

Calendar No. 351

115TH CONGRESS
2D SESSION

S. 2283

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 SENATE OF THE UNITED STATES

JANUARY 9, 2018

Mr. RISCH (for himself, Mrs. SHAHEEN, Mr. ENZI, and Ms. DUCKWORTH) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

MARCH 19, 2018

Reported by Mr. RISCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act, the terms “Administration” and “Admin-
3 istrator” mean the Small Business Administration and the
4 Administrator thereof, respectively.

5 **SEC. 3. CODIFICATION OF THE OFFICE OF CREDIT RISK**
6 **MANAGEMENT AND THE LENDER OVERSIGHT**
7 **COMMITTEE.**

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

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

12 (2) by inserting after section 46 the following:

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

14 **“(a) ESTABLISHMENT.**—There is established within
15 the Administration the Office of Credit Risk Management
16 (in this section referred to as the ‘Office’).

17 **“(b) DUTIES.**—The Office shall be responsible for su-
18 pervising—

19 **“(1)** any lender making loans under section
20 7(a) (in this section referred to as a ‘7(a) lender’);

21 **“(2)** any participant in a lending program of
22 the Office of Capital Access of the Administration;
23 and

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

1 “(c) DIRECTOR.—The Office is headed by the Direc-
 2 tor of the Office of Credit Risk Management (in this sec-
 3 tion referred to as the ‘Director’); who shall—

4 “(1) be a career appointee in a Senior Execu-
 5 tive Service position (as defined in section 3132 of
 6 title 5, United States Code); and

7 “(2) be responsible for oversight of the lenders
 8 and participants described in subsection (b), includ-
 9 ing by conducting periodic reviews of the compliance
 10 and performance of those lenders and participants.

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

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

14 “(A) be present for and supervise any re-
 15 view of a 7(a) lender that is conducted by a
 16 contractor of the Office on the premises of the
 17 7(a) lender; and

18 “(B) supervise any review of a 7(a) lender
 19 that is not conducted on the premises of the
 20 7(a) lender.

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

25 “(A) require the Administrator to—

1 “(i) deliver a written report of the re-
 2 view to the 7(a) lender not later than 60
 3 business days after the date on which the
 4 review is conducted; or

5 “(ii) if the Administrator expects to
 6 submit the report after the end of the 60-
 7 business-day period described in clause (i);
 8 notify the 7(a) lender in writing of the ex-
 9 pected submission day of the report and
 10 the reason for the delay; and

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

17 “(e) ENFORCEMENT AUTHORITY AGAINST 7(a)
 18 LENDERS.—

19 “(1) INFORMAL ENFORCEMENT AUTHORITY.—

20 The Director may take an informal enforcement ac-
 21 tion against a 7(a) lender if the Director finds that
 22 the 7(a) lender has violated a requirement under
 23 section 7(a) or any requirement in a Standard Oper-
 24 ating Procedures Manual or Policy Notice related to

1 a program or function of the Office of Capital Ac-
 2 cess.

3 ~~“(2) FORMAL ENFORCEMENT AUTHORITY.—~~

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

10 ~~“(i) a requirement under section 7(a);~~
 11 ~~including a requirement relating to credit~~
 12 ~~elsewhere; or any regulation implementing~~
 13 ~~such section; or~~

14 ~~“(ii) any requirement described in a~~
 15 ~~Standard Operating Procedures Manual or~~
 16 ~~Policy Notice related to a program or func-~~
 17 ~~tion of the Office of Capital Access.~~

18 ~~“(B) ENFORCEMENT ACTIONS.—~~

19 ~~“(i) IN GENERAL.—~~Any enforcement
 20 action taken with respect to a 7(a) lender
 21 by the Director under subparagraph (A)—

22 ~~“(I) shall be based on the sever-~~
 23 ~~ity or frequency of the violation; and~~

24 ~~“(II) may include assessing a~~
 25 ~~civil monetary penalty against the~~

1 7(a) lender in an amount that is not
2 greater than \$250,000.

3 ~~“(3) APPEAL BY LENDER.—~~A 7(a) lender may
4 appeal an enforcement action imposed by the Direc-
5 tor described in paragraph (2) to the Office of Hear-
6 ings and Appeals established under section 5(i) or to
7 an appropriate district court of the United States.

