we ran into at the eleventh hour there.

He was a classmate of mine. We both came in in the historic class of 1994, and he will be leaving at the end of this term. He is going to be greatly missed, but, in any event, I want to thank Chairman FRELINGHUYSEN.

Mr. Speaker, to conclude, the 7(a) Loan Program is an important capital access resource for the Nation's small businesses. However, with any government guarantee program, strong oversight is mandatory to safeguard American taxpayer dollars. H.R. 4743 institutes strong and critical reforms to make sure oversight is front and center as this program is administered by the SBA.

H.R. 4743 ensures the program will only be utilized by small businesses that truly require its services, and I urge my colleagues to support the bipartisan reforms instituted in H.R. 4743.

Finally, I want to again thank the gentlewoman from New York and the staffs and everyone else involved in this. I understand it might not be the norm everywhere these days, but, in our committee, it is business—and I should say—it is small business as usual. The gentlewoman was really a pleasure to work with on this and many other issues, so I thank the gentlewoman very much for her work.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MCCLINTOCK). The question is on the motion offered by the gentleman from Ohio (Mr. CHABOT) that the House suspend the rules and pass the bill, H.R. 4743, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF A RULE SUBMITTED BY BUREAU OF CONSUMER FINANCIAL PROTECTION

Mr. HENSARLING. Mr. Speaker, pursuant to House Resolution 872, I call up the joint resolution (S.J. Res. 57) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by Bureau of Consumer Financial Protection relating to "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act", and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 872, the joint resolution is considered read.

The text of the joint resolution is as follows:

S.J. RES. 57

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Bureau of Consumer Financial Protection relating to "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act" (CFPB Bulletin 2013-02 (March 21, 2013), and printed in the Congressional Record on December 6, 2017, on pages S7888-S7889, along with a letter of opinion from the Government Accountability Office dated December 5, 2017, that the Bulletin is a rule under the Congressional Review Act), and such rule shall have no force or effect.

The SPEAKER pro tempore. The joint resolution shall be debatable for 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services.

The gentleman from Texas (Mr. HENSARLING) and the gentlewoman from California (Ms. MAXINE WATERS) each will control 30 minutes.

The Chair recognizes the gentleman from Texas.

GENERAL LEAVE

Mr. HENSARLING. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and submit extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. HENSARLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Consumer Financial Protection Bureau, which many of us know as perhaps the single, most powerful, unaccountable agency in the history of our Republic, a few years ago, issued guidance that essentially outlawed the practice of auto dealers in America being able to take wholesale finances from third parties and charge retail rates. They did this because the Bureau claimed that the practice potentially violated the Equal Credit Opportunity Act, known as ECOA.

Mr. Speaker, there were several different problems with this approach, not the least of which is at section 1029 of Dodd-Frank, which forbids the Bureau from regulating auto dealers. It is in the law, and so many of my friends on the other side of the aisle come to this very floor to jealously, religiously, and unrelentlessly, defend the Dodd-Frank Act.

I am anxious to hear their voices today, because to defend the Dodd-Frank Act, you must vote to overturn the Bureau's guidance because this was absolutely trampling upon the sacred ground of Dodd-Frank.

Now, I didn't support Dodd-Frank, but it is the law of the land, Mr. Speaker. And if there is anything, shouldn't lawgivers in this Chamber be committed to the rule of law, the laws that have been passed by the United States

Congress and signed into law by the President of the United States? So no less of an authority than Dodd-Frank says: Bureau, thou shalt not regulate auto dealers. But they attempted to do it. So that was sin number one.

Sin number two: they didn't engage in rulemaking. This was guidance. Now, guidance is supposed to tell a market participant: Okay, we understand what you are trying to do, and what you are trying to do is permissible. But, instead, the Bureau flipped it on its head and said: No, you are not allowed to do X, Y, and Z, which is essentially rulemaking, Mr. Speaker.

And so what the Bureau did was they violated the Administrative Procedure Act, which is there to assure that market participants receive due process; that they are allowed notice; that they are allowed to comment; that they are allowed to participate in the democratic process by which rules are promulgated.

So, again, what the Bureau did was, as opposed to engaging in formal rulemaking as demanded by the Administrative Procedure Act—by the way, which was essentially defined by the Clinton administration—but they violated that. They just threw it out.

□ 1515

The third problem here, Mr. Speaker, is the Bureau claimed under its former Director, Mr. Cordray, now gubernatorial candidate Mr. Cordray, that they were a data-driven bureau. Well, guess what? They couldn't come up with any data of this purported violation of the Equal Credit Opportunity Act.

They claimed that somehow there was unconscious discrimination on racial basis, known as disparate impact. But where was the data? Auto dealers, by law, cannot keep records on the racial characteristics of their customers.

So what did the very enterprising Bureau do, Mr. Speaker? They guessed. Now, they came up with a great academic name for it: Bayesian Improved Surname Geocoding system. Do you know what that means, Mr. Speaker? They guessed. They looked at somebody's last name. They looked at a ZIP Code. They scratched their heads.

Oh, that person must be of Asian heritage.

Oh, that person must be of European heritage.

Oh, that person must be of African heritage.

They made it up. They had no data; so they made it up.

Now, because of all this, in the previous Congress, Mr. Speaker, this body voted overwhelmingly—overwhelmingly—to overturn the guidance. The vote was 332-96. Unfortunately, the Senate did not act then. Fortunately, today the Senate has now acted; so this body has the opportunity to overturn these many wrongs.

And let me end with this wrong: consumers are being hurt. An analysis by The Wall Street Journal showed that