

115TH CONGRESS
2D SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2018

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

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

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

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

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

7 and

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

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

11 “(a) ESTABLISHMENT.—There is established within
12 the Administration the Office of Credit Risk Management
13 (in this section referred to as the ‘Office’).

14 “(b) DUTIES.—The Office shall be responsible for su-
15 pervising—

16 “(1) any lender making loans under section
17 7(a) (in this section referred to as a ‘7(a) lender’);

18 “(2) any participant in a lending program of
19 the Office of Capital Access of the Administration;
20 and

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

24 “(c) DIRECTOR.—

25 “(1) IN GENERAL.—The Office shall be headed
26 by the Director of the Office of Credit Risk Manage-

1 ment (in this section referred to as the ‘Director’),
2 who shall be a career appointee in the Senior Execu-
3 tive Service (as defined in section 3132 of title 5,
4 United States Code).

5 “(2) DUTIES.—The Director shall be respon-
6 sible for oversight of the lenders and participants de-
7 scribed in subsection (b), including by conducting
8 periodic reviews of the compliance and performance
9 of such lenders and participants.

10 “(d) SUPERVISION DUTIES FOR 7(a) LENDERS.—

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

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

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

18 “(2) REVIEW REPORT TIMELINE.—Notwith-
19 standing any other requirements of the Office or the
20 Administrator, the Administrator shall develop and
21 implement a review report timeline which shall—

22 “(A) require the Administrator to—

23 “(i) deliver a written report of the re-
24 view to the 7(a) lender not later than 60

1 business days after the date on which the
2 review is conducted; or

3 “(ii) if the Administrator expects to
4 submit the report after the end of the 60-
5 day period described in clause (i), notify
6 the 7(a) lender of the expected date of sub-
7 mission of the report and the reason for
8 the delay; and

9 “(B) if a response by the 7(a) lender is re-
10 quested in a report submitted under subpara-
11 graph (A), require the 7(a) lender to submit re-
12 sponses to the Administrator not later than 45
13 business days after the date on which the 7(a)
14 lender receives the report.

15 “(e) ENFORCEMENT AUTHORITY AGAINST 7(a)
16 LENDERS.—

17 “(1) INFORMAL ENFORCEMENT AUTHORITY.—
18 The Director may take an informal enforcement ac-
19 tion against a 7(a) lender if the Director finds that
20 the 7(a) lender has violated a requirement under
21 section 7(a) or any requirement in a Standard Oper-
22 ating Procedures Manual or Policy Notice related to
23 a program or function of the Office of Capital Ac-
24 cess.

25 “(2) FORMAL ENFORCEMENT AUTHORITY.—

1 “(A) IN GENERAL.—With the approval of
2 the Lender Oversight Committee established
3 under section 48, the Director may take a for-
4 mal enforcement action against any 7(a) lender
5 if the Director finds that the 7(a) lender has
6 violated—

7 “(i) a requirement under section 7(a),
8 including a requirement relating to credit
9 elsewhere, or any regulation implementing
10 such section; or

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

15 “(B) ENFORCEMENT ACTIONS.—An en-
16 forcement action imposed on a 7(a) lender by
17 the Director under subparagraph (A) shall be
18 based on the severity or frequency of the viola-
19 tion and may include assessing a civil monetary
20 penalty against the 7(a) lender in an amount
21 that is not greater than \$250,000.

22 “(3) APPEAL BY LENDER.—A 7(a) lender may
23 appeal an enforcement action imposed by the Direc-
24 tor described in paragraph (2) to the Office of Hear-

1 ings and Appeals established under section 5(i) or to
2 an appropriate district court of the United States.

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

7 “(g) SERVICING AND LIQUIDATION RESPONSIBIL-
8 ITIES.—During any period during which a 7(a) lender is
9 suspended or otherwise prohibited from making loans
10 under section 7(a), the 7(a) lender shall remain obligated
11 to maintain all servicing and liquidation activities dele-
12 gated to the lender by the Administrator, unless otherwise
13 specified by the Director.

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

15 “(1) IN GENERAL.—The Director shall annually
16 conduct a risk analysis of the portfolio of the Ad-
17 ministration with respect to all loans guaranteed
18 under section 7(a).

19 “(2) REPORT TO CONGRESS.—On December 1,
20 2018, and every December 1 thereafter, the Director
21 shall submit to Congress a report containing the re-
22 sults of each portfolio risk analysis conducted under
23 paragraph (1) during the fiscal year preceding the
24 submission of the report, which shall include—

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

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

5 “(C) without identifying individual 7(a)
6 lenders by name, a consolidated analysis of the
7 risk created by the individual 7(a) lenders re-
8 sponsible for not less than 1 percent of the
9 gross loan approvals set forth separately for the
10 year covered by the report by—

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

13 “(ii) the number of loans made by
14 such 7(a) lenders;

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

18 “(E) the number of 7(a) lenders, the num-
19 ber of loans made, and the gross and net dollar
20 amount of loans made;

21 “(F) the number and dollar amount of
22 total defaults, the number and dollar amount of
23 total repurchases, and the percentage and dol-
24 lar amount of recoveries;

1 “(G) the number and type of enforcement
2 actions recommended by the Director;

3 “(H) the number and type of enforcement
4 actions approved by the Lender Oversight Com-
5 mittee established under section 48;

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

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

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

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

18 “(2) be submitted at or about the time of the
19 budget submission by the President under section
20 1105(a) of title 31; and

21 “(3) be maintained in an indexed form and
22 made available for public review for a period of not
23 less than 5 years beginning on the date of submis-
24 sion and justification.