8 ~~“(f) REGULATIONS.—~~Not later than 1 year after the
9 date of enactment of the Small Business 7(a) Lending
10 Oversight Reform Act of 2018, the Administrator shall
11 issue regulations, after opportunity for notice and com-
12 ment under section 553 of title 5, United States Code,
13 to carry out subsection (e).

14 ~~“(g) SERVICING AND LIQUIDATION RESPONSIBIL-~~
15 ~~ITIES.—~~During any period during which a 7(a) lender is
16 suspended from participating under section 7(a), or if a
17 7(a) lender is prohibited from making loans under section
18 7(a), the 7(a) lender shall remain obligated to maintain
19 all servicing and liquidation activities delegated to the
20 lender by the Administrator, unless otherwise specified by
21 the Director.

22 ~~“(h) PORTFOLIO RISK ANALYSIS OF 7(a) LOANS.—~~
23 ~~“(1) IN GENERAL.—~~The Director shall annually
24 conduct a risk analysis of the portfolio of the Ad-

1 ministration with respect to all loans guaranteed
2 under section 7(a).

3 ~~“(2) REPORT TO CONGRESS.—On December 1,~~
4 2018, and every December 1 thereafter, the Director
5 shall submit to Congress an annual report con-
6 taining the results of each portfolio risk analysis
7 conducted under paragraph (1) during the fiscal
8 year preceding the submission of the report, which
9 shall include—

10 ~~“(A) an analysis of the overall program~~
11 risk of loans guaranteed under section 7(a);

12 ~~“(B) an analysis of program risk, set forth~~
13 separately by industry concentration;

14 ~~“(C) without identifying individual 7(a)~~
15 lenders by name, a consolidated analysis of the
16 risk created by the individual 7(a) lenders re-
17 sponsible for not less than 1 percent of the
18 gross loan approvals by dollar and amount of
19 loans for the year covered by the report;

20 ~~“(D) steps taken by the Administrator to~~
21 mitigate the risks identified in subparagraphs
22 (A), (B), and (C);

23 ~~“(E) the number of 7(a) lenders, the gross~~
24 and net number of loans made, and the gross
25 and net dollar amount of loans made;

1 “(F) the number and dollar amount of
2 total defaults and total repurchases, and the
3 percentage and total amount of recoveries;

4 “(G) the number and type of enforcement
5 actions recommended by the Director;

6 “(H) the number and type of enforcement
7 actions approved by the Lender Oversight Com-
8 mittee established under section 48;

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

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

14 “(i) BUDGET SUBMISSION AND JUSTIFICATION.—Ef-
15 fective for the first fiscal year occurring after the date of
16 enactment of the Small Business 7(a) Lending Oversight
17 Reform Act of 2018, and each fiscal year thereafter, the
18 Director shall provide, in writing a budget submission and
19 justification for the submission to the Administrator,
20 which shall—

21 “(1) include the salaries and expenses of the
22 Office and lender oversight fees;

23 “(2) be submitted at or about the time of the
24 budget submission by the President under section
25 1105(a) of title 31, United States Code; and

1 ~~“(3)~~ be maintained in an indexed form and
 2 made available for public review for a period of not
 3 less than 5 years beginning on the date of submis-
 4 sion.

5 **~~“SEC. 48. LENDER OVERSIGHT COMMITTEE.~~**

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

9 ~~“(b) MEMBERSHIP.—~~The Committee shall consist of
 10 11 members appointed by the Administrator, of whom—

11 ~~“(1) 3~~ members shall be voting members, of
 12 whom 2 shall be career appointees serving in a Sen-
 13 ior Executive Service position (as defined in section
 14 3132 of title 5, United States Code); and

15 ~~“(2) 8~~ members shall be nonvoting members
 16 who shall serve in an advisory capacity on the Com-
 17 mittee.

