

Calendar No. 403

115TH CONGRESS
2D SESSION

H. R. 4743

IN THE SENATE OF THE UNITED STATES

MAY 9, 2018

Received; read twice and placed on the calendar

AN ACT

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 Lending Partner or Intermediary par-
19 ticipant of the Administration in a lending program
20 of the Office of Capital Access of the Administra-
21 tion; and

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

25 “(c) DIRECTOR.—

1 “(1) IN GENERAL.—The Office shall be headed
2 by the Director of the Office of Credit Risk Manage-
3 ment (in this section referred to as the ‘Director’),
4 who shall be a career appointee in the Senior Execu-
5 tive Service (as defined in section 3132 of title 5,
6 United States Code).

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

12 “(d) SUPERVISION DUTIES FOR 7(a) LENDERS.—
13 With respect to 7(a) lenders, an employee of the Office
14 shall—

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

18 “(2) supervise any such review that is not con-
19 ducted on the premise of the 7(a) lender.

20 “(e) ENFORCEMENT AUTHORITY AGAINST 7(a)
21 LENDERS.—

22 “(1) INFORMAL ENFORCEMENT AUTHORITY.—
23 The Director may take an informal enforcement ac-
24 tion against a 7(a) lender if the Director finds that
25 the 7(a) lender has violated a statutory or regulatory

1 requirement under section 7(a) or any requirement
2 in a Standard Operating Procedures Manual or Pol-
3 icy Notice related to a program or function of the
4 Office of Capital Access.

5 “(2) FORMAL ENFORCEMENT AUTHORITY.—

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

12 “(i) a statutory or regulatory require-
13 ment under section 7(a), including a re-
14 quirement relating to credit elsewhere; or

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

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

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

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

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

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

19 “(1) IN GENERAL.—The Director shall annually
20 conduct a risk analysis of the portfolio of the Ad-
21 ministration with respect to all loans guaranteed
22 under section 7(a).

23 “(2) REPORT TO CONGRESS.—On December 1,
24 2018, and every December 1 thereafter, the Director
25 shall submit to Congress a report containing the re-

1 sults of each portfolio risk analysis conducted under
2 paragraph (1) during the fiscal year preceding the
3 submission of the report, which shall include—

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

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

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

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

16 “(ii) the number of loans made by
17 such 7(a) lenders;

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

21 “(E) the number of 7(a) lenders, the num-
22 ber of loans made, and the gross and net dollar
23 amount of loans made;

24 “(F) the number and dollar amount of
25 total losses, the number and dollar amount of

1 total purchases, and the percentage and dollar
2 amount of recoveries at the Administration;

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

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

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

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

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

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

20 “(2) be submitted at or about the time of the
21 budget submission by the President under section
22 1105(a) of title 31; and

23 “(3) be maintained in an indexed form and
24 made available for public review for a period of not

1 less than 5 years beginning on the date of submis-
2 sion and justification.

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

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

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

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

14 “(2) the remaining members shall be nonvoting
15 members who shall serve in an advisory capacity on
16 the Committee.

17 “(c) DUTIES.—The Committee shall—

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

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

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

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

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

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

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

18 “(d) MEETINGS.—

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

22 “(2) REPORTS.—The Committee shall submit
23 to the Administrator a report detailing each meeting
24 of the Committee, including if the Committee does
25 or does not vote to approve a formal enforcement ac-

1 tion of the Director of the Office of Credit Risk
2 Management with respect to a lender.”.

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

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

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

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

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

14 “(2) REVIEW REPORT TIMELINE.—

15 “(A) IN GENERAL.—Notwithstanding any
16 other requirements of the Office or the Admin-
17 istrator, the Administrator shall develop and
18 implement a review report timeline which
19 shall—

20 “(i) require the Administrator to—

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

1 “(II) if the Administrator expects
2 to submit the report after the end of
3 the 60-day period described in clause
4 (i), notify the 7(a) lender of the ex-
5 pected date of submission of the re-
6 port and the reason for the delay; and
7 “(ii) if a response by the 7(a) lender
8 is requested in a report submitted under
9 subparagraph (A), require the 7(a) lender
10 to submit responses to the Administrator
11 not later than 45 business days after the
12 date on which the 7(a) lender receives the
13 report.

14 “(B) EXTENSION.—The Administrator
15 may extend the time frame described in sub-
16 paragraph (A)(i)(II) with respect to a 7(a)
17 lender as the Administrator determines nec-
18 essary.”.

19 (c) TRANSFER OF FUNCTIONS.—

20 (1) OFFICE OF CREDIT RISK MANAGEMENT.—
21 All functions of the Office of Credit Risk Manage-
22 ment of the Small Business Administration, includ-
23 ing the personnel, assets, and obligation of the Of-
24 fice of Credit Risk Management, as in existence on
25 the day before the date of the enactment of this Act,

1 shall be transferred to the Office of Credit Risk
2 Management established under section 47 of the
3 Small Business Act, as added by subsection (a).

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

13 (d) DEEMING OF NAME.—

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

22 (2) LENDER OVERSIGHT COMMITTEE.—Any ref-
23 erence in a law, regulation, guidance, document,
24 paper, or other record of the United States to the
25 Lender Oversight Committee of the Small Business

1 Administration shall be deemed a reference to the
2 Lender Oversight Committee, established under sec-
3 tion 48 of the Small Business Act, as added by sub-
4 section (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (1) by redesignating subsection (j) as sub-
 14 section (f); and

15 (2) by adding at the end the following new sub-
 16 section:

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

19 “(1) **IN GENERAL.**—Subject to paragraphs (2)
 20 and (3) and with respect to fiscal year 2018 and
 21 each fiscal year thereafter, if the Administrator de-
 22 termines that the amount of commitments by the
 23 Administrator for general business loans authorized
 24 under section 7(a) for a fiscal year could exceed the
 25 limit on the total amount of commitments the Ad-

1 administrator may make for those loans under this
2 Act, an appropriations Act, or any other provision of
3 law, the Administrator may make commitments for
4 those loans for that fiscal year in an aggregate
5 amount equal to not more than 115 percent of that
6 limit.

7 “(2) NOTICE REQUIRED BEFORE EXERCISING
8 AUTHORITY.—Not later than 30 days before the
9 date on which the Administrator intends to exercise
10 the authority under paragraph (1), the Adminis-
11 trator shall submit notice of intent to exercise the
12 authority to—

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

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

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

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

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

9 (b) NO NEW WAIVER AUTHORITY.—Nothing in sub-
10 section (a) shall be construed as creating new authority
11 for the Administrator to waive regulations of the Adminis-
12 tration.

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

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

Passed the House of Representatives May 8, 2018.

Attest: KAREN L. HAAS,
Clerk.

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