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

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

5 “(b) MEMBERSHIP.—The Committee shall consist of
6 11 members selected by the Administrator, of which—

7 “(1) 3 members shall be voting members, 2 of
8 whom shall be career appointees in the Senior Exec-
9 utive Service (as defined in section 3132 of title 5,
10 United States Code); and

11 “(2) 8 members shall be nonvoting members
12 who shall serve in an advisory capacity on the Com-
13 mittee.

14 “(c) DUTIES.—The Committee shall—

15 “(1) review reports on lender oversight activi-
16 ties;

17 “(2) review formal enforcement action rec-
18 ommendations of the Director of the Office of Credit
19 Risk Management with respect to any lender making
20 loans under section 7(a) and any participant in a
21 lending program of the Office of Capital Access of
22 the Administration;

23 “(3) in carrying out paragraph (2) with respect
24 to formal enforcement actions taken under sub-
25 section (d) or (e) of section 23, vote to recommend

1 or not recommend action to the Administrator or a
2 designee of the Administrator;

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

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

10 “(6) take such other actions and perform such
11 other functions as may be delegated to the Com-
12 mittee by the Administrator.

13 “(d) MEETINGS.—

14 “(1) IN GENERAL.—The Committee shall meet
15 as necessary, but not less frequently than on a quar-
16 terly basis.

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

23 (b) TRANSFER OF FUNCTIONS.—

24 (1) OFFICE OF CREDIT RISK MANAGEMENT.—
25 All functions of the Office of Credit Risk Manage-

1 ment of the Small Business Administration, includ-
2 ing the personnel, assets, and obligation of the Of-
3 fice of Credit Risk Management, as in existence on
4 the day before the date of the enactment of this Act,
5 shall be transferred to the Office of Credit Risk
6 Management established under section 47 of the
7 Small Business Act, as added by subsection (a).

8 (2) LENDER OVERSIGHT COMMITTEE.—All
9 functions of the Lender Oversight Committee of the
10 Small Business Administration, including the per-
11 sonnel, assets, and obligations of the Lender Over-
12 sight Committee, as in existence on the day before
13 the date of the enactment of this Act, shall be trans-
14 ferred to the Lender Oversight Committee estab-
15 lished under section 48 of the Small Business Act,
16 as added by subsection (a).

17 (c) DEEMING OF NAME.—

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

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

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

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

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

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

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

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

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

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

6 “(C) the adequacy of the collateral avail-
7 able to secure the requested loan;

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

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

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

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

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

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

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

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

19 (1) by redesignating subsection (j) as sub-
20 section (f); and

21 (2) by adding at the end the following new sub-
22 section:

23 “(g) **AUTHORITY TO INCREASE AMOUNT OF GEN-**
24 **ERAL BUSINESS LOANS.**—

1 “(1) IN GENERAL.—With respect to fiscal year
2 2018 and each fiscal year thereafter, if the Adminis-
3 trator determines that the amount of commitments
4 by the Administrator for general business loans au-
5 thorized under section 7(a) for a fiscal year could
6 exceed the limit on the total amount of commitments
7 the Administrator may make for those loans under
8 this Act, an appropriations Act, or any other provi-
9 sion of law, the Administrator may make commit-
10 ments for those loans for that fiscal year in an ag-
11 gregate amount equal to not more than 115 percent
12 of that limit.

13 “(2) APPROVAL REQUIRED BEFORE EXER-
14 CISING AUTHORITY.—

15 “(A) IN GENERAL.—Not later than 30
16 days before the date on which the Adminis-
17 trator intends to exercise the authority under
18 paragraph (1), the Administrator shall submit
19 notice of intent to exercise the authority to—

20 “(i) the Committee on Small Business
21 and Entrepreneurship and the Sub-
22 committee on Financial Services and Gen-
23 eral Government of the Committee on Ap-
24 propriations of the Senate; and

1 “(ii) the Committee on Small Busi-
2 ness and the Subcommittee on Financial
3 Services and General Government of the
4 Committee on Appropriations of the House
5 of Representatives.

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

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

18 **SEC. 6. DISCLOSURE OF WAIVERS.**

19 (a) IN GENERAL.—If the Administrator exercises
20 statutory or regulatory authority to waive a regulation re-
21 lated to a program or function of the Office of Capital
22 Access of the Administration—

23 (1) the waiver shall be in writing and shall
24 specify the grounds for approving the waiver; and

1 (2) the Administrator shall notify the public of
2 all waivers of regulations approved by the Adminis-
3 tration, which notice shall—

4 (A) be published in the Federal Register
5 not less than annually;

6 (B) cover the period beginning on the date
7 after the last day covered by the previous no-
8 tice;

9 (C) describe the nature of the requirement
10 that has been waived and specify the regulation
11 involved;

12 (D) include a brief description of the
13 grounds for approval of the waiver; and

14 (E) state how more information about the
15 waiver and a copy of the request and the ap-
16 proval may be obtained.

17 (b) NO NEW WAIVER AUTHORITY.—Nothing in sub-
18 section (a) shall be construed as creating new authority
19 for the Administrator to waive regulations of the Adminis-
20 tration.

21 (c) GAO STUDY ON STANDARD OPERATING PROCE-
22 DURES MANUAL OR POLICY NOTICE WAIVER PROCESS.—
23 Not later than 1 year after the date of the enactment of
24 this Act, the Comptroller General of the United States
25 shall submit to the Committee on Small Business and En-

1 entrepreneurship of the Senate and the Committee on Small
2 Business of the House of Representatives a report evalu-
3 ating—

4 (1) the methods and specific processes used by
5 the Small Business Administration to waive require-
6 ments in Standard Operating Procedures Manual or
7 Policy Notices relating to loans made under section
8 7(a) of the Small Business Act (15 U.S.C. 636(a));
9 and

10 (2) the number of such waivers granted during
11 the period of 5 fiscal years preceding the date of the
12 enactment of this Act.

○