18 ~~“(c) DUTIES.—~~The Committee shall—

19 ~~“(1) review reports on lender oversight activi-~~
 20 ties;

21 ~~“(2) review formal enforcement action rec-~~
 22 ommendations of the Director of the Office of Credit
 23 Risk Management with respect to any lender making
 24 loans under section 7(a) and any participant in a

1 lending program of the Office of Capital Access of
2 the Administration;

3 ~~“(3) in carrying out paragraph (2) with respect~~
4 ~~to a formal enforcement action taken under sub-~~
5 ~~section (d) or (e) of section 23, vote to recommend~~
6 ~~the action or vote to not recommend the action to~~
7 ~~the Administrator or a designee of the Adminis-~~
8 ~~trator;~~

9 ~~“(4) in carrying out paragraph (2) with respect~~
10 ~~to any other formal enforcement action not other-~~
11 ~~wise specified in subsection (d) or (e) of section 23,~~
12 ~~vote to approve, disapprove, or modify the action;~~

13 ~~“(5) review in an advisory capacity any lender~~
14 ~~oversight, portfolio risk management, or program in-~~
15 ~~tegrity matters brought by the Director of the Office~~
16 ~~of Credit Risk Management; and~~

17 ~~“(6) take such other actions and perform such~~
18 ~~other functions as may be delegated to the Com-~~
19 ~~mittee by the Administrator.~~

20 ~~“(d) MEETINGS.—~~

21 ~~“(1) IN GENERAL.—The Committee shall meet~~
22 ~~as necessary, but not less frequently than on a quar-~~
23 ~~terly basis.~~

24 ~~“(2) REPORTS.—The Committee shall submit~~
25 ~~to the Administrator a report detailing each meeting~~

1 of the Committee, including if the Committee does
 2 or does not vote to recommend a formal enforcement
 3 action of the Director of the Office of Credit Risk
 4 Management with respect to a lender.”.

5 (b) TRANSFER OF FUNCTIONS.—

6 (1) OFFICE OF CREDIT RISK MANAGEMENT.—

7 All functions of the Office of Credit Risk Manage-
 8 ment of the Administration, including the personnel,
 9 assets, and obligations of the Office of Credit Risk
 10 Management, as in existence on the day before the
 11 date of enactment of this Act, shall be transferred
 12 to the Office of Credit Risk Management established
 13 under section 47 of the Small Business Act, as
 14 added by subsection (a).

15 (2) LENDER OVERSIGHT COMMITTEE.—All

16 functions of the Lender Oversight Committee of the
 17 Administration, including the personnel, assets, and
 18 obligations of the Lender Oversight Committee, as
 19 in existence on the day before the date of enactment
 20 of this Act, shall be transferred to the Lender Over-
 21 sight Committee established under section 48 of the
 22 Small Business Act, as added by subsection (a).

23 (c) DEEMING OF NAME.—

24 (1) OFFICE OF CREDIT RISK MANAGEMENT.—

25 Any reference in a law, regulation, document, paper,

1 or other record of the United States to the Office of
 2 Credit Risk Management of the Administration shall
 3 be deemed a reference to the Office of Credit Risk
 4 Management of the Administration established
 5 under section 47 of the Small Business Act, as
 6 added by subsection (a).

7 ~~(2) LENDER OVERSIGHT COMMITTEE.—Any ref-~~
 8 ~~erence in a law, regulation, document, paper, or~~
 9 ~~other record of the United States to the Lender~~
 10 ~~Oversight Committee of the Administration shall be~~
 11 ~~deemed a reference to the Lender Oversight Com-~~
 12 ~~mittee of the Administration established under sec-~~
 13 ~~tion 48 of the Small Business Act, as added by sub-~~
 14 ~~section (a).~~

15 ~~(d) TECHNICAL AND CONFORMING AMENDMENTS.—~~

16 ~~The Small Business Act (15 U.S.C. 631 et seq.) is amend-~~
 17 ~~ed—~~

18 ~~(1) in section 3(r)(2) (15 U.S.C. 632(r)(2))—~~

19 ~~(A) in this paragraph heading, by striking~~
 20 ~~“SBA”; and~~

21 ~~(B) in the matter preceding subparagraph~~
 22 ~~(A), by striking “SBA”; and~~

23 ~~(2) in section 18 (15 U.S.C. 647), by striking~~
 24 ~~subsection (b) and inserting the following:~~

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

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

7 The Small Business Act (15 U.S.C. 631 et seq.) is
 8 amended—

9 (1) in section 3 (15 U.S.C. 632), by striking
 10 subsection (h) and inserting the following:

