

Public Law 115–189
115th Congress

An Act

June 21, 2018
[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.

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

Small Business
7(a) Lending
Oversight Reform
Act of 2018.
15 USC 631 note.

SECTION 1. SHORT TITLE.

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

15 USC 657t
note.

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.

15 USC 631 note.

(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:

15 USC 657t.

“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). Deadline.

“(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— Analyses.

“(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.

Public
information.
Time period.

15 USC 657u.

“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 nonvoting 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;

Recommendations.

“(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.—

15 USC 657t note.

“(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

Notification.

“(ii) if a response by the 7(a) lender is requested in a report submitted under subparagraph (A), require the 7(a) lender to submit responses to the Administrator not later than 45 business days after the date on which the 7(a) lender receives the report.

“(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.—

15 USC 657t
note.

(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).

15 USC 657u
note.

(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.—

15 USC 657t
note.

(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).

15 USC 657u
note.

(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.”.

Definition.

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.

Determination.

“(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—

Deadline.

“(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.”.

15 USC 657t
note.

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.

Approved June 21, 2018.

LEGISLATIVE HISTORY—H.R. 4743 (S. 2283):

HOUSE REPORTS: No. 115–655 (Comm. on Small Business).

SENATE REPORTS: No. 115–265 (Comm. on Small Business and Entrepreneurship) accompanying S. 2283.

CONGRESSIONAL RECORD, Vol. 164 (2018):

May 8, considered and passed House.

June 5, considered and passed Senate.