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

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

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

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

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

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

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

10 “(2) for the purposes of section 7(b), the avail-
 11 ability of credit on reasonable terms and conditions
 12 from non-Federal sources taking into consideration
 13 the prevailing rates and terms in the community in
 14 or near where the applicant small business concern
 15 transacts business, or the applicant homeowner re-
 16 sides, for similar purposes and periods of time.”;
 17 and

18 (2) in section 7(a)(1)(A)(i) (15 U.S.C.
 19 636(a)(1)(A)(i)), by inserting “The Administrator
 20 has the authority to direct, and conduct oversight
 21 for, the methods by which lenders determine whether
 22 a borrower is able to obtain credit elsewhere.” before
 23 “~~No financial assistance~~”.

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

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

5 (1) by redesignating subsection (j) as sub-
 6 section (f); and

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

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

10 “(1) **IN GENERAL.—**With respect to fiscal year
 11 2018 and each fiscal year thereafter, if the Adminis-
 12 trator determines that the amount of commitments
 13 by the Administrator for general business loans au-
 14 thorized under section 7(a) for a fiscal year could
 15 exceed the limit on the total amount of commitments
 16 the Administrator may make for those loans under
 17 this Act, an appropriations Act, or any other provi-
 18 sion of law, the Administrator may make commit-
 19 ments for those loans for that fiscal year in total
 20 amount equal to not more than 115 percent of that
 21 limit.

22 “(2) **APPROVAL REQUIRED BEFORE EXER-**
 23 **CISING AUTHORITY.—**

24 “(A) **IN GENERAL.—**Not later than 30
 25 days before the date on which the Adminis-
 26 trator intends to exercise the authority under

1 paragraph (1); the Administrator shall submit
2 notice of the intent of the Administrator to ex-
3 ercise the authority to—

4 “(i) the Committee on Small Business
5 and Entrepreneurship and the Sub-
6 committee on Financial Services and Gen-
7 eral Government of the Committee on Ap-
8 propriations of the Senate; and

9 “(ii) the Committee on Small Busi-
10 ness and the Subcommittee on Financial
11 Services and General Government of the
12 Committee on Appropriations of the House
13 of Representatives.

14 “(B) APPROVAL.—The Administrator may
15 not exercise the authority under paragraph (1)
16 unless the exercise of authority has been ap-
17 proved, in writing, by the Committee on Appro-
18 priations and the Committee on Small Business
19 and Entrepreneurship of the Senate and the
20 Committee on Appropriations and the Com-
21 mittee on Small Business of the House of Rep-
22 resentatives.

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

1 **SEC. 6. DISCLOSURE OF WAIVERS.**

2 (a) IN GENERAL.—If the Administrator exercises
3 statutory or regulatory authority to waive a regulation re-
4 lated to a program or function of the Office of Capital
5 Access of the Administration—

6 (1) the waiver shall be in writing and shall
7 specify the grounds for approving the waiver; and

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

11 (A) be published in the Federal Register
12 not less than annually;

13 (B) cover the period beginning on the date
14 after the last day covered by the previous no-
15 tice;

16 (C) describe the nature of the requirement
17 that has been waived and specify the regulation
18 involved;

19 (D) include a brief description of the
20 grounds for approval of the waiver; and

21 (E) state how more information about the
22 waiver and a copy of the request and the ap-
23 proval may be obtained.

24 (b) NO NEW WAIVER AUTHORITY.—Nothing in sub-
25 section (a) shall be construed as creating new authority

1 for the Administrator to waive regulations of the Adminis-
 2 tration.

3 ~~(c) GAO STUDY ON STANDARD OPERATING PROCE-~~
 4 ~~DURES MANUAL OR POLICY NOTICE WAIVER PROCESS.—~~

5 Not later than 1 year after the date of enactment of this
 6 Act, the Comptroller General of the United States shall
 7 submit to the Committee on Small Business and Entrepre-
 8 neurship of the Senate and the Committee on Small Busi-
 9 ness of the House of Representatives a report evalu-
 10 ating—

11 (1) the methods and specific processes used by
 12 the Administration to waive requirements in the
 13 Standard Operating Procedures Manual or Policy
 14 Notices relating to loans made under section 7(a) of
 15 the Small Business Act (15 U.S.C. 636(a)); and

16 (2) the number of waivers described in para-
 17 graph (1) granted during the period of 5 fiscal years
 18 preceding the date of enactment of this Act.

19 **SECTION 1. SHORT TITLE.**

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

22 **SEC. 2. DEFINITIONS.**

23 *In this Act, the terms “Administration” and “Admin-*
 24 *istrator” mean the Small Business Administration and the*
 25 *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 U.S.C.*
 5 *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 **“SEC. 47. OFFICE OF CREDIT RISK MANAGEMENT.**

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

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

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

17 *“(2) any lending partner or intermediary par-*
 18 *ticipating in a lending program of the Office of Cap-*
 19 *ital Access of the Administration; and*

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

23 *“(c) DIRECTOR.—The Office is headed by the Director*
 24 *of the Office of Credit Risk Management (in this section*
 25 *referred to as the ‘Director’), who shall—*

1 “(1) be a career appointee in a Senior Executive
2 Service position (as defined in section 3132 of title 5,
3 United States Code); and

4 “(2) be responsible for oversight of the entities
5 described in subsection (b), including by conducting
6 periodic reviews of the compliance and performance of
7 those entities.

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

9 “(1) REVIEWS.—An employee of the Office
10 shall—

11 “(A) be present for and supervise any re-
12 view of a 7(a) lender that is conducted by a con-
13 tractor of the Office on the premises of the 7(a)
14 lender; and

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

18 “(2) REVIEW REPORT TIMELINE.—

19 “(A) IN GENERAL.—Notwithstanding any
20 other requirements of the Office or the Adminis-
21 trator, with respect to a review of a 7(a) lender
22 that is conducted on or after January 1, 2019,
23 the Administrator shall develop and implement a
24 review report timeline that shall—

25 “(i) require the Administrator to—

1 “(I) deliver a written report of the
 2 review to the 7(a) lender not later than
 3 60 business days after the date on
 4 which the review is concluded; or

5 “(II) if the Administrator expects
 6 to submit the report after the end of the
 7 60-business-day period described in
 8 subclause (I), notify the 7(a) lender in
 9 writing of the expected submission day
 10 of the report and the reason for the
 11 delay; and

12 “(ii) except as provided in subpara-
 13 graph (B), if a response by the 7(a) lender
 14 is requested in a report submitted under
 15 subparagraph (A), require the 7(a) lender to
 16 submit a response to the Administrator not
 17 later than 45 business days after the date
 18 on which the 7(a) lender receives the report.

19 “(B) *EXTENSION.*—The Administrator may
 20 extend the time frame described in subparagraph
 21 (A)(ii) with respect to a 7(a) lender as the Ad-
 22 ministrator determines necessary.

23 “(e) *ENFORCEMENT AUTHORITY AGAINST 7(a) LEND-*
 24 *ERS.*—

1 “(1) *INFORMAL ENFORCEMENT AUTHORITY.*—*The*
 2 *Director may take an informal enforcement action*
 3 *against a 7(a) lender if the Director finds that the*
 4 *7(a) lender has violated a statutory or regulatory re-*
 5 *quirement or any requirement in a Standard Oper-*
 6 *ating Procedures Manual or Policy Notice related to*
 7 *a program or function of the Office of Capital Access.*

8 “(2) *FORMAL ENFORCEMENT AUTHORITY.*—

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

14 “(i) *a statutory or regulatory require-*
 15 *ment, including a requirement relating to*
 16 *credit elsewhere; or*

17 “(ii) *any requirement described in a*
 18 *Standard Operating Procedures Manual or*
 19 *Policy Notice related to a program or func-*
 20 *tion of the Office of Capital Access.*

21 “(B) *ENFORCEMENT ACTIONS.*—*Any en-*
 22 *forcement action taken with respect to a 7(a)*
 23 *lender by the Director under subparagraph*
 24 *(A)—*

1 “(i) shall be based on the severity or
2 frequency of the violation; and

3 “(ii) may include assessing a civil
4 monetary penalty against the 7(a) lender in
5 an amount that is not greater than
6 \$250,000.

7 “(3) *APPEAL BY LENDER.*—A 7(a) lender may
8 appeal an enforcement action imposed by the Director
9 under paragraph (1) or (2) to the Office of Hearings
10 and Appeals established under section 5(i) or to an
11 appropriate district court of the United States.

12 “(f) *REGULATIONS.*—Not later than 1 year after the
13 date of enactment of the Small Business 7(a) Lending Over-
14 sight Reform Act of 2018, the Administrator shall issue reg-
15 ulations, after opportunity for notice and comment under
16 section 553 of title 5, United States Code, to carry out sub-
17 section (e).

18 “(g) *SERVICING AND LIQUIDATION RESPONSIBIL-*
19 *ITIES.*—During any period during which a 7(a) lender is
20 suspended from participating under section 7(a), or if a
21 7(a) lender is prohibited from making loans under section
22 7(a), the 7(a) lender shall remain obligated to maintain
23 all servicing and liquidation activities delegated to the lend-
24 er by the Administrator, unless otherwise specified by the
25 Director.

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

2 “(1) *IN GENERAL.*—*The Director shall annually*
 3 *conduct a risk analysis of the portfolio of the Admin-*
 4 *istration with respect to all loans guaranteed under*
 5 *section 7(a).*

6 “(2) *REPORT TO CONGRESS.*—*On December 1,*
 7 *2018, and every December 1 thereafter, the Director*
 8 *shall submit to Congress an annual report containing*
 9 *the results of each portfolio risk analysis conducted*
 10 *under paragraph (1) during the fiscal year preceding*
 11 *the submission of the report, which shall include—*

12 “(A) *an analysis of the overall program risk*
 13 *of loans guaranteed under section 7(a);*

14 “(B) *an analysis of program risk, set forth*
 15 *separately by industry concentration;*

16 “(C) *without identifying individual 7(a)*
 17 *lenders by name, a consolidated analysis of the*
 18 *risk created by the individual 7(a) lenders re-*
 19 *sponsible for not less than 1 percent of the gross*
 20 *loan approvals by dollar and amount of loans*
 21 *for the year covered by the report;*

22 “(D) *steps taken by the Administrator to*
 23 *mitigate the risks identified in subparagraphs*
 24 *(A), (B), and (C);*

1 “(E) the number of 7(a) lenders, the gross
2 and net number of loans made, and the gross
3 and net dollar amount of loans made;

4 “(F) the number and dollar amount of total
5 losses and total purchases, and the percentage
6 and total amount of recoveries by the Adminis-
7 tration;

8 “(G) the number and type of enforcement
9 actions recommended by the Director;

10 “(H) the number and type of enforcement
11 actions approved by the Lender Oversight Com-
12 mittee established under section 48;

13 “(I) the number and type of enforcement ac-
14 tions disapproved by the Lender Oversight Com-
15 mittee; and

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

18 “(i) BUDGET SUBMISSION AND JUSTIFICATION.—Ef-
19 fective for the first fiscal year beginning after the date of
20 enactment of the Small Business 7(a) Lending Oversight
21 Reform Act of 2018, and each fiscal year thereafter, the Di-
22 rector shall provide to the Administrator in writing a budg-
23 et submission and justification for the Office, which shall—

24 “(1) include the salaries and expenses of the Of-
25 fice and lender oversight fees;

1 “(2) be submitted at or about the time of the
2 budget submission by the President under section
3 1105(a) of title 31, United States Code; and

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

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

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

11 “(b) *MEMBERSHIP.*—The Committee shall consist of
12 not less than 8 members appointed by the Administrator,
13 of whom—

14 “(1) 3 members shall be voting members, of
15 whom 2 shall be career appointees serving in a Senior
16 Executive Service position (as defined in section 3132
17 of title 5, United States Code); and

18 “(2) the remaining members shall be nonvoting
19 members who shall serve in an advisory capacity on
20 the Committee.

21 “(c) *DUTIES.*—The Committee shall—

22 “(1) review reports on lender oversight activities;

23 “(2) review formal enforcement action rec-
24 ommendations of the Director of the Office of Credit
25 Risk Management with respect to any lender making

1 *loans under section 7(a) and any lending partner or*
 2 *intermediary participating in a lending program of*
 3 *the Office of Capital Access of the Administration;*

4 *“(3) in carrying out paragraph (2) with respect*
 5 *to a formal enforcement action taken under subsection*
 6 *(d) or (e) of section 23, vote to recommend the action*
 7 *or vote to not recommend the action to the Adminis-*
 8 *trator or a designee of the Administrator;*

9 *“(4) in carrying out paragraph (2) with respect*
 10 *to any other formal enforcement action not taken*
 11 *under subsection (d) or (e) of section 23, vote to ap-*
 12 *prove, disapprove, or modify the action;*

13 *“(5) review in an advisory capacity any lender*
 14 *oversight, portfolio risk management, or program in-*
 15 *tegrity matters brought by the Director of the Office*
 16 *of Credit Risk Management; and*

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

20 *“(d) MEETINGS.—*

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

24 *“(2) REPORTS.—The Committee shall submit to*
 25 *the Administrator a report detailing each meeting of*

1 *the Committee, including if the Committee does or*
 2 *does not vote to approve a formal enforcement action*
 3 *of the Director of the Office of Credit Risk Manage-*
 4 *ment with respect to a lender.”.*

5 ***(b) TRANSFER OF FUNCTIONS.—***

6 ***(1) OFFICE OF CREDIT RISK MANAGEMENT.—****All*
 7 *functions of the Office of Credit Risk Management of*
 8 *the Administration, including the personnel, assets,*
 9 *and obligations of the Office of Credit Risk Manage-*
 10 *ment, as in existence on the day before the date of en-*
 11 *actment of this Act, shall be transferred to the Office*
 12 *of Credit Risk Management established under section*
 13 *47 of the Small Business Act, as added by subsection*
 14 *(a).*

15 ***(2) LENDER OVERSIGHT COMMITTEE.—****All func-*
 16 *tions of the Lender Oversight Committee of the Ad-*
 17 *ministration, including the personnel, assets, and ob-*
 18 *ligations of the Lender Oversight Committee, as in ex-*
 19 *istence on the day before the date of enactment of this*
 20 *Act, shall be transferred to the Lender Oversight Com-*
 21 *mittee established under section 48 of the Small Busi-*
 22 *ness Act, as added by subsection (a).*

23 ***(c) DEEMING OF NAME.—***

24 ***(1) OFFICE OF CREDIT RISK MANAGEMENT.—***
 25 *Any reference in a law, regulation, document, paper,*

1 *or other record of the United States to the Office of*
 2 *Credit Risk Management of the Administration shall*
 3 *be deemed a reference to the Office of Credit Risk*
 4 *Management of the Administration established under*
 5 *section 47 of the Small Business Act, as added by*
 6 *subsection (a).*

7 (2) *LENDER OVERSIGHT COMMITTEE.*—*Any ref-*
 8 *erence in a law, regulation, document, paper, or other*
 9 *record of the United States to the Lender Oversight*
 10 *Committee of the Administration shall be deemed a*
 11 *reference to the Lender Oversight Committee of the*
 12 *Administration established under section 48 of the*
 13 *Small Business Act, as added by subsection (a).*

14 (d) *TECHNICAL AND CONFORMING AMENDMENTS.*—
 15 *The Small Business Act (15 U.S.C. 631 et seq.) is amend-*
 16 *ed—*

17 (1) *in section 3(r)(2) (15 U.S.C. 632(r)(2))—*

18 (A) *in the paragraph heading, by striking*
 19 *“SBA”; and*

20 (B) *in the matter preceding subparagraph*
 21 (A), *by striking “SBA”; and*

22 (2) *in section 18 (15 U.S.C. 647), by striking*
 23 *subsection (b) and inserting the following:*

24 “(b) *As used in this Act, the term ‘agricultural enter-*
 25 *prises’ means those small business concerns engaged in the*

1 *production of food and fiber, ranching, and raising of live-*
 2 *stock, aquaculture, and all other farming and agricultural*
 3 *related industries.”.*

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

5 *The Small Business Act (15 U.S.C. 631 et seq.) is*
 6 *amended—*

7 *(1) in section 3 (15 U.S.C. 632), by striking sub-*
 8 *section (h) and inserting the following:*

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

10 *“(1) for the purposes of this Act (except as used*
 11 *in section 7(b)), the availability of credit on reason-*
 12 *able terms and conditions to the individual loan ap-*
 13 *plicant from non-Federal, non-State, or non-local gov-*
 14 *ernment sources, considering factors associated with*
 15 *conventional lending practices, including—*

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

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

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

23 *“(D) the loan term necessary to reasonably*
 24 *assure the ability of the loan applicant to repay*

1 the debt from the actual or projected cash flow of
2 the business; and

3 “(E) any other factor relating to the par-
4 ticular credit application, as documented in de-
5 tail by the lender, that cannot be overcome except
6 through obtaining a Federal loan guarantee
7 under prudent lending standards; and

8 “(2) for the purposes of section 7(b), the avail-
9 ability of credit on reasonable terms and conditions
10 from non-Federal sources taking into consideration
11 the prevailing rates and terms in the community in
12 or near where the applicant business concern trans-
13 acts business, or the applicant homeowner resides, for
14 similar purposes and periods of time.”; and

15 (2) in section 7(a)(1)(A)(i) (15 U.S.C.
16 636(a)(1)(A)(i)), by inserting “The Administrator has
17 the authority to direct, and conduct oversight for, the
18 methods by which lenders determine whether a bor-
19 rower is able to obtain credit elsewhere.” before “No
20 financial assistance”.

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

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

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

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

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

6 “(1) *IN GENERAL.*—With respect to fiscal year
7 2018 and each fiscal year thereafter, if the Adminis-
8 trator determines that the amount of commitments by
9 the Administrator for general business loans author-
10 ized under section 7(a) for a fiscal year could exceed
11 the limit on the total amount of commitments the Ad-
12 ministrator may make for those loans under this Act,
13 an appropriations Act, or any other provision of law,
14 the Administrator may make commitments for those
15 loans for that fiscal year in a total amount equal to
16 not more than 115 percent of that limit.

17 “(2) *APPROVAL REQUIRED BEFORE EXERCISING*
18 *AUTHORITY.*—

19 “(A) *IN GENERAL.*—Not later than 15 days
20 before the date on which the Administrator in-
21 tends to exercise the authority under paragraph
22 (1), the Administrator shall submit notice of the
23 intent of the Administrator to exercise the au-
24 thority to—

1 “(i) the Committee on Small Business
 2 and Entrepreneurship and the Sub-
 3 committee on Financial Services and Gen-
 4 eral Government of the Committee on Ap-
 5 propriations of the Senate; and

6 “(ii) the Committee on Small Business
 7 and the Subcommittee on Financial Serv-
 8 ices and General Government of the Com-
 9 mittee on Appropriations of the House of
 10 Representatives.

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

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

23 **SEC. 6. ESTABLISHING A PROCESS FOR WAIVERS.**

24 (a) IN GENERAL.—If the Administrator exercises stat-
 25 utory or regulatory authority to waive a regulation or re-

1 *quirement in a Standard Operating Procedures Manual or*
 2 *Policy Notice related to a program or function of the Office*
 3 *of Capital Access of the Administration, the waiver shall*
 4 *be maintained in an indexed form.*

5 (b) *NO NEW WAIVER AUTHORITY.*—*Nothing in sub-*
 6 *section (a) shall be construed as creating new authority for*
 7 *the Administrator to waive regulations of the Administra-*
 8 *tion.*

9 **SEC. 7. IMPROVED OVERSIGHT OF 7(A) LOANS TO POULTRY**
 10 **FARMS.**

11 *The Director of the Office of Credit Risk Management*
 12 *of the Administration shall, in the first report submitted*
 13 *to Congress under section 47(h)(2) of the Small Business*
 14 *Act (as added by section 3 of this Act), include information*
 15 *on how the Office of Capital Access of the Administration*
 16 *has addressed the recommendations in the report issued by*
 17 *the Office of Inspector General of the Administration enti-*
 18 *tled “Evaluation of SBA 7(a) Loans Made to Poultry*
 19 *Farmers”, dated March 6, 2018.*

Calendar No. 351

115TH CONGRESS
2^D Session
S. 2283

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.

MARCH 19, 2018

Reported with an amendment